

# Family Legal Services Review

**Report submitted to:**

Attorney General Yasir Naqvi and Treasurer Paul Schabas

**By:** Justice Annemarie E. Bonkalo

**Date:** December 31, 2016

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Dear Attorney General Naqvi and Treasurer Schabas,

**Re: Family Legal Services Review**

On February 9, 2016, I was appointed by then Attorney General Madeleine Meilleur and then Treasurer of the Law Society of Upper Canada Janet Minor to lead a review of the provision of family legal services by persons other than lawyers.

I have the honour to present to you my report in this matter.

Yours sincerely,



Justice Annemarie E. Bonkalo

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## Disclaimer

As set out in the Terms of Reference establishing the Family Legal Services Review, the Attorney General and the Treasurer of the Law Society of Upper Canada agreed to work together on a review of the provision of family legal services by persons in addition to lawyers. Chief Justice Lise Maisonneuve of the Ontario Court of Justice agreed to assign me to undertake this review.

## Acknowledgments

I would like to express my sincere appreciation to the following members of my advisory body for taking the time to meet with me and for their thoughtful consideration of the issues:

- Lisa Bernstein
- Nikki Gersh bain
- Judith Huddart
- Hilary Linton
- Alf Mamo
- The Honourable Mary Jo Nolan
- Elaine Page and
- Noel Semple.

I would also like to acknowledge the following individuals:

- Sunny Kwon and Katie Wood, both counsel with the Ministry of the Attorney General. Without their invaluable contribution and support throughout the review, this report would not have been possible;
- Joshua Patlik, an articling student with the Ministry of the Attorney General, for his diligent research and editing assistance; and
- Ida Bianchi and Kirsti Mathers-McHenry for their time and feedback in the early stages of the review.

I would like to thank Attorney General Yasir Naqvi and former Attorney General Madeleine Meilleur, as well as Treasurer Paul Schabas and former Treasurer Janet Minor, in providing me with the opportunity to lead this review. My thanks also go to Chief Justice Lise Maisonneuve of the Ontario Court of Justice for agreeing to assign me to the review.

Last, but not least, I would like to thank all the organizations and individuals who took the time and effort to provide me with their written submissions and/or to meet with me to share their views about the family justice system and the role of legal service providers. I read each written submission with great interest and learned much from the numerous discussions that took place. Needless to say, the submissions received during my consultations form the backbone of this report.

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## Part 1: Introduction

# 1. Background / Context

## a. Mandate of Review

On February 9, 2016, the Ministry of the Attorney General (MAG) posted the Terms of Reference for this review of family legal services on its website.<sup>[1]</sup>

The MAG and the Law Society of Upper Canada (the Law Society) have requested I explore whether the delivery of family legal services should be expanded to include legal service providers other than lawyers, such as paralegals, law clerks and law students.

I have been appointed to lead a review that will:

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.

The scope of the family law services review does not include child protection matters under the *Child and Family Services Act*.

The original deadline for my report was September 15, 2016. At my request, the Attorney General extended the deadline to December 31, 2016.

## b. Process for Review

In fulfilling my mandate, I:

- Oversaw the posting of a short consultation paper on the MAG website;
- Invited written submissions from members of the public who wished to provide input into the review; and
- Held over 25 meetings with groups and organizations.

After considering all the written submissions, and meeting with the various stakeholders, I put together an advisory body to provide input on an early draft of my recommendations. The following people were on the advisory body:

- Lisa Bernstein, Legal Aid Ontario (LAO);
- Nikki Gershain, Pro Bono Students Canada;

- Judith Huddart, collaborative family lawyer;
- Hilary Linton, family lawyer and mediator;
- Alf Mamo, family lawyer, mediator and arbitrator;
- The Honourable Mary Jo Nolan, retired Justice of the Superior Court of Justice of Ontario;
- Elaine Page, paralegal; and
- Noel Semple, professor.

The advisory body met two times in October 2016 to provide me with feedback on an early draft outline and summary of recommendations, and provided me with further input on some issues. I am grateful to the advisory body for its expertise and reasoned consideration of the issues, which was enormously helpful to me.

## c. Definition of Key Terms Used Throughout This Report

### i. Access to Justice

For the purpose of this report, I have chosen to adopt the expansive vision of access to justice set out in the 2013 final report of the Action Committee on Access to Justice and Family Matters, entitled *Access to Justice in Civil and Family Matters: A Roadmap for Change*:

When thinking about access to justice, the starting point and consistent focus of the Action Committee is on the broad range of legal problems experienced by the public — not just those that are adjudicated by courts. 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. Historically, access to justice has been a concept that centered on the formal justice system (courts, tribunals, lawyers and judges) and its procedures. The formal system is, of course, important. But a more expansive, user-centered vision of an accessible civil and family justice system is required. We need a system that provides the necessary institutions, knowledge, resources and services to avoid, manage and resolve civil and family legal problems and disputes. That system must be able to do so in ways that are as timely, efficient, effective, proportional and just as possible:

- by preventing disputes and by early management of legal issues;
- through negotiation and informal dispute resolution services; and
- where necessary, through formal dispute resolution by tribunals and courts.<sup>[2]</sup>

I also find Alf Mamo’s definition of “meaningful access to justice” helpful. Mamo defines “meaningful access to justice” as “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.”<sup>[3]</sup>

### ii. Self-represented vs. Unrepresented

The terms “self-represented litigant” and “unrepresented litigant” will be used interchangeably throughout this report to mean people who, for whatever reason, are not represented by a lawyer, regardless of whether they have initiated a court case.

### iii. Paralegal

References to “paralegal” throughout the report are references to paralegals licensed to provide legal services and regulated by the Law Society.

## 2. The Issues

### a. Challenges of Navigating the Justice System Without Legal Assistance

As indicated in the MAG’s consultation paper for this review<sup>[4]</sup>, and as seen in the chart below, over 57% of Ontarians did not have legal representation in family court in 2014/15. Just over 21,000 people were unrepresented. These figures appear to have remained relatively stable between 2012 and 2015.

Representation Statistics – Family Court Branch, Superior Court of Justice and Ontario Court of Justice – Provincial Values – 2012/2013 to 2014/2015<sup>[5]</sup>

Year	Total	Unrepresented	Represented	% Unrepresented	% Represented
2012/2013	39,528	23,177	16,351	58.6%	41.4%
2013/2014	38,537	22,350	16,187	58.0%	42.0%
2014/2015	36,706	21,054	15,652	57.4%	42.6%

The impact of self-representation can be widely felt at all levels of the justice system and has resulted in significant access to justice challenges. For example, Loom Analytics, a legal analytics company in Toronto, analyzed cases where one side was represented by counsel and the other side was unrepresented. Its research indicates that an unrepresented litigant does not typically fare well against a litigant represented by counsel. 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.

Unrepresented vs. represented party outcomes, Superior Court of Justice, January 2012 - April 2016<sup>[6]</sup>

	All hearings	Motions	Trials	Applications



Total hearings	1192	989	120	72
Win	163	124	30	9
Loss	865	720	84	56
Split	33	26	3	4
No order	93	80	5	2

According to a survey of self-represented litigants by Professors Rachel Birnbaum, Nicholas Bala and Lorne Bertrand, 65% of judges believe that self-represented litigants generally have worse outcomes on economic issues. 46% of judges are concerned about the effect of self-representation on child-related outcomes.<sup>[7]</sup>

In addition, there is evidence that the lack of representation on the part of one party may have an effect on the legal experience of the other party. Birnbaum, Bala and Bertrand's survey found that 91% of Ontario family lawyers feel that having an unrepresented party on the other side of a file increases costs for the represented party.<sup>[8]</sup>

Aside from the impact on legal outcomes and costs of self-representation, Professor Julie Macfarlane has described the emotional and psychological strain of self-representation. Her report captures the experience of over 250 self-represented litigants and numerous service providers in Ontario, Alberta and British Columbia, and involves qualitative assessments of court forms and guides in the three provinces. Macfarlane states:

The psychological impacts of self-representation in the current state of the family law system are significant and concerning. Many SRLs [self-represented litigants] described high levels of stress, lost nights of sleep, depression, and feeling traumatized by the experience. They described the social isolation and inevitable experience of becoming fixated on their case given the amount of time and energy involved. The psychological impact extended to family and friends trying to support the SRL, and would be expected to negatively affect parenting and ultimately children who often bear the brunt of their parents' stress and may end up in a losing battle competing for their parents' time and attention.<sup>[9]</sup>

The impact of self-representation can be felt not only by the parties, but by the overburdened court system as well. Justice David Price of the Superior Court of Justice of Ontario commented on the impact on the courts as follows:

A greater burden is placed on the [self-represented] litigants and the court system by the reduced likelihood of settling outside of court. If the litigants are not able to supply the necessary evidence and legal argument, the judge's task and the time required to perform it will be greater....The judge is disappointed to find that fewer cases on the list settle, that more cases require the judge's decision, and that more time is required to sift through evidence that the litigants have not properly organized, and to research the law that the

litigants have not provided in their argument. The litigant is disappointed to find that the judge cannot decide the case immediately based on the evidence that has been tendered and the limited legal argument that has been made.<sup>[10]</sup>

Relatedly, the judges surveyed by Birnbaum, Bala and Bertrand indicated that self-representation substantially lengthens the time required to resolve or manage a case.<sup>[11]</sup>

## b. Financial Cost of Family Legal Services in Ontario

Why are so many people in Ontario's family courts self-represented? While the research indicates that the answer to this question is complex, it also indicates that the cost of legal services is a significant factor.

In Birnbaum and Bala's survey of self-represented litigants, 49% of those surveyed indicated that the main reason they did not have a lawyer was that "they did not have enough money and were not eligible for legal aid."<sup>[12]</sup>

In her national study on the needs of self-represented litigants, Macfarlane similarly found that "the most consistently cited reason for self-representation was the inability to afford to retain, or to continue to retain, legal counsel."<sup>[13]</sup>

The 2016 Canadian Lawyer Legal Fees survey, published by *Canadian Lawyer Magazine*, found the following information about fees for family legal services in Ontario:<sup>[14]</sup>

2016 Canadian Lawyer Legal Fees survey

Family law service	Average	Minimum	Maximum
Uncontested divorce	\$1,302	\$1,125	\$1,966
Contested divorce	\$15,118	\$10,150	\$34,367
Separation agreement	\$2,965	\$1,875	\$7,420
Child custody and support agreement	\$2,689	\$1,997	\$7,333
Trial up to 2 days	\$19,833	\$10,525	\$25,036
Trial up to 5 days	\$30,971	\$18,650	\$45,750
Marriage/cohabitation agreement	\$2,147	\$1,528	\$4,864
Spousal support agreement	\$2,879	\$2,000	\$7,838
Division of property/assets agreement	\$3,224	\$2,245	\$10,418

Anecdotal evidence from the people I spoke with throughout the course of this review suggested that these costs are in fact often much higher. The same survey reports that the average hourly rate for a lawyer called to the Ontario bar in 2015 was \$234, and \$476 for a lawyer called before 1996. Based on these numbers, it is not surprising that Birnbaum and Bala found that “those with higher incomes were significantly more likely to have a lawyer”.<sup>[15]</sup>

As of April 1, 2016, the legal aid financial eligibility threshold for certificate services for a family of four is \$28,664. For duty counsel and summary legal advice services, the financial eligibility threshold is \$44,068.<sup>[16]</sup> Recent research tells us that a significant proportion of court users, and self-represented litigants in particular, fall into income categories that exceed LAO’s thresholds but that also would not easily allow the payment of legal fees at their current rates, at least not for any sustained period of time.

For example, 17% of self-represented respondents participating in Macfarlane’s survey identified themselves as having an annual income within the \$30,000-\$50,000 range, 19% within the \$50,000-\$75,000 range and 12% within the \$75,000-\$100,000 range. Six percent identified themselves as having annual incomes above \$100,000.<sup>[17]</sup> With respect to the proportion of respondents in higher income categories:

The number of SRL’s in a higher income bracket reported here reflects the growing gap between the means of middle income earners and the affordability of legal services, as well as the phenomenon of “expended resources” – 53% of the SRL sample in this study had previously retained a lawyer to represent them, but had run out of funds to continue to pay for them.<sup>[18]</sup>

This finding is supported by research done by Pascoe Pleasence and Nigel J. Balmer:

... [I]t is clear that justiciable problems [are ubiquitous and affect people in all income groups. Yet people in different income groups appear to use lawyers to varying extents, even after controlling for problem type and severity. In broad terms, lawyer use increases with income. However, for problem types where legal aid is most available, it is those on lower incomes, but not eligible for legal aid, who are least likely to use lawyers.<sup>[19]</sup>

Given the consensus in the research literature about the impacts of self-representation, the legal community has, for some time, generally held that more needs to be done to address challenges in the family justice system and to make it more accessible for all families, particularly those who fall outside of legal aid thresholds but still cannot afford to pay for legal services. An expansion of the classes of providers who can provide family legal services has been, in numerous reports, presented as an option for achieving this goal.

### 3. Reports on Legal Service Delivery

Several reports have reviewed whether legal service providers, in addition to lawyers, should provide assistance in family law matters as a way to increase access to justice

for Ontarians. I note that this is only a sample of the work that has been done to consider ways to improve access to the justice system and is not exhaustive.

### a. 1997 McCamus Report – Report of the Ontario Legal Aid Review: A Blueprint for Publicly Funded Legal Services

In the 1997 *Report of the Ontario Legal Aid Review*, Professor John McCamus stated:

Family law is a particularly problematic area for independent paralegals. Legal problems in family law are highly complex, volatile, and of extraordinary importance to the parties involved. The lack of accountability and quality control of independent paralegals poses very real risks to family law clients, who are very often themselves unlikely to fully appreciate or understand the complexity or long term consequences of their legal issues.

Supervised paralegals, however, could assume a much larger role in the delivery of legal aid family law services, particularly in Staff Offices and in an expanded duty counsel office. Many private counsel use paralegals for a range of family law tasks. It may be possible to encourage an increase in the use of paralegals by private counsel in the delivery of legally aid services – for example, in the initial interviews with clients and/or intake – and thereby make use of lawyer's time on a certificate more efficient.<sup>[20]</sup>

### b. 2000 Cory Report – A Framework for Regulating *Paralegal Practice* in Ontario

The Honourable Peter Cory recommended the establishment of an independent regulatory body to govern the practice of paralegal services in order to improve access to justice.

He further stated that licensed paralegals should be entitled to undertake uncontested divorce proceedings in the circumstances specified:

I see no reason why licensed paralegals should not be authorized to undertake uncontested divorce proceedings in any of three circumstances: first where the parties have no children and no significant assets or the assets are jointly held, and if there is no need for, or no issue outstanding, as to spousal support; second where the proceedings are commenced within one year of the execution of a Separation Agreement which resolves all collateral concerns; third, where there was a Court Order resolving all of the ancillary issues granted within one year of the commencement of the divorce action.<sup>[21]</sup>

However, he was opposed to any licensed paralegal drafting a separation agreement.

Justice Cory commented that there could be a place for licensed paralegals to assist the public in court but that in-court assistance should only be provided by licensed paralegals that had received special training and demonstrated competence in family

law through an examination. He suggested that licensed paralegals should provide a role comparable to that of duty counsel if properly trained.

Justice Cory stated the following with respect to paralegals providing advice in matters related to custody and access, division of family property and support and maintenance:

...I worry about a paralegal giving advice of this sort. It is the custody and access cases that determine, not only the best interest of the children involved, but also to some extent the future of our country. The best interest of the child will always be paramount. A consideration of children's best interests must include custody and access entitlements...questions of child custody, access and support are of fundamental importance. Yet they raise legal issues of great complexity, very often involving the use and division of property both real and personal. The more complex the situation the more likely a mistake will be made in giving advice.

Only a lawyer should give advice in this area.<sup>[22]</sup>

### c. 2004 Law Society Task Force Report – Task Force on Paralegal Regulation

In 2004, then-Attorney General Michael Bryant asked the Law Society to consider taking on responsibility for paralegal regulation.

The Law Society established a task force, and the task force's report<sup>[23]</sup> was adopted by the Law Society on September 23, 2004. In response to this report, the government introduced Bill 14 (the *Access to Justice Act, 2006*<sup>[24]</sup>), which amended the *Law Society Act*<sup>[25]</sup> in order to include the regulation of paralegals within the Law Society's mandate, in the Legislative Assembly of Ontario. On October 19, 2006, Bill 14 received Royal Assent.

On May 1, 2007, the Law Society put in place a registration process, application forms, insurance requirements and rules of professional conduct for paralegals. It processed 2,230 paralegals – more than double the highest estimates of the number of paralegals practising prior to regulation – under “grandparenting” provisions of regulations.<sup>[26]</sup>

Paralegals' scope of practice reflected the scope permitted to “agents” in legislation and case law at the time, which did not include the provision of legal services in family matters.<sup>[27]</sup>

### d. 2008 Trebilcock Report – Report of the Legal Aid Review

In the *Report of the Legal Aid Review 2008*<sup>[28]</sup>, Professor Michael Trebilcock noted that LAO had successfully used paralegals in its staff offices, and added that, given the Law Society's recent assumption of responsibility for regulating paralegals, there was more that could be done to fully utilize their services where it was “appropriate and cost-effective”<sup>[29]</sup> to do so:

Paralegals are an important current source of legal assistance in the provision of legal aid services and it is incumbent on LAO and the LSUC jointly, going forward, to ensure that all potential opportunities for full utilization of the invaluable human resources they offer are maximized.<sup>[30]</sup>

### e. 2012 Law Society Report - Report to the Attorney General of Ontario Pursuant to Section 63.1 of the *Law Society Act*

Section 63.1 of the *Law Society Act* mandated a review by the Law Society five years after paralegal regulation was fully implemented. The report reviewed the manner in which paralegals were regulated during this time and the effect that such regulation had on paralegals and on members of the public. The Law Society retained a consultant to do research, hold focus groups and administer online surveys of paralegals and members of the public who have used paralegal services.

In its summary of findings, the consultant's report states:

Paralegal regulation is viewed as beneficial and effective by the paralegal profession and by the public who use paralegal services.<sup>[31]</sup>

Almost half (46%) cited lower cost as the reason they chose to use the services of a paralegal rather than those of a lawyer. Other reasons included: simple matter/not requiring a lawyer (41%), the paralegal was experienced/specialist in that area of law (33%), and it was easier to hire and manage a paralegal than a lawyer (23%).

Almost three-quarters (74%) of survey respondents reported that they were satisfied with the paralegal services they had received, whereas 9% reported they were dissatisfied. Eighty-eight percent of respondents indicated they would definitely (41%) or probably (47%) use similar paralegal services if they encountered a similar situation.

Asked about the impact of regulation on access to justice, 45% indicated it would increase access to justice, 5% that it would decrease access to justice and 42% that it would make no difference.

### f. 2012 Morris Report – Five-Year Review of Paralegal Regulation in Ontario

The *Law Society Act* required a review to assess paralegal regulation five years after its introduction. An independent reviewer, David Morris, concluded:

It is appropriate to view the first five years of regulation as the *introduction* of regulation – of getting the mechanics of it firmly established. By any objective measure, the introduction has been a remarkable success.<sup>[32]</sup>

Morris was cautious with respect to expanded scope of practice. He recommended that the Law Society actively pursue the broadening of scope to facilitate enhanced access to justice, but that this be linked to enhanced paralegal education, training and professional conduct. Morris also recommended the consideration of sub-classes of paralegal licenses for areas of law that fall outside of the existing scope of practice. Specialized training would be required to acquire these licenses.

### g. 2013 Law Commission Report – Increasing Access to Family Justice Through Comprehensive Entry Points and Inclusivity

The Law Commission of Ontario's 2013 report entitled *Increasing Access to Family Justice Through Comprehensive Entry Points and Inclusivity* acknowledged that

there are valid concerns about paralegals providing services in family law, but argued that these should not be considered absolute barriers:

Lawyer organizations raise a valid concern about the extent to which a person not trained as a lawyer can provide meaningful assistance in the case of family breakdown. Paralegals, however, can and do play a well-developed role in providing access to justice. Currently, they provide representation in small claims court, traffic court, tribunals such as the Landlord and Tenant Board or the Workplace Safety and Insurance Board and they can represent individuals in the Ontario Court of Justice on minor criminal charges. In a number of these areas, they must be familiar with a number of different statutes and regulations to properly represent their clients. Moreover, some of the administrative tribunals that paralegals work in are as complex in their structure and procedural rules as a court. Some of the work they do engages issues which have grave consequences for the welfare of their clients. In landlord and tenant matters, a person's housing is at stake. In social benefits matters, the success or failure in a matter will make a tangible difference to the quality of life of the claimant. Paralegals also can work closely with lawyers which can reduce the cost to the client.<sup>[33]</sup>

The report concluded that:

There may be many tasks that a lawyer performs in a family law matter that can be competently done by a paralegal with training and experience, either in a stand-alone fashion or in some form of symbiotic relationship with lawyers.<sup>[34]</sup>

### h. 2013 Action Committee on Access to Justice in Civil and Family Matters – A Roadmap for Change

Convened in 2012 at the invitation of the Chief Justice of Canada, the Action Committee on Access to Justice in Civil and Family Matters is currently chaired by retired Supreme Court of Canada justice, The Honourable Thomas Cromwell. The Committee is a national stakeholder-driven initiative that reports to all of the participating organizations

and sectors involved in civil and family justice. The Committee's objectives are to help stakeholders develop consensus priorities for civil and family justice reform and to encourage all of the participants in the system to work together in a cooperative and collaborative way with the ultimate goal of implementing reforms in the public interest.

The Action Committee established working groups in four key areas, one of which was family law. The Family Justice Working Group produced a report entitled *Meaningful Change for Family Justice: Beyond Wise Words*, which recommends

[t]hat jurisdictions expand reliance upon properly trained and supervised paralegals, law students, articling students, and non-lawyer experts to provide a range of services to families with legal problems.<sup>[35]</sup>

Another working group, the Access to Legal Services Working Group, also commented on the role of other legal service providers in its report:

Assistance with legal problems can come from a variety of sources. Paralegals, law students and articling students, as well as a variety of non-lawyers, particularly those who have specialized expertise, can provide effective assistance with a range of legal matters. There is a vast array of organizations and individuals who provide legal assistance and advice although they are not licensed or regulated by any law society.

Some law societies specifically exempt from regulation a variety of nonlawyer organizations and individuals who provide legal advice. For example, in Ontario, the *Law Society Act* exempts a number of legal service providers, including persons working in other regulated professions and employees or volunteers with trade unions who represent a member before a tribunal. The law society's bylaws exempt a further number of groups including Aboriginal Court Workers, legal clinic or student legal clinic staff and volunteers, employees of not for profit organizations and persons who act for friends or family, among others. The law society also has broadened the role of paralegals and law students, especially articling students.

The activities and initiatives of the LSUC demonstrate how law societies are increasingly recognizing that non-lawyers have a role to play in assisting people with their legal problems.<sup>[36]</sup>

The final report of the Action Committee, *A Roadmap for Change*,<sup>[37]</sup> states:

Specific innovations and improvements that should be considered and potentially developed include ...increased opportunities for paralegal services...<sup>[38]</sup>

As a follow up to its final report, the Action Committee held a national colloquium in January 2014. The Action Committee Colloquium report made the following recommendation:



Increase the use of paralegals and regulate other “navigators”. In appropriate matters, paralegals and other navigators can represent people in court (on limited matters), often for a lower cost, recognizing, however, that for some matters, lawyers are essential.<sup>[39]</sup>

The report went on to recommend that others in the justice system could play an important role:

Train and authorize staff in pro bono clinics to assist clients with preparing documents. Doing so would help reduce the amount of time lawyers have to spend fixing, or alternatively, sending clients away to fix, documents with mistakes. If trained correctly, front-end staff could help reduce simple and common errors, thereby reducing the time, cost and frustration of all parties involved. Law students working in pro bono clinics could also be trained to help clients complete forms.<sup>[40]</sup>

## Part 2: Overview of the Provision of Legal Services in Family Matters

### 1. The Law Society of Upper Canada and the *Law Society Act*

The Law Society is established under the *Law Society Act*. The *Law Society Act* restricts the provision of legal services to lawyers and paralegals who have met the criteria to provide legal services, subject to certain specified exceptions. The legislative purpose behind this provision is to ensure that members of the public are provided, to the greatest extent possible, with competent legal services that protect their legal rights.

The Ontario legislature has deemed it appropriate to create exceptions to the requirement that only lawyers and paralegals may perform legal services. One such exception relates to individuals’ right to self-representation.<sup>[41]</sup> The *Law Society Act* authorizes the Law Society to provide for further exceptions in its by-laws.

### 2. Main Legal Service Providers

#### a. Lawyers

In order to become licensed to practice as a lawyer in Ontario, one must do the following:

- complete a qualifying common law degree (in most law schools, the minimum length of program is three academic years);
- complete an articling program (work ten months with an Articling Principal approved by the Law Society) or Law Practice program (four-month training course and a four-month work placement). Note that graduates from

Lakehead University's law program do not need to fulfill this requirement, as they complete a four-month placement in their third year of study;

- pass the good character requirement (*i.e.* supply the Law Society with requested documentation); and
- pass the Barrister Licensing Examination and Solicitor Licensing Examination.

There are different requirements for students with a non-Canadian law degree, lawyers from other jurisdictions within Canada and foreign trained lawyers.

A lawyer may practise any area of law in Ontario once licensed. A lawyer must abide by the Law Society's *Rules of Professional Conduct*,<sup>[42]</sup> complete the continuing legal education requirements and be insured.

As of November 2015, 49,048 lawyers were licensed by the Law Society.

## b. Law Students

The Law Society's By-Law 4<sup>[43]</sup> states that a law student may provide legal services under the direct supervision of a lawyer:

- while articling or completing the Law Practice Program;
- while employed by a lawyer, a law firm, a professional corporation, the Government of Canada, the Government of Ontario or a municipal government in Ontario if the legal services are provided through those entities and under the direct supervision of a lawyer;
- while volunteering in, employed by or completing a clinical education course at a student legal aid services society (SLASS) or clinic and provides legal services through the SLASS or clinic to the community that the society serves; and/or
- while volunteering through a program established by PBSC.

The by-law also permits a law student to provide legal services that paralegals are authorized to provide if the law student is employed by a licensed paralegal, a legal services firm or a professional corporation, and provides legal services throughout the course of that employment and under the direct supervision of a paralegal.

The Law Society's *Rights of Appearance for Lawyer Licensing Process Candidates*<sup>[44]</sup> document ( *Rights of Appearance* document) provides that students-at-law (*i.e.* articling students, employed students and those in the Law Practice Program) may appear before Ontario courts and tribunals on the following family law matters, provided the candidate is employed under the direct supervision of a licensed lawyer:

1. Consent motions and matters before Ontario Court of Justice and the Superior Court of Justice, and before the Masters and Registrars of the Superior Court of Justice and the Registrars of the Court of Appeal for Ontario, including references and assessments of costs.

2. Matters brought without notice to the opposing party before the Ontario Court of Justice and the Superior Court of Justice, and before the Masters and Registrars of the Superior Court of Justice, provided no substantial rights will be affected.
3. Simple contested interlocutory motions before the Ontario Court of Justice and the Superior Court of Justice and before the Masters and Registrars of the Superior Court of Justice, unless the result of such interlocutory motion could be to finally dispose of a party's substantive rights by determining the subject matter in dispute.
4. Examinations for discovery, examinations in aid of execution, examinations of witnesses on pending motions and cross-examinations on affidavits in support of interlocutory motions.
5. Assignment court matters in both the Superior Court of Justice and the Ontario Court of Justice.
6. Status hearings in the Superior Court of Justice.
7. Applications in the Ontario Court of Justice. Candidates may not appear on contested Crown Wardship Applications.

Articling/LPP students must identify themselves as such when appearing in Family Court, the Superior Court of Justice and the Ontario Court of Justice. As well, they are subject to Rule 4 of the *Family Law Rules*<sup>[45]</sup>, which states that anyone acting for a litigant must be a lawyer unless the court gives permission in advance.

The *Rights of Appearance* document also provides that:

Articling Principals and/or supervising lawyers are under an obligation to ensure in each case where candidates are instructed to appear before courts or tribunals that:

- i. the attendance of the articling principal and/or supervising lawyer is not necessary in order to secure the client's rights, assist the court or for any other reason;
- ii. the candidate is adequately supervised;
- iii. the matter is appropriate for the candidate's training, experience and ability; and
- iv. the candidate is properly prepared.<sup>[46]</sup>

In 2015, the Ontario Court of Justice released the *Family Law Students at the Ontario Court of Justice Guidelines* (the *Guidelines*) to provide consistency and to ensure that proper supervision and training was in place.

Unlike the Law Society's *Rights of Appearance* document, the *Guidelines* require that the supervising lawyer attend at all court appearances. Importantly, the *Guidelines* also set out limits to what a law student is permitted to do in family court, even under the supervision of a lawyer; students are not allowed to appear on child protection matters, complex motions, trials or *Hague Convention on the Civil Aspects of International Child*

*Abduction* matters. The *Guidelines* were developed by the Ontario Court of Justice, with input from LAO and SLASS clinics.

In practice, there is significant variation in the extent to which judges allow articling students, employed law students and law students from clinics to appear in their courts. Some of the variation is by level of court, with more willingness to allow students to appear in the Ontario Court of Justice than in the Superior Court of Justice or Family Court. There also appears to be substantial variation in the approach to law students from judge to judge, as well as from one court site to another, even within the same level of court.

### c. Paralegals

In 2007, Ontario became the first Canadian jurisdiction to regulate paralegals<sup>[47]</sup> and the first and only jurisdiction in Canada where paralegals are licensed to work independently of lawyers. Paralegals are licensed by the Law Society to provide legal services within a permitted scope of practice.

In order to become a licensed paralegal in Ontario, a candidate must:

- complete an approved paralegal program at a college;
- pass the good character requirement (*i.e.* supply the Law Society with requested documentation); and
- pass the Law Society's paralegal licensing exam.

Once licensed, a paralegal 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.<sup>[48]</sup>

Within the current scope of practice for paralegals, a licensed paralegal can:

- give legal advice concerning legal interests, rights or responsibilities with respect to a proceeding or the subject matter of a proceeding;
- draft or assist with drafting documents for use in a proceeding; and
- negotiate on behalf of a person who is a party to a proceeding.

Paralegals are not permitted to appear or provide legal services in family law cases.<sup>[49]</sup>

Certain exemptions to the licensing requirements were provided when paralegal regulation was first introduced.<sup>[50]</sup> For example, in-house paralegals representing their

employer, such as municipal prosecutors, are not required to have a licence. This can be contrasted with the situation of in-house lawyers, who are required to be licensed.

Licensed paralegals are subject to regulation and discipline by the Law Society in much the same way as lawyers.

There are two types of paralegal training programs available: diploma and degree.

Paralegal diplomas are available to paralegal candidates that have completed some post-secondary coursework or who have work experience in the legal field. Because paralegal diploma coursework does not require general education coursework, diplomas can usually be completed in two years. Students that are enrolled in a paralegal diploma program will often take classes alongside students in a degree program.

Paralegal degrees include both general education courses and paralegal specific courses. Degrees usually can be earned in four years.

As of November 25, 2015, 7,473 paralegals were licensed in Ontario.

#### d. Law Clerks

In Ontario, a law clerk is a person who is employed or retained by a lawyer, law office, governmental agency or other entity to perform administrative or managerial duties, and/or specifically delegated substantive legal work, under the supervision of a lawyer.

In 1968, the Law Society established the name “Law Clerk” and permitted use of this title to members of the Institute of Law Clerks of Ontario (ILCO).<sup>[51]</sup>

Those who wish to become recognized as a law clerk must complete a two- or three-year program offered by nineteen community colleges throughout Ontario. After completing courses in litigation, corporate, real estate and estates law, candidates must receive a grade of at least 60% on the four ILCO exams in each of those legal areas. It is not mandatory to be a member of ILCO to practice as a law clerk.

### 3. The Courts

In Ontario, family law matters are heard in the Ontario Court of Justice, the Superior Court of Justice, or the Family Court branch of the Superior Court of Justice, depending on the issue in dispute and where one is located in the province.

The Family Court of the Superior Court of Justice is Ontario’s unified Family Court and has exclusive jurisdiction over all family matters in 17 court locations across the province. The existing locations are: Barrie, Bracebridge, Brockville, Cobourg, Cornwall, Hamilton, Kingston, L’Orignal, Lindsay, London, Napanee, Newmarket, Oshawa/Whitby, Ottawa, Perth, Peterborough, and St. Catharines.

Where the unified Family Court exists, the court hears all family law matters, including divorce, division of property, child and spousal support, custody and access, adoption, and child protection applications.

In all other sites in Ontario, family law matters are divided between the Ontario Court of Justice and the Superior Court of Justice as follows:

The Superior Court of Justice can hear family law cases involving:

- divorce;
- division of family property;
- claims relating to the family home;
- trust claims and claims for unjust enrichment;
- applications and appeals relating to family arbitrations;
- declarations of parentage;
- child support;
- spousal support;
- restraining orders; and
- custody of and access to children.

The Ontario Court of Justice can hear family law cases involving:

- custody of and access to children;
- child support;
- spousal support;
- restraining orders;
- enforcement of support set out in a domestic contract or separation agreement;
- adoption; and
- child protection.

Family court cases in the Ontario Court of Justice generally begin with a first appearance, where a court clerk or, in some courts, a judge confirms that all necessary documents have been served and filed and that the case is ready for a case conference (if it is contested and no agreement can be reached). Cases in the Family Court branch also usually begin in this way if they do not include property issues or a claim for a divorce. Cases in the Superior Court of Justice and other Family Court branch cases typically proceed directly to a case conference before a judge.

Dispute Resolution Officers (DROs) are available in a number of Superior Courts to help family court litigants who are bringing a motion to change an existing order to resolve or narrow their issues prior to the case appearing before a judge. The DRO program currently operates in Superior Court of Justice locations in Barrie, Brampton, Durham, Hamilton, London, Milton, Newmarket, St. Catharines and Toronto.

In the Ottawa Family Court, a Family Case Manager is available to help with case management of family law files.

## 4. The Government

### a. Family Court Support Worker Program

The Family Court Support Worker Program is offered by MAG. According to the ministry's website, Family Court Support Workers provide direct support to victims of domestic violence who are involved in the family court process.

A Family Court Support Worker will:

- provide information about the family court process;
- help victims prepare for family court proceedings;
- refer victims to other specialized services and supports in the community;
- help with safety planning, such as getting to and from court safely; and
- accompany victims to court proceedings, where appropriate.<sup>[52]</sup>

Family Court Support Workers are based in communities across the province.

### b. Mandatory Information Program

The two-hour Mandatory Information Program (MIP) provides information to families up front about separation/divorce and the legal process, including:

- the effects of separation and divorce on adults and children;
- alternatives to litigation;
- family law issues;
- the family court process; and
- local resources and programs for families facing separation and/or divorce.

Completion of the program is required as a first step after an application is filed and prior to a first appearance or first case conference. Attendance is judicially enforced. While mandatory for litigants, MIPs are open to the public – it is not necessary to have started a court case in order to attend.

### c. Family Law Information Centres

Family Law Information Centres (FLICs) are located in courts that hear family cases and provide people with free user-friendly information about the family court process. An advice lawyer from LAO is available at the FLIC at certain times. Duty counsel is also available to provide same-day assistance with court matters to financially eligible litigants.

## d. Information and Referral Coordinators

Information and Referral Coordinators (IRCs) are located in FLICs and function as a point of contact for families as they enter the family justice system. IRCs are able to assess client needs, expedite access to community resources and identify high-risk cases. MAG enters into contracts with external service providers for the provision of IRC services.

## e. Mediation

Voluntary family mediation services are available on site at court (for cases that are before the court) and off-site (where clients can meet with family mediators in their offices and take more time to explore solutions). On-site services are available free of charge, and the fees that are charged for off-site services are geared to the family's income and number of dependents. MAG enters into contracts with external service providers for the provision of mediation services.

## f. Child Support Service

On April 4, 2016, the Government of Ontario introduced an online child support service that allows eligible parents to establish and update child support without going to court.

## g. Office of the Children's Lawyer

The Office of the Children's Lawyer represents children under the age of 18 in court cases involving custody and access and child protection, as well as in civil, and estates and trusts cases.

The Office of the Children's Lawyer employs both lawyers and clinicians (social workers), who work on a fee-for-service basis across the province. Clinicians prepare reports for the court and help lawyers who are representing children.<sup>[53]</sup>

## h. Supervised Access Program

MAG-funded supervised access centres provide fully supervised on-site visits in a group setting and supervised exchanges when access occurs off-site.<sup>[54]</sup>

## i. Family Responsibility Office

The Ministry of Community and Social Services is responsible for the Family Responsibility Office (FRO), which collects, distributes and enforces child and spousal support payments.

## j. Streamlining and Modernizing Family Court Services



The MAG has advised that it is currently engaged in the development of the following modernization initiatives to streamline processes for family court clients:

- E-filing: On average, over 25,000 uncontested divorce applications are filed in the Superior Court of Justice annually. The ministry has created a multi-year roadmap for online service expansion, which includes plans to make the divorce process easier.
- E-orders and E-consents: The ministry has developed an electronic tool that allows staff, the public and duty counsel to more quickly produce final orders and consent agreements. The e-consent is currently being piloted with LAO at the Durham Region, 47 Sheppard (Toronto), Brampton and London courthouses. The e-order tool is being used by court staff in the preparation of orders for self-represented litigants.
- E-forms: The ministry is finalizing an electronic application with interactive features to help guide users through its completion.

## k. Pilot Projects

### i. Legal Information vs. Legal Advice

The ministry advised that it has recently completed a two-courthouse pilot project intended to help court staff and court users better understand the distinction between legal information and legal advice.

In its internal document *A Guide for Court Services Division Staff – Family and Small Claims Court*, the ministry sets out the distinction between legal information and legal advice in this way:

Legal information includes facts about the law and the legal process. When providing legal information, there is only one right or wrong answer.

Legal advice includes making suggestions about the course of action a court user should take to further his or her own best interests. When providing legal advice, there is typically more than one option that can be pursued.<sup>[55]</sup>

While this definition is helpful, I understand that it is often challenging to determine whether a particular activity constitutes giving legal information or giving legal advice.

The goals of the pilot were to better support court staff in providing assistance to self-represented litigants and manage litigant expectations regarding the type of service court staff can provide. The pilot is currently being evaluated.

### ii. Ministry of the Attorney General Triage

In June 2015, former Attorney General Madeleine Meilleur hosted a Justice Roundtable and convened a working group (the Family Justice Table) to consider, among other

things, triage in the family court. Through the Family Justice Table, co-chaired by Justice George Czutrin, Justice Debra Paulseth and Assistant Deputy Attorneys General Lynne Wagner (in 2015) and Irwin Glasberg (in 2016), the ministry obtained input from numerous stakeholders. Triage was described as "a method of determining the processes and services required to effectively and efficiently resolve the issues arising from family breakdown" and would include "a consideration of legal advice, social services the family may require, dispute resolution options, single source information services and disclosure".

The ministry has announced that it will undertake pilot triage programs at a family court site in winter 2016/17.

## 5. Legal Aid Ontario<sup>[56]</sup>

### a. Mandate

LAO is Ontario's largest provider of family legal services, and has a statutory mandate to promote access to justice for low-income Ontarians. Family law services are a core component of LAO's statutory service delivery mandate.<sup>[57]</sup> Each year, thousands of low-income people rely on LAO for legal information, advice and assistance, up to and including in-court legal representation, to address their family law issues.

LAO provides family law services to eligible clients in the broad areas of custody, access, and support. Issues for which coverage is available include child support (including extraordinary expenses under section 7 of the Child Support Guidelines<sup>[58]</sup>), spousal support, restraining orders, mobility issues, parental alienation, Family Responsibility Office (FRO) matters including default hearings and refraining motions, motions to change child support, custody and access (and incidents of these), contempt and enforcement.

LAO provides limited advice in the areas of annulments, divorce and property matters. Divorce coverage is not available where there are no corollary issues present. LAO coverage is also unavailable for matters such as marriage contracts, cohabitation agreements, change of name applications and changes to wills.

For child custody, access and support matters, depending on the needs of the client and client eligibility, LAO provides a full range of services that includes:

- information services, including procedural, non-case-specific information;
- referral services;
- legal advice services (regarding initial court proceedings, motions, FRO matters, settlement proceedings and negotiations, mediation, motions to change and inter-jurisdictional support orders and proceedings);
- document-based services (including document information and advice, document preparation and document review);
- out-of-court mediation services and settlement conferences; and

- court-based representation, including appearances, adjournments, motions, negotiations and trials.

## b. Services Provided

The specific legal services that are provided by LAO in areas where coverage is available depend on whether the client holds a legal aid certificate or is accessing duty counsel services, Family Legal Service Centre services, advice lawyer services or mediation services.

As of April 1, 2016, the legal aid financial eligibility threshold for certificate services for a family of four is \$28,664. For duty counsel and summary legal advice services, that cut-off is \$44,068.

### Eligibility for Certificate Services as of April 1, 2016, Based on Gross

#### Family Income

# of family members	Likely qualifies	Likely qualifies with a contribution agreement	Certificate eligibility for domestic violence clients
1	\$12,863	\$14,888	\$21,438
2	\$22,253	\$26,798	\$32,131
3	\$25,367	\$31,228	\$36,921
4	\$28,664	\$35,873	\$44,068
5	\$31,817	\$40,447	\$50,803
Single boarders	\$8,456	\$9,766	N/A

#### Eligibility for Duty Counsel and Summary Legal Advice Services as of April 1, 2016, Based on Gross Family Income

Number of family members	Income must be below
1	\$21,438
2	\$32,131
3	\$36,921
4	\$44,068

5+	\$50,803
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**i. Legal Aid Certificate Services**

Eligible low-income Ontarians can apply to LAO for a legal aid certificate covering representation by a private bar lawyer (or a lawyer at a Family Law Office or Family Law Service Centre (FLSC)) in relation to domestic family law matters such as child custody and access, child support and restraining orders. Certificate services are provided to eligible clients who have complex, contested cases or who are particularly vulnerable. As of June 2015, certificates are available for separation agreements and for independent legal advice (ILA) to support clients who choose mediation services to address their family law issue. LAO also offers a settlement conference service to legally aided clients, where the clients and their lawyers can work toward resolution out of court, led by an experienced lawyer or social worker. In 2015/2016, LAO issued 30,195 family law certificates. Included in this number were 2,882 certificates for separation agreements and ILA, and 6,247 child protection certificates. 13,196 of the family law certificates that were issued in 2015/2016 were provided to clients who have experienced domestic violence.

**ii. Duty Counsel Services**

Duty counsel services are available to financially eligible clients at family law courthouses across the province. In fiscal year 2015/2016, 177,014 duty counsel assists were provided to family law clients, including 79,139 summary advice assists, 26,408 dispositive assists (assists that help to move a case forward to another stage, for example by obtaining a consent order or arguing an emergency motion), and 72,467 assists that were non-dispositive in nature (for example, document preparation assists).

Depending on local practice, duty counsel may cover custody, access, child support and spousal support up to the trial stage. They are able to provide information and advice, assist clients with document preparation, negotiate interim or final settlements and prepare minutes of settlement based on negotiations, speak to adjournments, obtain consent orders, argue simple motions and assist in non-complex, uncontested hearings regarding custody, access and support. They may also provide limited advice regarding property matters, restraining orders and FRO matters.

In LAO's three expanded duty counsel locations (in Hamilton, London and Oshawa), Duty Counsel provides a broader range of duty counsel services through inter-professional teams that include staff lawyers, Legal Aid Workers (LAWs), and students, in order to increase continuity of service to duty counsel clients, minimize court appearances, and facilitate earlier resolution of legal issues. Duty counsel also have an expanded capacity to create and carry client files in order to provide continuous representation.

**iii. Advice Lawyer Services**

LAO advice lawyers located at MAG's FLIC offices in Ontario courthouses provide summary legal advice to individuals with family law matters who are not scheduled for court on the day of their attendance. In locations without a FLIC, advice lawyers are available during specified hours at the courthouse or at a local community centre or the LAO district office.

In general, the advice lawyer may provide an individual with up to 20 minutes of information on court processes and related general advice on family law matters, including advice about the role of counsel and how to choose a lawyer, as well as advice about, and referral to, other sources of legal and non-legal assistance.

Financial eligibility testing may be conducted where the advice lawyer wishes to refer the client to other legal aid services. Case-specific advice may also be provided to financially eligible clients.

In 2014/2015, across the province, more than 93,000 people were provided with summary legal advice at family court.

#### **iv. Advice Lawyer - Family Violence Two Hour Authorization Program**

This program enables financially eligible domestic violence survivors, who need immediate advice and assistance, to meet with a lawyer of their choice (from a list of available lawyers on LAO's domestic violence panel) to receive up to two hours of free legal advice related to family law, refugee law and/or immigration law matters. In 2015/2016, 2,160 clients were provided with assistance through these two-hour consultations.

#### **v. Family Law Service Centres and Family Law Offices**

Across the province, LAO has 15 staff offices that provide family law services. There are 12 FLSCs<sup>[59]</sup> plus three other staff offices<sup>[60]</sup> offering legal assistance to financially eligible clients with family law issues including, but not restricted to, custody, access, support, child protection and restraining orders. While each FLSC location differs in some respects, each employs the basic structure of a lawyer manager, staff lawyers and LAWs working together to serve clients. Services available through FLSCs may include document assistance, referrals (including referrals to advice lawyers and social service agencies), mediation and settlement conferences, as well as taking certificate applications for complex family law cases, domestic violence cases and child protection cases. Some centres provide full legal representation to clients who are eligible for certificates.

LAWs are non-legal service providers who provide services to LAO's clients in the areas of criminal and family law. Currently, 23 LAWs (out of a total 53) work in family law across the province. LAWs are not required to be paralegals or law clerks, as LAO provides them with subject-matter training. However, in family law, significant law clerk experience in family law and knowledge of relevant family law legislation are considered

assets in the hiring process. A significant number of LAWs working in family law are, in fact, paralegals who are not exercising their licences. LAO believes that having a paralegal license is valuable for a LAW, because of the baseline level of knowledge provided. Family law LAWs report to lawyer managers and are responsible for providing legal administrative support to lawyers. They prepare and file family court documents, assist with financial assessments, provide procedural information, take legal aid applications, triage clients to the appropriate LAO service, collect information and help to maintain LAO's client databases.

#### **vi. Telephone Summary Legal Advice Services**

Financially eligible clients can speak with a family lawyer on the telephone for up to 20 minutes by calling LAO's toll-free number. Summary legal advice (SLA) lawyers can provide an opinion on the best legal options for the next steps in a family law case, and are trained to provide support to callers who are experiencing domestic violence or mental health issues. Advice can be provided on a broad range of issues including separation, divorce, custody and access, child or spousal support, changing an existing court order through a motion to change, choosing mediation and the family court process. Referrals are also provided through the SLA program, including to legal clinics, community agencies and the agencies that support court services. SLA Phone lawyers can also assess merit for certificate referrals. In 2014/2015, 18,862 callers received family law legal advice through this program. In 2015/2016 that number increased substantially to 26,855.

#### **vii. Enhanced Public Legal Information**

Through its Enhanced Public Legal Information (EPLI) Program, non-lawyers working at LAO's call centre are trained to provide and interpret basic information on a wide variety of family law issues and to refer callers to various legal aid and non-legal aid programs. They are able to provide assistance and information in relation to non-urgent or non-complex areas including mediation, family court processes, getting started on family court forms and getting documents ready to go to one of LAO's FLSCs for further assistance with document preparation. They can help callers to understand court processes and available options, including alternatives to going to court. They also provide callers with assistance on how to find a lawyer.

#### **viii. Community Partnerships and Hub Services**

LAO has entered into partnerships with a number of community hubs to offer family law services to clients in an integrated setting where clients are able to access other legal and social services. These partnerships enable clients to address their intersecting needs in a holistic way and at a single location. Family law services that are provided by LAO at hub locations, including the Rexdale Community Legal Clinic, include summary advice, preparation of court documents, referrals to mediation and referrals to services provided by other hub partner agencies. LAO's partnership with Luke's Place in Oshawa to provide wraparound services to victims of domestic violence is another example of

holistic service delivery, as is LAO's own Integrated Legal Services Office (formerly known as the Ottawa Family Law Office), which offers one-stop help with a variety of matters, including immigration and refugee law matters, in addition to family law assistance.

### **ix. Student Legal Aid Service Societies**

Although funded by LAO, the SLASS clinics do not provide legal aid services directly through or for LAO. The SLASS clinics have a dual mandate: to provide free legal services to low-income clients and to offer experiential educational opportunities for law students. In addition to individual client services, the SLASS clinics also engage in community outreach and public legal education activities.

In response to the increasing unmet need for family law services, the University of Toronto's Downtown Legal Services (DLS) began offering family law services in 2005. Through this program, the clinic offers a range of services including summary advice, negotiation and representation at the Ontario Court of Justice on a variety of family law issues including custody and access, support and restraining orders.

In 2014, with the support of new dedicated provincial money for family law services, LAO offered funding to the five other SLASS clinics to establish family law divisions and to DLS to expand its existing program. As a result, all of the SLASS clinics — except the newest SLASS at Lakehead University — now offer some family law assistance.<sup>[61]</sup> There is considerable variety in how the programs are structured and the scope of services available. All of the programs offer information, advice and assistance to clients with family law issues including custody, access, child support, spousal support and restraining orders. They assist with summary advice, negotiation, and document preparation. Some of the SLASS clinics also represent clients at mediation and in court, where possible.<sup>[62]</sup>

To qualify for SLASS assistance, prospective clients must meet LAO's financial eligibility criteria. In recognition of the complex service needs of this client group, several of the SLASS programs have partnered with their university's Faculty of Social Work to offer social work advocacy and counselling services to SLASS clients.<sup>[63]</sup>

Students providing family law services at a SLASS clinic work under the supervision of the clinic's family lawyer. All client contact and services provided by students are monitored and reviewed by the supervising lawyer. The SLASS family law programs are also subject to the provincial guidelines for law students appearing before the Ontario Court of Justice.

Family law services at the SLASSs are usually provided by a combination of employed law students (during the summer months), students who are registered in a for-credit clinical education course, and law student volunteers — all of whom are supervised by a family lawyer. Although the nature and intensity of the training offered to students will vary according to the student's level of involvement, all of the programs require students

to participate in training prior to working with clients. This training includes training in substantive family law, procedure, oral advocacy, legal drafting, file management, the *Rules of Professional Conduct* and working with vulnerable clients. In terms of the latter topic, students are taught strategies for working effectively with low-income, vulnerable clients, clients who have mental health issues and clients that have experienced domestic violence.

## 6. Pro Bono Students Canada

PBSC is a national organization with chapters in 21 law schools across Canada. PBSC works with law schools and the bar to deliver legal services to not-for-profit organizations and the vulnerable clients they serve. PBSC’s mandate is threefold: (1) to train future lawyers by providing practical, supervised learning experiences for students; (2) to increase access to justice in local communities by integrating law students into an under-resourced system; and (3) to promote a culture of *pro bono* work in the profession by exposing law students to the value of public service.

The Family Law Project (FLP) is one of PBSC’s flagship programs. Through the FLP, PBSC trains upper-year law students to assist self-represented litigants with their court forms. The FLP has been operating in Ontario since 1997 and trains up to 100 volunteer law students each year to assist clients from October to April in eight Ontario courthouses: 393 University, 311 Jarvis, 47 Sheppard (all three of which are in Toronto), Brampton, Kingston, London, Windsor and Newmarket. In addition, PBSC hires eleven students to work in the courts from May to August.

In 2015-2016, FLP students assisted over 1,300 unrepresented litigants across Ontario. FLP’s students also filled out over 5,400 forms. Its paid summer students and school-year volunteers delivered over 11,600 hours of legal service to Ontarians.

PBSC is referred clients by LAO duty and advice counsel. To be eligible for assistance from FLP students, clients must meet both financial and substantive eligibility criteria that are higher than LAO’s eligibility criteria. The financial eligibility criteria for PBSC are as follows:

Financial Eligibility Criteria for PBSC

# of People in Household	Financial Eligibility for FLSC Based on Annual Household Income	Financial Eligibility for FLP Students Based on Annual Household Income
1	\$21,438 or less	\$21,438-\$36,000
2	\$32,131 or less	\$32,131-\$54,000
3	\$36,921 or less	\$36,921-\$61,992
4	\$44,068 or less	\$44,068-\$73,992
5	\$50,803 or less	\$50,803-\$73,992



Substantively, FLP students assist self-represented litigants with their court forms, mainly in the areas of custody and access, child support, and motions to change final orders. They also assist with certain emergency matters. Overly complex matters and files where there may be domestic abuse or mental health issues are not referred to PBSC.

FLP students are supervised by LAO staff and per diem duty and advice counsel. The duty and advice counsel are available to support and guide the students and they are ultimately responsible for the files and for signing off on all documents. Duty and advice counsel refer clients to the FLP, providing the students with written direction. Students then meet with the clients and draft their forms. They then return to duty or advice counsel, who review the materials and suggest revisions as needed. The process continues until the forms are finalized and approved by duty or advice counsel. Only at this point are clients directed to file their forms with the court.

Prior to commencing their volunteer placements or employment with PBSC, all FLP students receive training. Summer student employees attend a three day program delivered by PBSC staff, LAO Supervisory Duty Counsel and guest speakers with expertise in relevant topics. The students receive training in substantive family law, family law procedure, court procedures, ethics and professionalism, the difference between legal information and advice, and legal drafting. They also receive training on how to work with low-income, vulnerable clients, clients who have mental health issues, and clients who have experienced domestic violence, as well as training in conflicts. School-year volunteers attend the equivalent of two days of training that also covers off all of these issues.

## 7. Community Legal Education Ontario

Community Legal Education Ontario (CLEO) is a community legal clinic that specializes in public legal education and information and is part of Ontario's legal aid system. For over 40 years, CLEO has produced legal rights education and information in print and online to help people understand and exercise their legal rights. Its mandate is to serve people who face barriers to accessing the justice system, including barriers of income, disability, literacy and language.

CLEO is developing a "Steps to Justice" website<sup>[64]</sup>, in collaboration with The Action Group on Access to Justice (TAG) and other key justice sector partners.<sup>[65]</sup> The website will provide answers to legal problems, including family law issues, frequently experienced by the public. The information addresses questions commonly asked by users, with a series of steps for users to work through based on their situation. Courts, government, legal aid and non-profit organizations will be able to present this content on their websites through an automated embedding feature; this 'no wrong door' approach means that people will be able to find the content on websites that they trust and use.

CLEO also conducts workshops on how to find reliable information and make referrals for "trusted intermediaries", defined as workers or leaders whom clients trust and who

often serve as the entry point to the justice system. Trusted intermediaries include “organizations that focus on social services, services to people with disabilities, immigrant settlement, healthcare, education, advocacy, or a particular faith or ethno-cultural group. They also include organizations that serve the public generally, such as libraries, community centres, information and referral services and hotlines.”<sup>[66]</sup>

## 8. Other Jurisdictions

The different approaches to the provision of legal services by persons other than lawyers taken by other jurisdictions in Canada and the United States are outlined below.

### a. Canada

#### i. British Columbia

The Law Society of British Columbia (LSBC) does not license paralegals to practise independently; rather, paralegals must be supervised by a lawyer. A “designated paralegal” is a paralegal who, in the opinion of the supervising lawyer, has the skills and experience necessary to give the legal advice or representation required by a given situation. The areas of law in which a designated paralegal may assist a lawyer are not limited.

The LSBC does not directly regulate designated paralegals. It protects the public through the regulation of the supervising lawyer.

Since July 2012, under the *Code of Professional Conduct for BC* (the *Code*), designated paralegals have been allowed to give legal advice and make limited appearances, if permitted by the court.

In January 2013, the LSBC, BC Supreme Court and BC Provincial Court launched a two-year pilot project giving designated paralegals a limited right of appearance in court. The goal was to identify whether lawyer-supervised paralegals are able to perform certain procedural applications in court in an efficient and competent manner.

The pilot project was aimed at family law proceedings, with an emphasis on non-contentious procedural matters (for example, an uncontested application to compel production of financial documents). However, it also gave paralegals the right to appear in court for a few contested procedural matters, including:

- an application to compel production of documents for inspection and copying, unless the objection is on the grounds of privilege;
- an application to change the location of an examination for discovery; and
- an application for child support and maintenance under s. 15.1 of the *Divorce Act* or s. 149 of the *Family Law Act*, including straightforward extraordinary expenses under s. 7 of the *Child Support Guidelines* if s. 3(1) of the *Child*

*Support Guidelines* apply and annual employment income, excluding self-employment income, is less than \$150,000.

Supervising lawyers were required to provide the designated paralegal with an [affidavit to be filed on first appearance](#). If the courts were concerned that the designated paralegal was not prepared or competent to speak to the matter, the courts could require the supervising lawyer to attend. Supervising lawyers were required to be available to the designated paralegal by telephone on the day of appearance.

In December 2014, the pilot project ended in the BC Supreme Court. However, it was extended in the BC Provincial Court until October 2015.

Although the *Code* permits designated paralegals to appear in court with judicial permission, there was not enough participation for the courts to be able to assess the program's effectiveness. <sup>[67]</sup>

The program may still have led to greater family law service delivery by paralegals. In December 2015, the LSBC amended the *Code* to allow lawyers to permit designated paralegals with the necessary skills and experience to represent clients at a family law mediation. <sup>[68]</sup> A lawyer must review any settlement agreements arising from mediations where the designated paralegal represented the client, and those agreements are provisional until signed by the lawyer. <sup>[69]</sup> A lawyer may not supervise more than two designated paralegals at a time. <sup>[70]</sup>

## ii. Alberta

The University of Calgary is planning to launch a Family Law Incubator, in late 2017. The aim of the incubator is "to create a new breed of reasonably priced lawyers who will drive further innovation in the delivery of family legal services." The incubator will provide legal services in family law, for a reasonable fee, to middle-class Albertans who earn too much income to obtain legal aid, but not enough to be able to retain a lawyer. It is envisioned that the incubator will be self-sustaining.

The incubator will be run by a full-time family law lawyer, who will serve as the executive director. There will be four articling jobs for law graduates and, in the second year of operation, it will employ four first-year lawyers. The articling students and new lawyers will also be trained in the business aspects of law.

The incubator will use available technologies and operate in a mobile, paperless environment. It will be located at the University of Calgary's campus building. The pilot project is being led by Tony Young, a family law practitioner, and members of the Canadian Research Institute for Law and the Family, the Law Society of Alberta, Calgary's family law bar and the University of Calgary. <sup>[71]</sup>

## iii. Saskatchewan

In November 2015, the Law Society of Saskatchewan announced that it is working with the Ministry of Justice of Saskatchewan to explore possibilities for allowing non-lawyers to provide some legal services in the province. The possibilities that are being considered include:

- Expanding the scope of paralegals working under the supervision of lawyers;
- Relaxing the restrictions on other types of professionals who provide services akin to legal services; and
- Creating a new class of legal service providers who would be permitted to provide some legal services independently after undergoing training and assessment.

The goal is to provide greater access to legal services for residents of Saskatchewan.

The Law Society of Saskatchewan and the Ministry of Justice have begun informal discussions with individual paralegals and their associations to better understand the current market and how many non-lawyers are working in any legal capacity or are delivering some kind of informal legal service in Saskatchewan. The plan is to conduct wider consultations with all affected stakeholders, including the courts, the legal profession, Crown corporations, the Saskatchewan Trial Lawyers Association, the Canadian Bar Association, the Public Legal Education Association, CLASSIC legal clinic, tribunals, community-based organizations, notaries, paralegals, insurance brokers, financial planners, estate planners, and the public.<sup>[72]</sup>

#### **iv. Nova Scotia**

In 2016, the Legal Information Society of Nova Scotia established the Public Navigator Program. Specially trained volunteer non-lawyers, called Public Navigators, provide basic legal information to self-represented litigants considering an action in Small Claims Court or the Nova Scotia Supreme Court, General Division.

The goals of the project are to help self-represented litigants better understand their legal issues and options, to divert self-represented litigants from the formal court process where appropriate and to ensure self-represented litigants use proper documentation when proceeding with a court-based action.<sup>[73]</sup>

Nova Scotia's Public Navigator Pilot Project is based on New York's Court Navigator Program, which is described below.

#### **b. United States**

In the United States, the Supreme Court of each state has jurisdiction over the practice of law in that state, including admission to the practice and the conduct and discipline of persons admitted to the practice. The courts designate bar associations (e.g. the Washington State Bar Association, the Utah State Bar) to administer the bar admission process and to licence and discipline legal professionals.

## i. Washington

In 2012, the Supreme Court of Washington created a new class of practitioners called Limited License Legal Technician (LLLT). LLLTs are trained and licensed to help people with family law matters, including divorce and child custody.<sup>[74]</sup>

The LLLT program was established in response to the 2003 *Washington State Civil Legal Needs Study*<sup>[75]</sup>. The study found that the majority of low to moderate-income residents in Washington cannot afford legal representation, and instead, represent themselves in legal proceedings.

The program allows people who meet the licensing requirements to set up limited practices, establish fees for their services, operate independently (without supervision) and provide a range of assistance, including:

- individualized information regarding court procedures;
- reviewing documents and completing forms;
- performing legal research;
- drafting letters and pleadings; and
- advising clients as to necessary documents and explaining how such documents or pleadings may affect the client's case.

Unless specifically permitted, an LLLT may not represent a client in legal negotiations, in court, in formal administrative proceedings or in other formal dispute resolution processes.

To become licensed as an LLLT, candidates must have an associate's degree, complete a three year program at an accredited school (including the LLLT Core Curriculum, which covers basic legal concepts), the Practice Area curriculum (which focuses on family law) and 3,000 hours of paralegal experience involving substantive legal work in any practice area under the supervision of a lawyer, and pass the LLLT licensing exams.<sup>[76]</sup>

LLLTs are regulated by the Washington State Bar Association. In order to practise, an LLLT must obtain malpractice insurance and fulfill professional obligations similar to those of an attorney. These include attending continuing legal education courses, abiding by a code of ethical conduct, and being subject to disciplinary measures for violations of the code of ethical conduct.<sup>[77]</sup>

Seven out of nine candidates passed the first LLLT exam administered by the Washington State Bar Association in May 2015.<sup>[78]</sup> Three additional candidates passed the second LLLT exam in the spring of 2016. As such, there is no data yet about the success of the program in improving access to justice.

## ii. Utah

In December 2015, the Utah Supreme Court approved the creation of a new program that would authorize Limited Paralegal Practitioners (LPPs) to engage in the practice of law on a limited basis.

Under the new program, LPPs will be authorized to practice in three areas of law where parties are largely self-represented: family law (separation, divorce, paternity, cohabitant abuse and civil stalking, custody and support and name changes), evictions and debt collection.

LPPs will be authorized to engage in the following legal tasks:

- Retain a client who is not represented by a lawyer;
- Conduct client interviews to understand the client's objectives and to obtain facts relevant to achieving that objective;
- The following tasks related to forms:
  - Complete court-approved forms on the client's behalf;
  - Advise the client on which form to use;
  - Advise the client on how to complete the form;
  - Sign, file and complete service of the form on the client's behalf;
  - Obtain, explain and file any necessary supporting documents on the client's behalf; and
  - Advise the client about the anticipated course of proceedings by which the court will resolve the matter;
- Communicate with another party or the party's representative if the communication relates to the matter raised by the form;
- Represent a client in mediated negotiations;
- Prepare a written settlement agreement in conformity with the mediated agreement; and
- Advise a client about how a court order affects the client's rights and obligations.

To become licensed as an LPP, candidates must obtain either a Doctor of Jurisprudence degree from an ABA-approved law school or an associate's degree with a paralegal or legal assistant certificate from an ABA-approved program. If the candidate does not have a Doctor of Jurisprudence degree, he or she must also successfully complete the National Association of Legal Assistants' Certified Paralegal exam, successfully complete a course of instruction for one of the approved practice areas and obtain experience working as a paralegal under the supervision of a lawyer or through internships, clinics or another means of acquiring legal experience.

In designing the minimum education and experience requirements for LPPs, the Utah Supreme Court Task Force sought to implement requirements that were less arduous than the education and experience requirements for Washington's LLLT program. The Task Force questioned whether Washington's LLLTs could provide services at rates significantly less than those provided by lawyers, given their arduous education and

experience requirements. It also noted that the requirements for Washington's LLLTs were more demanding than the requirements for obtaining a law degree in Utah. <sup>[79]</sup>

### **iii. New York**

New York's Court Navigator pilot project, started in February 2014, provides essential non-legal services to unrepresented litigants in housing and consumer credit matters.

The project recruits college students, law students and others. It relies on designated not-for-profit organizations, including University Settlement and Housing Court Answers, to assign and supervise Court Navigators. To become a Court Navigator, one must complete a two-hour training seminar.

The range of services Court Navigators may provide differs with each not-for-profit organization. Generally, they may assist litigants in completing court-approved 'do-it-yourself' forms (but no other forms), gathering documents and scheduling, and may refer them to attorneys or other services. They also inform litigants about what to expect in court. They may accompany the litigant in court and may, if directed by the court, answer factual questions posed by the court. <sup>[80]</sup>

A December 2014 evaluation survey found that litigants assisted by Navigators fared better in court than did unassisted litigants. The average number of defences raised per case in Brooklyn Housing Court between January 2014 and August 2014 was 1.3 for unassisted litigants, but over 4 for their assisted counterparts. Assisted litigants in that court paid an average of \$54 less than their landlords initially demanded, while unassisted litigants paid an average of \$121 more than the demanded amount. The vast majority of assisted litigants surveyed felt that their Court Navigators were courteous, helpful and supportive. <sup>[81]</sup>

## **Part 3: Consultations**

### **1. What Do Self-represented Litigants in Family Matters Need?**

In response to the consultation document posted on the MAG website on February 9, 2016, I received approximately 35 written submissions from groups and organizations and 65 written submissions from individuals. From there, I held over 25 in-person consultations with groups and organizations, including bar associations, mediators, community organizations, academics, technology providers, paralegals, law clerks, colleges, tribunals and agencies and LAO. This process drove home for me the passion and commitment of those working in family law, the creative innovations that are being introduced to meet the needs involved in family legal matters and the opportunities that exist to make the system more accessible.

Ultimately, the conclusion that emerged from the process I engaged in is that, in spite of the many resources described in Part 2 of this report, more can be done to provide assistance to people dealing with a family law matter. The submissions I received consistently identified a lack of affordable resources in the following areas:

- a. legal information;
- b. legal advice;
- c. drafting; and
- d. representation.

What follows is a summary of the needs identified and the suggestions made during the consultation process.

### a. Legal Information

There are currently a number of options for clients to obtain legal information, including:

- online;
- through trusted intermediaries;
- at the MIP;
- at the court counter; and
- at the FLIC.

While there are considerable substantive and procedural resources online, I heard that many people consider them confusing, insufficient or overwhelming<sup>[82]</sup> and that they use complex language and terminology that exceed the abilities of the average court user. With respect to information about alternative dispute resolution mechanisms, one submission noted that “the public struggles to find ways to resolve their family breakdown in ways that will not use fragile resources or cause further harm to the family unit.”<sup>[83]</sup>

CLEO submitted that many people access legal information through the important work of “trusted intermediaries”:

People with legal problems often turn to workers or leaders in their community whom they trust; these front-line workers often serve as the entry point to the justice system.<sup>[84]</sup>

While their role was seen as valuable, there are currently no means of regulating trusted intermediaries or ensuring they provide up-to-date, accurate information. I heard that it would be beneficial to provide clearer guidelines and training for legal information providers, and that investing more resources in the expansion of these important and relevant legal information services would enable more people to be served more comprehensively. In this regard, recent initiatives by CLEO have provided training to service providers, such as librarians, in delivering legal information to the public.<sup>[85]</sup>



It was suggested that individuals need to be able to speak directly and in person with professionals trained in the multiple areas impacting families experiencing relationship breakdown. Joint meetings with a neutral professional, where appropriate, were suggested to allow both parties to hear the same information about the law and about how to navigate the family justice system. For example, “[a] two to three-hour meeting could be provided on a flat fee basis with a sliding scale”.<sup>[86]</sup> Lawyers and other professionals are already being trained in ‘early neutral consultation’.<sup>[87]</sup>

There was considerable discussion of the need for a triage service to help ensure people with family justice issues understand their options, including alternative dispute resolution mechanisms, and what is required of them should they decide to start a proceeding. Who should conduct the triage, when it should take place and what it should entail are matters for further discussion, but there was consensus that an early, neutral opportunity to identify the issues and explain the processes would be beneficial. I understand that the MAG is currently exploring triage options, with a view to piloting one of the options.

For those individuals who attempted to utilize the supportive resources available at the courthouse, including the FLIC and staff at the family court counter, I heard that frustration arises due to limitations of time and scope<sup>[88]</sup>. In particular, I heard that counter staff are the first line of contact for overwhelmed litigants and that they typically feel that they cannot provide the kind of assistance requested because it would cross the line from legal information to legal advice. Because so few other resources exist to provide the kind of help unrepresented litigants are requesting, however, court staff often find themselves spending upwards of half an hour with an individual at the outset of a case, going over court forms and helping in the limited ways they feel they can (usually at the public court counter, where privacy is limited). This was particularly true in rural sites, where users had travelled long distances to file their documents and often arrived at times that supportive services, including the FLIC, were not available.

It was suggested that the ministry consider “appointing a specific court services staff member or members who will exclusively review forms being filed by family SRLs in particular to ensure that they are complete and ready to go forward.”<sup>[89]</sup>

Although outside the immediate scope of my mandate, the following suggestions were also made:

- The MAG should update existing public legal education material to make it more interactive, less text heavy, more user-friendly, available in more languages and tailored to specific audiences.
- Legal information material should focus on the broad spectrum of options available to families to resolve their disputes, including mediation, collaborative practice, arbitration and court, and information should be available regardless of whether a court application has been started.

- Once a decision has been made to proceed with the court process, more resources, including smart forms, online wizards and e-filing options, should be made more widely available.
- The MIP should be offered earlier in the process, and should include information about the procedural aspects of litigation.
- Improvements should be made to the FLICs, including: introducing a toll-free information line; equipping each FLIC with computers, software and printers; and providing more in-person resources who can provide both substantive and procedural information about family law generally, as well as about alternatives to litigation, court forms and navigating the court process.

## b. Legal Advice

Many people with family law issues struggle with accessing legal advice, particularly at the start of their case. Even those who retain counsel often experience frustration with making the best use of the limited time available to them. “Clients arrive at lawyers disorganized with an inaccurate picture of how separation and divorce actually work....”<sup>[90]</sup> This is especially true for those people making use of limited summary advice services provided by LAO.

In order to address this, the following suggestion was made:

Based on the experiences, needs and lack of resources of self-represented litigants, there may be ample opportunity for paralegals, law students, and law clerks to be more involved in assisting SRLs in ways that do not amount to full legal representation but would still improve their experience with family justice. For example, para-professionals could help SRLs maximize their use of the available but limited free summary legal advice service by conducting intake, narrowing issues and preparing SRLs for their 30-minute summary legal advice session with a lawyer.<sup>[91]</sup>

Many submissions proposed better use of unbundled and other innovative, non-traditional legal service models to allow unrepresented litigants to access the help they feel they most need and can best afford. Unbundled services or limited scope retainers are “the provision of legal services by a lawyer for part, but not all, of a client’s legal matter by agreement between the lawyer and the client.”<sup>[92]</sup>

The Law Society has amended the *Rules of Professional Conduct* (which governs lawyers) and the *Paralegal Code of Conduct* to allow for unbundled services, or ‘limited scope retainers’. LawPRO has always covered lawyers for the provision of unbundled services and has developed practice resources for lawyers on this topic.<sup>[93]</sup>

There was unanimous support of unbundled services. Many framed it as the solution to the perceived access to justice crisis, presenting it as an affordable way to get legal advice from a qualified lawyer.

In spite of this promise, however, unbundled services appear to be infrequently offered. My understanding, based on the submissions I received, is that lawyers continue to have concerns about liability. This is consistent with the findings of a small survey of lawyers conducted by Professor Julie Macfarlane. Of the 46 respondents, 65% indicated they used limited scope retainers, while the remaining 35% remain ‘on the fence’ about whether to offer unbundled services as part of their family practice. Macfarlane notes:

Clarifying liability issues is the most frequently cited concern (79% of responses) about offering unbundled family services – as well as the most highly rated suggestion (75% of responses) to encourage more lawyers to offer these services.<sup>[94]</sup>

There is no evidence to suggest that unbundling results in greater malpractice risks or more complaints to the regulator.<sup>[95]</sup> In fact, the most common causes of malpractice claims in family law in Ontario between 2005 and 2015 were based not on failure to know or apply the law (23% of claims), but on lawyer/client communication issues (42% of claims) and missed deadlines and procrastination (about 9% of claims).<sup>[96]</sup>

It was urged that ongoing professional development opportunities for lawyers should occur alongside public education campaigns advertising the availability of unbundled services. I also heard about a number of innovations that the bar is developing to promote and extend the use of unbundled services. It was suggested that the increased use of such innovations, including rosters of lawyers willing to accept limited scope retainers, would meet a critical need for families. For example, I heard about the following initiative, where lawyers are actively seeking to provide unbundled services:

In Simcoe County a panel of lawyers that call themselves the “PLUS Panel” (Private Legal Unbundled Service Panel) has formed. They are developing a Financial Eligibility Test (not unlike the Legal Aid test) for the litigants referred to them. If the litigants are financially eligible, the lawyers will provide specific limited retainer legal services at reduced rates or on a block fee system. Initial proposals that have circulated are to have a financial eligibility test and practice guidelines that consider providing these services to clients with a total family income over \$48,000 but under \$65,000 per annum. The PLUS Panel also want to help people save their savings instead of spending it all on legal fees, so they are setting the asset limit at approximately \$5,000. All of this is still being discussed and is under development in the early stages, however, if it works, it could even expand to create a “private duty counsel” panel that could make lawyers available for one-day appearances at Settlement Conferences, Trial Management Conferences and Exit Pre-Trials. This panel initiative has the support of the local judiciary and mediation centre.<sup>[97]</sup>

Other examples of unbundled services I heard about are Joel Miller’s Family Law Coach, which offers unbundled legal services at flat rates,<sup>[98]</sup> and Stacy MacCormac’s proposal for an “Onsite – On Demand - Day of Court – Limited Scope Retainer Private Counsel” model.<sup>[99]</sup>

### c. Drafting

It is clear that litigants struggle with form completion and that limited resources are available to help them with this task. This challenge is made more significant by the critical role that forms play during the life of a family court case and beyond. Mistakes in an application can have ramifications that extend long beyond the determination of the issues before the court.

As a result, more often than anything else, I heard that individuals need help filling out the documents that will form the basis of their court action, including the application, financial statement and parenting affidavit. In particular, I heard that litigants would benefit from:

- assistance identifying the correct forms to use for their matter;
- general guidance on what a particular section requires;
- explanation of legal terms used on forms;
- identification of omissions or errors after forms have been completed; and
- assistance with filing and service.

Perspectives were varied as to where exactly on the spectrum of legal information and legal advice the completion of family court forms would fall. As a result, suggestions regarding how to provide greater assistance varied. Many took the position that the information requested on court forms (especially those for applications) requires legal advice that, because of its potential to impact a case, can only be provided by a lawyer. There was general agreement that persons other than lawyers could also provide this advice as long as there was lawyer supervision, as is currently the case in PBSC's FLP, at LAO's FLSCs and in situations where law clerks are supervised by lawyers.

Others indicated that a departure from existing models was necessary in order to meet the pressing needs of litigants and that appropriately trained persons could provide some assistance in form completion, particularly where forms would otherwise be completed without any assistance. It was suggested that persons who may not be lawyers could help explain some of the concepts on court forms, gather the necessary documentation and assist with filing and service. They could also be trained to flag the necessity of seeking legal advice, particularly in complex circumstances.

Various options were presented for ensuring clients were appropriately protected where such services were provided, including:

- ensuring anyone providing assistance is appropriately trained before doing so;
- simplifying existing forms to include more information about terminology and the need for legal advice;
- requiring anyone who provided legal assistance to sign forms;
- developing standard checklists to aid in form completion; and
- requiring those who provide assistance to give standard disclaimers outlining the assistance they can and cannot provide to clients.

A number of organizations also commented on impediments to finalizing a resolution reached through litigation, mediation or other means. In the case of a court order, there are virtually no resources to assist litigants to understand what happens next, what is expected of them and how enforcement works.

In regard to mediations completed using court-connected resources, I heard that there are few resources available to help clients convert non-binding mediation reports or memoranda of understanding into court orders or settlement agreements. Mediators currently provide clients with a copy of the mediation reports (or an equivalent) and direct them to seek a lawyer's assistance in converting it into a binding separation agreement or consent order. While LAO has increased supports for mediation and independent legal advice, this was still identified as a critical need that often goes unfulfilled. This is in part because clients may be reluctant to seek legal advice after having reached what they perceive to be a workable resolution and in part because lawyers may be reluctant to offer any services without a thorough, and potentially costly, review of the issues.

Several post-resolution options were identified to help clients achieve finality and a binding agreement, including:

- introducing resources to aid clients already in court in obtaining a consent order on the basis of the agreement reached in mediation;
- making better use of unbundled services for the purposes of finalizing mediation agreements and understanding enforcement of court orders;
- expanding the scope of court-connected mediators to enable them to assist in the production of a final agreement; and
- enhancing the scope of non-lawyer justice professionals to provide services relating to separation agreements.

#### d. Representation

The majority of unrepresented litigants “describe their challenges primarily in terms of the procedural complexity of the legal process” and “[r]elatively few describe problems with developing substantive legal arguments...their principal needs – and challenges - are being presented as access to legal (primarily procedural) information and general orientation.”<sup>[100]</sup>

I heard that the area in which unrepresented litigants wanted the most help was with their court appearance. Most of them wanted someone to attend court with them and speak for them because they were intimidated and emotional speaking on their own. They were also desperate for information on procedural protocols and on how to orient themselves to the courtroom experience. <sup>[101]</sup>

It was further suggested that they often do not understand what is expected of them at each step of a family proceeding. One submission I received noted that “[t]he assistance they say that they need in relation to what to expect includes: when they will

be asked to speak, what type of presentation is required, how to organize their response to the other side, how to develop a proposal for settlement, what documentation they should present at a hearing, and how.”<sup>[102]</sup>

Many self-represented litigants have asked a friend to accompany them to court to resolve some of these anxieties, but the friend’s knowledge and ability to assist may be limited by their lack of training and by how they are treated in the courtroom. Some friends are allowed to sit beside the self-represented litigant while submissions are being made, while others are required to sit in the public gallery.<sup>[103]</sup>

Making use of legal service providers who may or may not be lawyers to provide coaching support was suggested as a means of improving the experience of unrepresented litigants in the courtroom. One submission noted that

Coaching in the form of answering questions about process, preparing for court (e.g., what to wear, what to expect, how to make an argument and address everyone), and emotional support are all areas in which law students, paralegals, and law clerks might be helpful. Improved preparation and role playing scenarios could be provided by non-lawyers but importantly by people such as para-professionals who are more familiar with legal procedure and have had experience in a courtroom.<sup>[104]</sup>

It was noted that this kind of support is already offered by professionals (often mental health professionals) in victim-witness programs.

There was also considerable discussion about the use of McKenzie friends. McKenzie friends are “courtroom companions who cannot address the court, but can sit beside a SRL at the front of the court, take notes for them, pass them documents and debrief the proceedings after.”<sup>[105]</sup> In particular, it was suggested that this could be a role for persons other than lawyers in supporting unrepresented litigants. It was submitted that, “by applying a more consistent interpretation allowing law students, law clerks and paralegals to accompany SRLs as so-called ‘McKenzie friends’, paraprofessionals could provide numerous benefits to SRLs by being a source of moral support, assisting with note-taking, providing guidance on procedural matters, and providing legal information.”<sup>[106]</sup>

Another submission noted that there “should be caution and restrictions on this practice for family cases. This type of support should be understood to be emotional support, and in particular should not be a means for paraprofessionals or disbarred lawyers to provide legal services without directly addressing the court or asking questions of witnesses.”<sup>[107]</sup> It was also suggested that “[w]ithout significantly more study of the experience in other jurisdictions, there should be a prohibition on payment for these services.”<sup>[108]</sup>

## **2. Who, Other Than Lawyers, Should Be Permitted to Provide Legal Services in Family Matters?**

## a. Paralegals

A central component of this review involves consideration of whether a broader range of legal services providers, such as paralegals, should be allowed to handle certain family law matters. The bulk of the submissions received focused almost exclusively on this issue, and there was a profound divergence of opinion across family justice stakeholders. Broadly, large bar organizations and the bench tended to express considerable opposition to paralegals providing family law services, while alternative and non-traditional service providers (including a number of lawyers and mediators), front line service providers, not-for-profit organizations and paralegals, expressed support.

### i. Arguments Against Paralegal Services in Family Matters

The key concern expressed about having paralegals provide services in family law matters was that the public would not be protected. I heard that there is no such thing as a simple family law case, and that even a matter as simple as an uncontested divorce can have serious ramifications if proper family law advice is not provided. Because family law involves complicated interactions with a diverse range of other areas of the law and has the potential to seriously impact vulnerable clients in the most important areas of their lives, it was argued that protection of the public requires limiting the provision of legal services to lawyers. Concern was expressed about creating a second legal market or a two-tier system of justice.

It was also submitted that the problem is not lack of access to affordable legal services, but systemic weaknesses in the family law system that are the cause of the current number of self-represented litigants.

I also heard that there is no evidence that paralegals will charge lower fees, particularly if they are required to invest in further training, education and insurance.

### ii. Arguments For Paralegal Services in Family Matters

The key argument in support of paralegal services in family law matters related to greater access to justice. The top reason that litigants are unrepresented in court is their inability to pay for legal services, and it was submitted that this can result in the abandonment of important legal rights such as financial support and custody or access of children. It was proposed that expanding the provision of legal services in family matters to paralegals would increase competition and options, thereby encouraging innovation, improving quality and reducing prices.

I heard that expanded legal services mean increased options for unrepresented litigants with unmet legal needs. It was submitted that the training and experience brought by a lawyer may not be necessary in order to provide meaningful assistance in every step of a family law matter or for every family law issue.

It was submitted that a wider range of options is particularly important for those in rural and remote communities where access to service providers is limited. Further, it was argued that non-profit legal service providers would have more options if they can employ paralegals, as would diverse and non-English-speaking communities.

### **iii. Legal Aid Ontario's Experience With Paralegals**

The most contentious issue with respect to the provision of services by paralegals was the question of supervision by lawyers. While many of the people I spoke with believed strongly that services by paralegals could not responsibly be offered without direct supervision by a lawyer, others were of the view that unsupervised services could be viable, if appropriate training and limits on scope of practice were in place.

LAO provided information about other areas of law in which paralegals are currently effectively (and increasingly) providing services. I quote substantially from LAO's written submission, as I believe its experience with paralegals in the criminal law context is particularly instructive:

LAO's non-lawyer legal aid services have always been provided under the supervision of lawyers. However, following the introduction of the Law Society of Upper Canada's new paralegal regulatory framework, LAO began to explore potential opportunities for expanding its use of paralegals, bearing in mind the needs of clients, the permitted scope of paralegal practice, and the need to ensure that all legal aid clients receive high quality and cost-effective services. The new licensing framework went some distance to allay LAO's concerns about quality and consistency of service provided by independent paralegals, as it included a mandatory training and accreditation process. However, LAO's approach was cautious. A pilot project focused on licensed paralegals providing a wider range of services within their permitted scope of practice as part of inter-professional legal services teams in criminal duty counsel offices was launched in 2014.

Prior to the launch of the project, LAO employed approximately 35 paralegals in its criminal offices across the province. However, these paralegals operated as non-licensed LAWs [legal aid workers] and worked only under the direct supervision of lawyers. Their roles were - and continue to be - varied, from administrative duties like filing and office work to carrying out routine adjournments in set-date court under the supervision of a lawyer. None were employed to exercise their licence without supervision of counsel.

Five licensed paralegals working as LAWs were identified as candidates for the new project at four criminal duty counsel locations around the province. They were all required to have a minimum of two years' prior criminal experience working as LAWs. They were provided with training, mentorship, and management supports. Quality assurance tools, including monthly peer mentorship meetings, ongoing substantive legal training, monthly quality review observations by their managers, and daily reporting of their activities into a newly developed "Paralegal Portal", ensured that quality client service was provided throughout the process.



In March 2014, the paralegals were officially seconded to their new roles. Over the course of the year since, each paralegal took on new work in accordance with their skills, the availability of work and local staff supports. By February 2016, all five of the paralegals were permanently assigned to one of three new roles that have been developed:

- "Specialist" paralegals: paralegals who, based on their background and training, are able to provide more comprehensive services for an identified vulnerable client group. The Specialist follows cases through the criminal system, providing continuity of contact and service in specialty courts such as mental health court or Gladue court (for example, assisting with diversion) or assisting these same clients in Provincial Offences Court.
- "Traditionalist" paralegals: paralegals who support duty counsel in all aspects of duty counsel office matters, integrated as part of the duty counsel team and acting within scope (for example, providing summary legal advice or doing guilty plea preparation for summary conviction matters).
- "Hybrid" paralegals: paralegals who take on matters in "specialist" courts such as Gladue Court, and who also support their office in a "traditionalist" role.

Between April 2014 and May 2015, there was significant expansion of "within scope" services provided by paralegals at the project sites: there was a sixfold increase in withdrawal of all charges, diversions doubled, and the provision of summary legal advice and information virtually doubled. Surveys of LAO staff working with the paralegals in their new roles at the project sites confirmed that administrative staff and duty counsel felt that they were able to assist more clients and to provide more substantive or comprehensive services than before.

One respondent indicated:

Because of the paralegal project I am able to spend more time with clients and give more substantive legal advice. I work in a very busy courthouse so being able to split our lists is extremely helpful to both me and the clients. It frees up more time for me to deal with clients and to provide legal advice and speak with the Crowns.

The "Specialist" role, in particular, was felt to enhance the quality of client service, as evidenced by this feedback from another survey respondent:

Our office has a paralegal who has provided exceptional service to the vulnerable client population. When the Canadian Mental Health Association is unable to assist a client, the paralegal in our office intervenes as long as the client's criminal charges fall within her scope and mandate.

The criminal law paralegal project has demonstrated to LAO that licensed paralegals, provided with support and mentorship, can deliver a range of high quality services to clients and become valuable members of inter-professional legal service teams. The results of the pilot established that the expanded use of licensed paralegals allows clients

to be provided with more comprehensive services, and gives duty counsel more time to work with clients on more complex matters.

...

LAO believes that the Criminal Law Paralegal Pilot Project is a promising indicator of the potential that properly trained and supported licensed paralegals have for providing a wider range of services as part of inter-professional legal services teams.<sup>[109]</sup> (footnotes omitted)

Based on this experience, LAO wrote:

LAO's recent experience in expanding the roles of licensed paralegals as members of inter professional teams in criminal duty counsel office locations (through the Criminal Law Paralegal Pilot Project ...) has convinced LAO that licensed paralegals are capable of increasing the quality and quantity of services provided to clients, and that they can do so in a cost-effective manner. Accordingly LAO believes that with the proper safeguards and an appropriate framework in place, persons other than lawyers, such as paralegals, are capable of providing - and should be permitted to provide – some legal services in certain family law matters.<sup>[110]</sup>

LAO also provided information about the provision of legal services by paralegals in refugee matters:

It should also be noted that, for some time, LAO's Toronto-based Refugee Law Office (RLO) has successfully integrated non-lawyers in the provision of services to vulnerable refugee clients. The RLO is a staff office that offers services through teams of legal services providers including lawyers, licensed paralegals and LAWs. The staff complement at the RLO currently includes seven LAWs and three licensed paralegals, whose work includes conducting detention reviews and hearings before the Refugee Protection Division of the Immigration and Refugee Board.<sup>[111]</sup>

#### **iv. Tribunals' Experience With Paralegals**

I also met with a number of tribunal adjudicators, including those from the Landlord and Tenant Board, the Social Benefits Tribunal, the Human Rights Tribunal of Ontario and the Licence Appeal Tribunal.

Paralegals are already permitted to offer legal services to clients and appear before these tribunals in the areas they cover. I heard that paralegals are undertaking work for vulnerable clients in areas like Statutory Accident Benefits, which can involve multiple statutes and complex, time-sensitive paperwork that can significantly impact legal rights and outcomes. Paralegals are also representing refugee claimants before the Immigration and Refugee Board, where outcomes can profoundly impact every aspect of a claimant's life.

In the experience of many of these tribunals, paralegals excel at paperwork and advocacy in less complex cases. In each of these areas, paralegals and lawyers have formed formal and informal affiliations that allow for referrals where cases would be better handled by one or the other. My impression after my consultations with these tribunal members was that, without paralegals, many tribunals would be not be able to function as efficiently and effectively.

## v. Scope of Practice, Education, Training

Those who supported an expanded scope of practice for paralegals recognized the importance of setting out a clear scope of practice, education and training requirements, as well as safeguards, such as regulation and insurance.

One of the most significant concerns raised regarding expanding paralegals' scope of practice had to do with the quality of the education they currently receive. This is perhaps not surprising, given David Morris' findings in his 2012 report to the Attorney General on the review of paralegal regulation. Morris highlighted concerns expressed to him about paralegal education and training. He concluded that "[o]pportunities should continue to be sought to broaden the scope of paralegal practice, but in lock-step with improvements in the standards of learning, professional competence and professional conduct of the paralegal sector."<sup>[112]</sup>

Since the Morris review, the Law Society has strengthened the standards of learning for paralegal students and included substantive material in the licensing exam for paralegals. In 2014, the Law Society subjected colleges offering paralegal programs to more strenuous audit and compliance procedures. Those colleges have also been required to re-apply for accreditation.

The submission I received from the Ontario Paralegal Association, an advocacy body for paralegals, noted:

The current paralegal curriculum does not prepare paralegal candidates to deliver legal services in family law. To be authorized to provide family law services, the OPA believes that in addition to being licensed for at least two years, additional family law education, training, a substantive exam and a specialized licence should be required before a paralegal can be authorized to provide family legal services to Ontarians, as outlined below:

- **Work experience:** A candidate for a family law license must be a licensed paralegal for at least two years.
- **Education:** A family law certificate program offered through colleges already accredited to offer the paralegal program, a specialized certificate program offered through an accredited CPD provider, or previous college course(s) in family law.
- **Training:** A candidate for a family law licence would be required to complete a certain number of family law-specific placement hours (between 80 and 120)

and would need to demonstrate, via references, experience appearing before an Ontario Court of Justice judge.

- **Specialized exam and licensing:** Upon successful completion of the requirements mentioned above, and licensing examination on substantive family law material, a specialized licence would be obtained.<sup>[113]</sup>

Additional suggestions received throughout the course of this review for family law focused paralegal programs included:

- an entrance requirement of two years of college or university;
- education and training on family court structure and procedure, starting an application, completing financial statements, serving and filing documents, answer and reply, motions, case conferences, conflict management and mediation;
- a focus on working with vulnerable clients, including clients who have experienced domestic violence;
- courses devoted to identifying issues that are outside a paralegal's scope of practice and require referral to a lawyer;
- supervised experiential learning opportunities;
- specialized licence exam;
- certification as a family law specialist; and
- mentoring and/or supervision by an experienced family lawyer for the first years of practice.

It was also suggested that any specialized family law program for paralegals be piloted at one or a few colleges to allow a period of evaluation and adjustment before full implementation.

It is worth noting that many of the people I spoke with commented that there is currently no mandatory family law training for lawyers (except during the licensing exam) and no training in client counselling, domestic violence or the emotional issues that accompany many family law cases. It was suggested that paralegals could be required to complete a diverse range of family courses that covered these topics. Because no such education or training is mandatory for family law lawyers, it was submitted that this enhanced level of specialized education and training for paralegals could offer real benefits to clients.

There was consensus that further improvements would be required before paralegals should be allowed to provide family legal services. I also heard, however, that it is important to ensure that any program is not so rigorous, specialized or expensive that the time and cost involved in completing the program outweigh potential benefits and, in particular, require students to take on significant debt loads that would render the provision of less expensive services difficult.

## b. Law Students

Far less controversial was the suggestion that better and more expanded use be made of law students. There were, however, differing views on the level of supervision required for court appearances.

Properly trained and supervised law students play an important role in meeting the need for family law assistance. The organizations I consulted with as a part of this review were virtually unanimous in their view that students play a valuable role in the provision of family law services and that efforts should be made to utilize them as frequently as possible, particularly given that any investments in their training will continue to yield positive results for the family justice community as they enter legal practice.

I met with a number of SLASSs and representatives from PBSC. Both programs utilize students to provide family services. I note the following points made in their submission:

While the SLASS and PBSC programs are based on different models, together they showcase the possibilities of law student programs. In addition to meeting important access to justice needs, these programs align with the national impetus towards expanding experiential learning opportunities within legal education. This push is driven by a number of factors, including student interest, heightened competition for articling positions and an increasing emphasis by Law Societies and Federations across the country on core competencies and skills. Students, law faculties, the Bar and the judiciary appreciate these programs.

Moreover, it is worth noting that one of the contributing factors to the family law crisis is the greying and shrinking of the family law Bar. These programs offer important pathways for law students interested in family law to gain exposure to and experience with the practice in an academically rigorous and highly supportive forum. With proper supervision, students can walk away from these experiences interested in practising family law and able to run a family law practise. There are so few family law opportunities in law schools and limited articling positions. These programs really provide a pipeline into family law practise that will be important for longer term solutions for the access to justice crisis.<sup>[114]</sup>

...

PBSC has a waiting list of more than 900 students in Ontario; the program simply does not have the capacity to provide a placement to every law student who wants one. Similarly, SLASS clinics also have to cap the number of volunteers they can take on due to capacity issues, and the summer caseworker positions are highly competitive.<sup>[115]</sup>

They also state: "With more resources, both the SLASS clinics and PBSC could expand[their] programs to have an even greater impact on family law. Indeed, stable funding is not only critical to expanding existing programs, it is required in some cases to maintain existing programs."<sup>[116]</sup>

PBSC and the SLASS clinics provided the following examples of the enhanced services that could be provided with new funding:

- SLASS clinics and the FLP could increase the number of lawyer supervisors and the number of students providing services, helping more clients.
- Having a PBSC staff lawyer in each court to provide consistent supervision and service would be of significant benefit and would serve more clients.
- Additional sites could be added, expanding reach and impact.
- The nature of services could be extended. For example, while SLASS students work on spousal support cases, PBSC students currently do not. Spousal support could be added to the PBSC portfolio. Similarly, students do not currently work on divorce, but divorce services could be added.
- Students could take on more representation, with the courts' permission.
- The Law Practice Program (LPP) could be integrated into the family courts. LPP students could do their four-month placements at courts where LAO has articling students, adding significant capacity.
- Legal coaching programs (where self-represented litigants receive support and information in order to better represent themselves and, where necessary, purchase unbundled legal services) could be expanded by increasing the number of students helping self-represented litigants.<sup>[117]</sup>

There was also some consideration given during the course of consultations to opportunities for students to provide services on a fee-for-service basis, although the administrative costs were thought likely to outweigh any potential benefits.

The one area in which there were diverging views was student appearances in court. I heard concerns about law students appearing alone at any stage of a court proceeding because of the court's focus on ensuring that every appearance is meaningful and capable of moving the parties toward full or partial resolution. There was concern that these objectives could be compromised without a supervising lawyer present at every attendance with a student. The pedagogical benefits of close lawyer supervision were also emphasized.

The problem with a supervision model that requires a lawyer to attend every court appearance or client interview is that it is inefficient. I heard that there is a far greater demand for participation in existing student programs than can be accommodated, in large part because lawyers are only able to supervise a finite number of students.

I also received submissions about Rule 4(1) of the *Family Law Rules*, which requires "permission in advance from the court" if a litigant in a family law case is to be represented by a person who is not a lawyer.

I heard that Rule 4 is applied inconsistently across courts and has a particular impact on students seeking to appear in court:

A major barrier to law student appearances in family proceedings at present is the variation in the application of Rule 4, and the related complication that there is a broader opportunity for appearance by students in the Ontario Court of Justice than in the (Unified) Family Court or the Superior Court. While there are good reasons for limiting law students to certain types of cases, and excluding appearances for such matters as contested child protection or custody or access proceedings, it is unclear what the justification may be for allowing a properly supervised law student to appear on a contested child support matter in the Ontario Court of Justice but not in a Family Court or Superior Court. The present regime may effectively deny access to lower cost services provided by law students (or free services for Legal Aid qualified litigants) in communities with a Unified Family Court.<sup>[118]</sup>

I received very detailed submissions on how to expand Rule 4 to address this issue, including:

- amendments to provide a right of representation to attend on simple matters, including first appearances, procedural motions and conferences, while retaining the requirement to seek judicial permission.
- the codification of factors to be considered in the exercise of judicial discretion to permit or refuse representation by a student.
- the development of a procedure to request permission by way of Form 14B motion, on notice.

### c. Law Clerks

The few submissions that commented on the role of law clerks appeared to agree that law clerks provide a valuable function, have considerable family law expertise and could be used more extensively.

## Part 4: Key Observations and Recommendations

### 1. Key Observations

Paralegals' current scope of practice excludes family law. Yet family law is an area in which there is an acute client demand for legal services. There are wide gaps in the family justice system that significantly impede access to justice, particularly for the large segment of the population that earns too much to qualify for legal aid and too little to feel they can afford a lawyer. The problems with the system are, however, not exclusive to this group or created solely by financial drivers.

I heard numerous times during the consultations about the need for change to the family justice system. It was suggested that the focus of the government and Law Society

should be on a systemic review, rather than on an exploration into who should be authorized to provide legal services.

I agree 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. If forms and rules are so complex that trained professionals struggle with them and insist that paraprofessionals cannot be trusted to complete them (as was the position many in the bar and bench took in this review), then unrepresented litigants, who make up over half of court users, are in an impossible position.

Yet, there have been, and continue to be, sustained efforts by the judiciary, the bar, and other family justice service providers to do more to improve access to justice for those involved in legal family matters. These professionals clearly care about unrepresented litigants and are tirelessly and passionately striving to better ensure that they receive the assistance they seek. I heard wonderful ideas from many individuals and organizations about possibilities for improving the family justice system. I would encourage those individuals and organizations to continue to search for ways to help unrepresented litigants resolve their family law matters in a fair, timely and affordable manner. Action on many fronts from the key players in the justice system, including the government, the bar, the bench and non-governmental organizations, is required.

It is clear that the answer in today's fiscal climate will likely not be more funding for lawyers, which was proposed repeatedly throughout the course of my consultations. Given recent funding increases for LAO,<sup>[119]</sup> it is unlikely that the government will further increase funding for legal aid in the near future. Recommendations like expanding legal aid to cover existing gaps are not practicable. Moreover, I do not agree that the solution to any crisis in access to legal services lies solely with LAO or the government. While it is important to build on existing services and successful programs, it is also time to consider other options, including options to expand the legal marketplace and offer clients a range of affordable services.

This review is focused on one aspect of the family justice system: the provision of services by persons other than lawyers. The challenge is to consider how to increase access to affordable legal services while ensuring that the rights and interests of often vulnerable individuals with family law problems are not prejudiced by inadequate assistance, advice, or representation. This review provides an important opportunity for public interest analysis of the delivery of legal services in family matters. As such, the most important consideration for me in conducting this review was what will best serve the interests of the public.

## **2. Recommendations on the Provision of Family Legal Services**



## a. Lawyers

While there is no doubt that lawyers play, and will continue to play, a fundamental role in the delivery of family legal services, there is also no doubt that changes to the way those services are delivered are necessary. Traditional retainer agreements and models of representation should not be the only, or even the main, option.

Many Ontarians do not qualify for legal aid and do not feel that they can afford to hire a lawyer at current hourly rates for full representation. During my consultations, I heard the argument that families should prioritize paying for a lawyer and, if necessary, forgo the family vacation or a new car, or dip into their savings in order to do so. In my view, the question of whether someone can 'afford' legal services is deeply personal and fraught with difficulties. People can, and should, make decisions about how they want to spend their money and what kind of services are worth a significant investment of their savings or their future earnings. The reality is that many are reviewing their financial circumstances and determining that they cannot afford a lawyer at current rates or under current models of representation.

Yet the majority of unrepresented litigants would like some practical legal assistance. Not feeling able to afford a lawyer does not mean that a person does not want some legal assistance. Lawyers have a critical role to play in meeting these needs.

Professors Woolley and Farrow put it succinctly in this way:

Although it may be that traditional service delivery models – dominated by bespoke legal services largely based on hourly billing – are not ideal methods to reach many of those people, there is certainly no lack of work to go around for those who are interested in matching up their services to the kinds of legal needs that are often most pressing and are not currently being met. The issue is not necessarily an over-crowded market; rather, it is the challenge of matching up those who are willing and able to provide accessible services with those in need.<sup>[120]</sup>

It was clear from my consultations that lawyers are enthusiastic about the potential for unbundled services to address gaps in the system. In fact, the availability of unbundled services was heralded by both the bench and bar as the most significant solution to the access to justice crisis.

However, in spite of the fact that unbundled services are expressly permitted by the Law Society, I heard that they continue to be offered sparingly. The reason most often provided for the reluctance to offer these services is a continued fear of increased exposure to liability. This fear persists even though the Law Society and LawPRO continue to educate lawyers about the permissibility of offering unbundled legal services, and provide resources to support them in doing so.

I agree that unbundling has immense potential to enhance access to justice. I am concerned that lawyers are not engaging in it to the degree necessary to have a significant impact.

While I support greater use of unbundled services, I caution that there is some potential for the misuse of unbundling by lawyers. I have heard of instances where a lawyer has refused to deal with a collateral issue in court because he or she was retained to deal only with a very particular issue. The potential for abuse in situations such as these may also arise with a client who wishes to sidestep or avoid dealing with another issue. Thus, in encouraging the use of unbundled services, I would suggest that safeguards to discourage such abuses be put in place.

### **Recommendation 1:**

Lawyers should continue to offer unbundled services and should take steps to ensure the public is made aware of their availability. Lawyers should consider innovative opportunities to offer unbundled legal services, including affiliations with other lawyers and online platforms.

### **Recommendation 2:**

The Law Society of Upper Canada and LawPRO should continue to support the expanded use of unbundled services and should offer continuing legal education opportunities and tools to address the liability concerns that lawyers have raised as an impediment to offering these services.

Legal coaching is a new area of practice the profession should also support. Legal coaching may overlap with some unbundled tasks, but is uniquely characterized by the lawyer equipping the client to move his or her own matter forward (by reviewing documents, preparing them for an appearance, etc.) rather than personally doing the work for the client. Legal coaching can be provided on a fee-for-service or flat-rate model, and may involve the provision of substantive legal advice, procedural coaching, hearings coaching and/or negotiation and settlement coaching. Depending on the client's needs, capabilities and financial circumstances, coaching and unbundled services can be provided hand-in-hand.

### **Recommendation 3:**

The legal profession should support the development of legal coaching and offer continuing legal education opportunities to ensure lawyers are equipped to offer these services. Lawyers should be encouraged to take these training programs, and to offer and advertise coaching services. The Law Society of Upper Canada and LawPRO should consider providing incentives for lawyers to make legal coaching an integral part of their practice.

## **b. Paralegals**

There are few subjects that cause more controversy within the family justice community than the provision of legal services by paralegals. I appreciate the views of the bar and the bench and the sincere concerns expressed about the vulnerabilities of families attempting to navigate the court system.

Many people currently seek advice and guidance from sources such as friends, community members and the internet instead of hiring lawyers. In fact, I heard about divorce coaches and divorce doulas – these are individuals who have been through their own legal family matter and, based on those experiences, offer their assistance to others. I also heard about leaders in religious and ethnic communities who provide advice to vulnerable women about how they should resolve their family law matters. In these circumstances where untrained and unregulated individuals are teeter-tottering between providing legal information and legal advice, I believe that no assistance may be better than some assistance.

However, I do not agree that no assistance is better than some assistance where paralegals, properly trained and regulated, are able to provide legal services in family matters. The rising number of unrepresented litigants can be addressed more immediately and effectively by considering ways to expand the provision of legal services.

Issues relating to geography, culture and language deepen the need for consideration of other options. While opportunities for representation may abound in Toronto (legal costs notwithstanding), the availability of lawyers decreases dramatically in more rural and remote areas. Even in Toronto, finding a legal representative from one's own cultural background or who speaks one's own language presents challenges for many. 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.

Ultimately, people who do not qualify for legal aid and feel they cannot afford a lawyer should have a greater ability to obtain some legal assistance in family law. I recognize that those with a low income who just barely miss the legal aid cutoff may still be unable to afford a paralegal. However, paralegals would provide a greater choice of legal service providers for those in the middle class.

The great advantage to expanding the scope of paralegals is that they are already regulated by the Law Society. Professor Semple writes:

It is important that family legal services providers be regulated, because clients can be seriously damaged by deficient services and because they are generally unable to determine service quality themselves. Ontario paralegals are already subject to a comprehensive Law Society of Upper Canada (LSUC) regulatory regime including licensing, discipline, a code of conduct, and insurance requirements. The available

evidence suggests that the LSUC paralegal licensing regime enjoys reasonable success in protecting the public and upholding the rule of law. The key question today is whether and how the benefits of regulated paralegal services can be extended to more people with legal needs.<sup>[121]</sup> (footnotes omitted)

There was much discussion throughout the course of this consultation about the need for paralegals to be supervised by lawyers. In fact the prospect of lawyer supervision significantly diminished concerns about paralegal representation.

The challenge with implementing lawyer supervision for paralegals providing family law services is that it is unlikely to impact the access to justice concerns it is intended to address. Indeed, the supervision model proposed by the legal organizations I spoke with already exists in the form of the law clerk-lawyer relationship, which has had no discernible impact on access to justice:

[O]nly licensed and independent paralegals can offer meaningful competition to lawyers. Students or clerks would presumably continue to operate under lawyers' supervision. Expanding the range of tasks they may perform may allow law firms employing them to offer more or less expensive services to family law clients, but the beneficial effects on price and service variety are likely to be modest. This is because the supervising law firms control the pricing and retain the right mark-up [on] student/clerk services before providing them to clients.

Inter-professional competition can foster access to justice by driving innovation, improving quality, and reducing prices. However, in a highly-regulated economic sphere such as legal services, competition is not a "natural" state of affairs – it must be designed and fostered by regulators.<sup>[122]</sup> (footnotes omitted)

There is no doubt that family law is complex and that it has the potential to forever impact vulnerable people in the most important areas of their lives. I am not convinced, however, that only lawyers have the capacity to identify legal issues or provide support to vulnerable clients facing complex emotional and mental health issues, including domestic violence, particularly because law students are not required to take family law courses. As Professor Semple points out, "[i]f we trust a newly licensed lawyer with no family law training to hang out a shingle and offer quality family law services, it is hard to believe that a highly experienced paralegal would be unable to do so."<sup>[123]</sup>

I heard that expanding the scope of practice for paralegals would result in a two-tier legal system and that those represented by paralegals would be afforded a lesser kind of justice than those represented by lawyers. This argument ignores the fact that there is already a two-tier justice system in Ontario and the fact that unrepresented litigants are often startlingly unsuccessful in court. None of us can know all of the reasons why people represent themselves, but it is beyond dispute that a significant proportion of those who represent themselves say that they do so for financial reasons and that they want help.

I would note that, after paralegal regulation was first introduced in Ontario, various reports have suggested a greater role for paralegals to play in providing access to justice for unrepresented litigants. The 2008 Trebilcock report on legal aid suggested that the use of paralegals be maximized. The 2012 Morris report on the review of paralegal regulation recommended considering whether the scope of practice of paralegals should be expanded, but that this be linked to enhanced paralegal education, training and professional conduct. The 2013 Law Commission report also contemplated paralegals possibly providing some family law services.

As a result, I am recommending that paralegals be permitted to provide some family law services without supervision by lawyers. My recommendation to enhance the scope of work performed by paralegals is contingent on the implementation of related recommendations to develop a specialized training program and licensing scheme that would be required before any family law services could be offered.

#### **Recommendation 4:**

The Law Society of Upper Canada should create a specialized licence for paralegals to provide specified legal services in family law.

As important as creating a specialized licence is the need to clearly delineate the areas within family law in which paralegals should be able to provide services. I considered a number of options in this regard, including creating a distinction between contested and uncontested matters or between substantive and procedural matters. Ultimately, such distinctions appeared more likely to create confusion and uncertainty, particularly for clients. As a result, I am recommending that paralegals be permitted to provide a complete spectrum of services in prescribed areas of family law that are typically (but by no means always) less complex than others.

This list closely parallels the areas in which law students currently provide services and, as a result, draws workable and understandable lines that experience has proven less likely to be easily crossed. However, there is a key difference: specialized family paralegals, unlike students, would not have to work under the supervision of a lawyer in these areas.

#### **Recommendation 5:**

Paralegals licensed in family law should be permitted to provide legal services in the following areas:

- custody;
- access;
- simple child support cases;
- restraining orders;
- enforcement; and
- simple and joint divorces without property.

They should not be permitted to provide services in cases involving:

- the *Convention on the Civil Aspects of International Child Abduction*<sup>[124]</sup> (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.

In terms of the services that a paralegal should be able to provide within these areas of law, I would recommend, for the most part, following the model adopted in Utah. Unlike the Utah model, however, I am also recommending that paralegals be permitted to represent clients in court, other than in trials, as long as the matters on which they are providing representation fall within their prescribed scope.

I recognize that the issue of paralegals representing clients in court is one of considerable controversy. When I began this review, my own feeling, based on the written submissions I received, was that in-court assistance would not be appropriate and that a line could reasonably be drawn at the courtroom door. As I continued to explore the issues and hear from different communities, it became clear to me that precluding paralegals from appearing in court would be a disservice to clients.

As indicated in Part 3 of this report, the area in which unrepresented litigants want the most help is with their court appearance.

Paralegals are currently permitted to appear in Small Claims Court, in the Ontario Court of Justice on *Provincial Offences Act*<sup>[125]</sup> matters, on summary conviction offences under the *Criminal Code*<sup>[126]</sup> and before tribunals. The current paralegal curriculum includes education and training in oral advocacy, albeit not specifically in family law.

The fact that advocacy work is conducted in a public forum in the presence of a neutral third party should also provide some element of monitoring and oversight. If there was misconduct or incompetence on the part of a paralegal, there would be the ability to report it to the Law Society.

Requiring paralegals to seek judicial permission before appearing in court (pursuant to Rule 4) would create uncertainty, act as a disincentive to seek paralegal services and contribute to the already considerable stress litigants face as they enter a courtroom. From a practical standpoint, it may discourage individuals from pursuing the specialized paralegal licence in family law, as it would be frustrating to not be able to provide continuous service to one's client. It would be difficult to explain to a client that one could assist the client with filling out forms and preparing for court but that, where the client perhaps most needed the assistance, the paralegal could not enter the courtroom.

Such a limitation could very well play into a person's decision on whether to hire a paralegal.

Requiring paralegals to be supervised by a lawyer and to seek judicial permission before a court appearance was piloted in British Columbia and, based on that province's experience, does not seem to be a feasible option.

### **Recommendation 6:**

Within the areas of practice set out in Recommendation 5, above, paralegals licensed in family law should be permitted to do the following:

1. Conduct client interviews to understand the client's objectives and to obtain facts relevant to achieving that objective;
2. Perform the following forms-related tasks:
  - i. Complete court-approved forms on the client's behalf;
  - ii. Advise the client on which form to use;
  - iii. Advise the client on how to complete the form;
  - iv. Sign, file and complete service of the form on the client's behalf;
  - v. Obtain, explain and file any necessary supporting documents on the client's behalf;
    1. Select, draft, complete or revise, or assist in the selection, drafting, completion or revision of, a document for use in a proceeding;
    2. Determine what documents to serve or file in relation to the proceeding, determine on whom to serve or file a document, or determine when, where or how to serve or file a document;
    3. Advise the client about the anticipated course of proceedings by which the court will resolve the matter;
    4. Communicate with another party or the party's representative;
    5. Represent a client in mediated negotiations;
    6. Prepare a written settlement agreement in conformity with the mediated agreement;
    7. Represent a client in court, other than at trials; and
    8. Advise a client about how a court order affects the client's rights and obligations.

For greater clarity, I am not proposing that paralegals be permitted to draft domestic contracts, except where they are the result of mediated negotiations and are drafted in conformity with a mediated agreement.

Throughout my consultations, I heard about the importance of service providers in family matters having a certain level of maturity, given the sensitivity and importance of the issues that they may face. Concern was expressed about individuals being able to

provide family legal services just a few years out of high school. Indeed, Ontario law students must complete a minimum of three academic years before entering law school.

The Ontario Paralegal Association submitted that a paralegal should be licensed for at least two years before being able to provide family legal services. While I believe completing the current requirements for a paralegal licence would be beneficial to a paralegal seeking a specialized licence, I do not think it necessary that a paralegal practise for two years in another area of law when he or she would like to specialize in family law.

Putting in place a requirement for a general paralegal licence provides the broad education and exposure to other areas of the law that would form a solid foundation for further specialization in family law. This would also better ensure that an individual interested in being a family law paralegal would have more life experience and maturity than he or she would have upon completing high school.

#### **Recommendation 7:**

Paralegals wishing to specialize in family law should first be required to complete the current requirements for a paralegal licence.

Beyond my recommendations that paralegals ought to be able to provide some services in family law after acquiring a specialized licence, and that the paralegal ought to first complete the current requirements for a paralegal licence, I leave it to the Law Society and other experts in education, training and licensing to develop curriculum and training appropriate for specialization in family law.

However, based on the submissions I received, I would recommend that certain elements be minimum requirements for any education and training program for a paralegal specialization in family law.

#### **Recommendation 8:**

At minimum, the following topics should be included in any education and training of paralegals in family law: gender-based violence, family dynamics, client counselling, forms completion, ethics and professionalism, substantive and procedural family law and indicators that a client requires referral to a lawyer.

I believe it is critical for experiential learning to be part of the licensing process for paralegals in family law. I am not making specific recommendations with respect to how this experiential learning should be obtained. It will, however, be important for paralegal students in family law to get some sort of practical experience.

The Law Society is currently reviewing the licensing process for lawyers. I am aware of the issues related to the experiential component of law school. I know that it is expensive and that there is difficulty in finding placements for law students. I do not wish



my recommendations to further complicate this area, and I defer to the Law Society to develop a curriculum that contains all of the elements necessary to ensure that well-trained, qualified paralegals are equipped to competently deliver specialized family legal services.

**Recommendation 9:**

A practical, experiential component in family law should be built into the licensing process for paralegals specializing in that area.

Once trained and qualified, licensed paralegals with a specialization in family law should be subject to regulation and discipline by the Law Society, be required to follow a prescribed code of conduct developed by the Law Society and be required to meet all insurance requirements.

**Recommendation 10:**

Licensed paralegals with a specialization in family law should be subject to regulation and oversight by the Law Society of Upper Canada, and be required to be insured for their services.

While I am not recommending supervision of paralegals by lawyers, I by no means intend to discourage lawyers and paralegals from forming affiliations, partnerships and networks. Indeed, the optimal arrangement would see paralegals and lawyers working alongside one another, making referrals and consulting as necessary, or in interdisciplinary teams (such as those LAO has recently developed in the criminal law context). While such interdisciplinary models represent the ideal, they should not be mandatory in order for paralegals to provide legal services.

**Recommendation 11:**

The Law Society of Upper Canada should take steps to facilitate collaboration between lawyers and paralegals with family law licences to form formal and informal affiliations, referral networks and interdisciplinary teams.

Once appropriately trained, there is a wide array of roles paralegals could fill, including within LAO (in much the same way in which criminal paralegals are being utilized) and at the FLICs. This could be in addition to offering services within their scope of practice on a private fee-for-service basis.

**Recommendation 12:**

Legal Aid Ontario should apply its interdisciplinary model to family law, using paralegals licensed in family law wherever possible.

Much has been made of the need for a triage function to be performed at the outset of a family law case, or even before such a case is started. I understand that the MAG is currently exploring options in this regard, and I support its efforts. I emphasize, however, that it should be geared toward providing the practical assistance that was identified as necessary throughout the course of our consultations: legal information, assistance with forms, answers to procedural questions, explanations of the court process and of the availability of alternatives (including court-connected mediation services) and measures to ensure all necessary steps have been understood and completed. A paralegal licensed in family law may be particularly well-suited to perform the triage role.

Regardless of whether or not the ministry implements a triage program, consideration should also be given to potential roles for paralegals within the family court system, including at the FLICs, as first appearance clerks and at court counters. They may perhaps offer specialized services to unrepresented litigants.

**Recommendation 13:**

The Ministry of the Attorney General should consider whether opportunities exist to utilize paralegals licensed in family law in the delivery of family justice services, including at the Family Law Information Centre and at the family court counter.

In order to provide some transparency with respect to forms, lawyers and paralegals who have been compensated for preparing or assisting with the preparation of any forms should be required to indicate on those forms that they have been compensated.

**Recommendation 14:**

The Family Rules Committee should consider how the family court forms could be amended to require service providers who are compensated for preparing, or assisting in the preparation of, forms, to indicate that they have provided such assistance.

Clearly, my recommendations represent a significant departure from current practice. Because paralegals have been entirely precluded from appearing in family court, it has been difficult to identify the most appropriate and effective means of introducing them. For this reason, and because the issue has garnered such longstanding controversy within the family justice community, it is critically important to review the role paralegals play within family law in order to determine whether further changes to that role are desirable. It is equally important to ensure a robust evaluation system is in place to determine whether paralegals are having a positive impact on the system and, in particular, enabling families to better access justice.

**Recommendation 15:**

The Law Society of Upper Canada should review the impact paralegals specialized in family law have had on access to justice five years after the first family paralegal licences have been issued. This review should include an analysis of whether paralegals provide an affordable alternative to traditional models, whether the introduction of paralegals in family law has had any impact on self-representation and whether adjustments should be made to their scope of practice.

### **Recommendation 16:**

In order to facilitate a five-year review, there should be a robust evaluation system in place as soon as paralegals are permitted to begin specializing in family law. The evaluation should measure client and paralegal satisfaction, as well as obtain views from the wider family justice community on the impact of paralegal practice in family law.

I have focused on paralegals because they are already regulated by the Law Society. As a result, they seem to be a natural starting point with respect to the provision of family legal services by persons other than lawyers. There is already a regulatory scheme in place upon which to build.

By this, I do not mean to diminish the magnitude of the task of implementing a regulatory system that would allow for licensing of paralegals specializing in family law. Although there is some foundation in place for the regulation of paralegals, the implementation of the recommendations above would require careful consideration and the establishment of a specialized licence, including education, training and other regulatory requirements. I commend the Law Society for its success in implementing the regulation of paralegals a decade ago, which I understand was an enormous feat, and have every confidence that it could, in collaboration with its partners, rise to this challenge.

I would, however, further recommend that, at the five-year review, the Law Society consider whether it would be appropriate to allow others, such as mediators, law clerks and community legal workers, to undertake various forms of training to independently provide legal services in family matters.

For example, law clerks work under the supervision of lawyers and appear to have gained a great deal of experiential knowledge in family law. Consideration could be given to authorizing law clerks with experience to offer document preparation services independently, with appropriate training and safeguards.

### **c. Law Students**

Regardless of whether paralegals are ultimately permitted to provide family law services, there will still be a portion of the population who either cannot pay for legal services at any cost or choose not to. Although I do not agree with the submission that paralegals are unlikely to be less expensive than lawyers, I do agree that their costs will

be prohibitive for some. As a result, it is critically important to continue to invest in and offer both free services and services at a nominal cost.

I was very impressed by the extensive and important work undertaken by law students, supported by lawyers, who are obviously committed to excellence in the family justice system. The role that student programs play in access to justice cannot be underestimated, but I am gravely concerned about the apparent lack of stable funding to support their continued existence and ability to provide family law services to the public. These programs are far too important to be jeopardized by ongoing funding concerns. LAO, law schools and the family justice community as a whole need to ensure their continued operation and expansion is a priority.

**Recommendation 17:**

The Ministry of the Attorney General and LAO should ensure continued funding to enable student programs like Pro Bono Students Canada's Family Law Project and the student legal aid services societies to continue to operate and possibly even expand.

While I am deeply respectful of the learning that takes place as a result of the intensive supervision model in clinics, I am concerned about the limits it places on the number of students who can participate in, and the number of clients who can benefit from, these programs. I encourage clinics to work with the judiciary to identify a wider range of situations in which accompaniment by counsel is not necessary, with the proviso that counsel is always reachable by telephone should a settlement opportunity or other questions arise.

In cases where it is determined that accompaniment by a supervising lawyer continues to be necessary, it is not clear to me why Rule 4 requests for permission are required. There should be a presumption that law students can appear on behalf of clients in court in these circumstances.

This approach increases opportunities for expanding programs while maintaining their pedagogical integrity and ensuring that meaningful opportunities for resolution exist at court appearances.

**Recommendation 18:**

The Family Rules Committee should consider amendments to Rule 4 to ensure its consistent application across courts, particularly with respect to court appearances by students and to clarify when lawyer supervision is required. Where supervision is required, judicial permission should not be necessary.

The Law Society has an opportunity, as it continues to review the experiential component of its licensing process for lawyers, to consider ways for students to meaningfully address unmet legal needs in family law. The role of law students is

universally recognized as valuable within the family justice system, and I heard that there is far more demand for family law services provided by students than current student programs can accommodate. Some services are already being provided by the FLP and the SLASSs, but there may be an opportunity to provide student services on a much larger scale if it is built into the mandatory learning of every law student.

**Recommendation 19:**

The Law Society of Upper Canada should take the opportunity during its review of its licensing process for lawyers to consider whether there is a way to connect the experiential learning of law students with unmet legal needs in family law.

**d. Court Staff**

Court staff have extensive knowledge of the practical and procedural issues self-represented litigants need assistance with, but arbitrary and poorly understood distinctions between legal information and legal advice prevent them from providing help. Self-represented litigants are not alone in their dissatisfaction with these limits. I heard that court staff are often deeply frustrated by not being able to provide information to assist clients who have travelled long distances and for whom no other help is available.

Clarifying what staff can and cannot do is not sufficient. Further consideration needs to be given to changing traditional roles and limitations and to providing training that better equips staff to answer the questions they are asked most often. While there is no doubt that staff should not be providing legal advice, there is much more in the way of legal information that they can, should and want to provide. This includes, but is not limited to, helping clients understand legal terminology used on court forms, indicating where documentation is incomplete and explaining what needs to be provided.

**Recommendation 20:**

The Ministry of the Attorney General should develop a training program for court staff that emphasizes the difference between legal information and legal advice and encourages staff to provide as much assistance as possible within the limits of their role.

**Recommendation 21:**

The Law Society of Upper Canada should ensure that rules relating to the unauthorized practice of law clearly distinguish between legal advice and the legal information provided by court staff to unrepresented litigants.

## **Part 5: Conclusion**

As was the case in 2006, when paralegal regulation was first introduced in Ontario, the issue of legal service delivery brings to the fore the two imperatives of access to justice and protection of the public. After reading all the written submissions and hearing the diverse views expressed, it is clear to me that unrepresented litigants in family law need more options in obtaining legal assistance to resolve their family disputes.

Thus, I have made recommendations about the greater use of unbundled services and coaching by lawyers, as well as the continued funding of, and reliance on, law students. The most controversial recommendations, however, will be those with respect to the provision of legal services in family matters by paralegals with a specialized licence in family law.

It will now be incumbent upon the Ministry of the Attorney General and the Law Society of Upper Canada, to whom I submit this report, to determine the path forward.

## **Appendix: Written submissions received**

### **Written Submissions Received from Judiciary, Organizations and Academics**

#### **Judiciary**

1. Association of Ontario Judges
2. Ontario Court of Justice
3. Superior Court of Justice

#### **Organizations**

1. Akwesasne Justice Department
2. The Advocates' Society
3. Anderson Adams
4. The Association of Family and Conciliation Courts, Ontario Chapter
5. The Canadian Association of Somali Lawyers
6. Community Legal Aid, University of Windsor
7. Community Legal Education Network
8. County of Carlton Law Association
9. Criminal Lawyers' Association
10. DeRusha Law Firm
11. Downtown Legal Services, Community and Legal Services Program and Pro Bono Students Canada
12. Family Dispute Resolution Institute of Ontario
13. Family Information and Mediation Service Providers (joint submission)
14. Family Lawyers Association
15. Family Service Toronto

16. Federation of Ontario Law Associations
17. LawPRO
18. Leed and Grenville Law Association
19. Legal Aid Ontario
20. Miralaw Inc.
21. Office of the Children's Lawyer
22. Ontario Association for Family Mediation
23. Ontario Bar Association
24. Ontario Paralegal Association
25. Renfrew County Law Association
26. Rural Response for Healthy Children
27. Seneca College of Applied Arts and Technology
28. Sheridan College Institute of Technology and Advance Learning
29. Thunder Bay Law Association
30. Toronto Lawyers Association
31. Yellow Brick House
32. York Region Law Association

## Academics

1. Nicholas Bala
2. Julie Macfarlane
3. Noel Semple

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[1] Ministry of the Attorney General, Backgrounder, *Terms of Reference for Family Legal Services Review*, online: <https://news.ontario.ca/mag/en/2016/02/terms-of-reference-for-family-legal-services-review.html>.

[2] Action Committee on Access to Justice in Civil and Family Matters, *Access to Civil and Family Justice: A Roadmap for Change* at 2, online: [http://www.cfcj-fcjc.org/sites/default/files/docs/2013/AC\\_Report\\_English\\_Final.pdf](http://www.cfcj-fcjc.org/sites/default/files/docs/2013/AC_Report_English_Final.pdf) [Action Committee Final Report].

[3] 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.adrontario.ca/media/Family%20Law%20Process%20Reform%20Report%20final%20web.pdf> .

[4] Ministry of the Attorney General, *Expanding Legal Services Options for Ontario Families*,  
online: [https://www.attorneygeneral.jus.gov.on.ca/english/family/legal\\_services\\_consultation\\_paper.html](https://www.attorneygeneral.jus.gov.on.ca/english/family/legal_services_consultation_paper.html).

[5] The data for family matters reflects the number of represented and unrepresented applicants at the time of filing of an application for FLA/CLRA and Divorce matters, with the exception of data for the court location at 393 University Avenue (Toronto – Superior Court of Justice, Family), which is unavailable due to a change in data collection systems and data entry practices. Representation status may change throughout the duration of the matter. The Ministry of the Attorney General collects this data, and, as such, the Superior Court of Justice cannot confirm the accuracy of this data.

[6] National Self-Represented Litigants Project, “Finally, Canadian Data on Case Outcomes: SRL vs. Represented Parties” (18 April 2016), *National Self-Represented Litigants Project Blog*(blog), online: <http://representingyourselfcanada.com/finally-canadian-data-on-case-outcomes-srl-vs-represented-parties/>.

[7] Rachel Birnbaum, Nicholas Bala & Lorne Bertrand, “The Rise of Self-Representation in Canada’s Family Courts: The Complex Picture Revealed in Surveys of Judges, Lawyers and Litigants” (2013) 91 Can Bar Rev 67 at 87.

[8] *Ibid* at 80.

[9] Julie Macfarlane, *The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants – Final Report* at 108-09,  
online: <http://representingyourselfcanada.com/wp-content/uploads/2016/09/srlreportfinal.pdf>[Macfarlane, *Final Report*].

[10] Charlie Gillis, “A Judge’s View on one of the Biggest Problems Facing the Justice System” *Macleans*’s (4 February 2013), online: <http://www.macleans.ca/news/canada/a-judges-view-on-one-of-the-biggest-problems-facing-the-justice-system/>.

[11] Birnbaum, Bala and Bertrand, *supra* note 7, at 81.

[12] *Ibid* at 76.

[13] Macfarlane, *Final Report*, *supra* note 9 at 8.

[14] Michael McKiernan, "The Going Rate" (2 June 2014) *Canadian Lawyer Magazine*,  
online: <http://www.canadianlawyermag.com/5151/The-going-rate.html>.



[15] Birnbaum, Bala and Bertrand, *supra* note 7 at 78.

[16] Legal Aid Ontario, *Am I eligible for a legal aid certificate?*,  
online: <http://www.legalaid.on.ca/en/getting/eligibility.asp>.

[17] Macfarlane, *Final Report*, *supra* note 9 at 28.

[18] *Ibid* at 29.

[19] Pascoe Pleasence & Nigel J Balmer, "Caught in the Middle: Justiciable Problems and the Use of Lawyers" in Michael Trebilcock, Anthony Duggan & Lorne Sossin, eds, *Middle Income Access to Justice* (Toronto: University of Toronto Press, 2012) 27 at 54.

[20] John McCamus, *Report of the Ontario Legal Aid Review: A Blueprint for Publicly Funded Legal Services* at 175,  
online: <http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/olar/ch10.php> [McCamus Report].

[21] The Honourable Peter de C. Cory, *A Framework for Regulating Paralegal Practice in Ontario* (Toronto: Queen's Printer, 2000) at 63.

[22] *Ibid* at 69.

[23] Law Society of Upper Canada, *Task Force on Paralegal Regulation Report to Convocation* (Toronto: Law Society of Upper Canada, 2004),  
online: [http://www.lsuc.on.ca/media/convsept04\\_paralegal\\_report.pdf](http://www.lsuc.on.ca/media/convsept04_paralegal_report.pdf).

[24] SO 2006, c 21.

[25] RSO 1990, c L.8.

[26] Law Society of Upper Canada, *Paralegal Standing Committee Report to Convocation – November 22, 2012* (Toronto: Law Society of Upper Canada, 2007) at 10,  
online: <http://www.lsuc.on.ca/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=2147490042>.

[27] *Ibid*.

[28] Michael Trebilcock, *Report of the Legal Aid Review 2008*,  
online: [http://www.legalaid.on.ca/en/publications/downloads/advisorygroups/transform-poverty\\_trebilcock.pdf](http://www.legalaid.on.ca/en/publications/downloads/advisorygroups/transform-poverty_trebilcock.pdf).

[29] *Ibid* at 85.

[30] *Ibid* at 174.

[31] David Kraft et al, *Five Year Review of Paralegal Regulation: Research Findings – Final Report for the Law Society of Upper Canada* (Toronto: Strategic Communications, 2012) at 7, published in Law Society of Upper Canada, *Paralegal Standing Committee Report to Convocation – June 28, 2012*, online: <http://www.lsuc.on.ca/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=2147488005>.

[32] David J Morris, *Report of Appointee's Five-Year Review of Paralegal Regulation in Ontario*, online: [https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/paralegal\\_review/Morris\\_five\\_year\\_review-ENG.html](https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/paralegal_review/Morris_five_year_review-ENG.html).

[33] Law Commission of Ontario, *Increasing Access to Family Justice Through Comprehensive Entry Points and Inclusivity* (Toronto: Law Commission of Ontario, 2013) at 70, online: <http://www.lco-cdo.org/family-law-reform-final-report.pdf>.

[34] *Ibid*.

[35] Family Justice Working Group of the Action Committee on Access to Justice in Family and Civil Matters, *Meaningful Change for Family Justice: Beyond Wise Words* at 7, online: <http://www.cfcj-fcjc.org/sites/default/files/docs/2013/Report%20of%20the%20Family%20Law%20WG%20Meaningful%20Change%20April%202013.pdf>.

[36] Access to Legal Services Working Group of the Action Committee on Access to Justice in Family and Civil Matters, *Report of the Access to Legal Services Working Group* at 11, online: <http://www.cfcj-fcjc.org/sites/default/files/docs/2013/Report%20of%20the%20Access%20to%20Legal%20Services%20Working%20Group.pdf>.

[37] Action Committee on Access to Justice in Civil and Family Matters, *supra* note 2.

[38] *Ibid* at 21.

[39] Action Committee on Access to Justice in Civil and Family Matters, *Action Committee on Access to Justice in Civil and Family Matters Colloquium Report* at 9, online: [http://cfcj-fcjc.org/sites/default/files/docs/2014/ac\\_colloquium\\_web\\_FINAL.pdf](http://cfcj-fcjc.org/sites/default/files/docs/2014/ac_colloquium_web_FINAL.pdf).

[40] *Ibid* at 10.

[41] *Law Society Act*, *supra* note 25, s 1(8).

[42] Law Society of Upper Canada, *Rules of Professional Conduct*, Toronto: LSUC, 2016.

[43] Law Society of Upper Canada, By-Law 4, online: <https://www.lsuc.on.ca/uploadedFiles/By-Law-4-Licensing-05-16-16.pdf> [Law Society of Upper Canada, By-Law 4].

[44] Law Society of Upper Canada, *Rights of Appearance for Lawyer Licensing Process Candidates*, online: <http://www.lsuc.on.ca/licensingprocess.aspx?id=2147498115> [Law Society of Upper Canada, *Rights of Appearance*].

[45] O Reg 114/99.

[46] Law Society of Upper Canada, *Rights of Appearance*, *supra* note 44.

[47] Ministry of the Attorney General, Backgrounder, *Paralegal Regulation in Ontario*, online: <https://news.ontario.ca/mag/en/2009/03/paralegal-regulation-in-ontario.html>.

[48] Law Society of Upper Canada, *Paralegal Licensing Frequently Asked Questions*, online: <http://www.lsuc.on.ca/licensingprocessparalegal.aspx?id=2147491230>.

[49] *Ibid.*

[50] *Law Society Act*, *supra* note 25, s 1(8); Law Society of Upper Canada, By-Law 4, *supra* note 43.

[51] The Institute of Law Clerks of Ontario, *FAQ*, online: <http://www.ilco.on.ca/membership-information/faq>.

[52] Ministry of the Attorney General, *Family Court Support Worker Program*, online: [https://www.attorneygeneral.jus.gov.on.ca/english/ovss/family\\_court\\_support\\_worker\\_program/](https://www.attorneygeneral.jus.gov.on.ca/english/ovss/family_court_support_worker_program/).

[53] Ministry of the Attorney General, *The Office of the Children's Lawyer*, online: <http://www.attorneygeneral.jus.gov.on.ca/english/family/ocl/>.

[54] Ministry of the Attorney General, *Supervised Access*, online: <http://www.attorneygeneral.jus.gov.on.ca/english/family/supaccess.php>.

[55] A Guide for Court Service Division Staff – Family and Small Claims Court.

[56] The information in this section was provided by Legal Aid Ontario in its submission to the FLSR. See Legal Aid Ontario, *Submission on expanding legal services options for Ontario families*, online: <http://www.legalaid.on.ca/en/publications/submission-Family-Legal-Services-Review-2016-04.asp>.

[57] Section 13(1) of the *Legal Aid Services Act*, 1998, SO 1998, c 26 provides that LAO "shall provide legal aid services in the areas of criminal law, family law, clinic law and mental health law."

[58] *Child Support Guidelines*, O Reg 391/97 (Ontario); *Federal Child Support Guidelines*, SOR/97-175 (federal).

[59] FLSCs are located in Chatham, Newmarket, Peel, Oshawa, Sarnia, Toronto (North), Toronto (Central), Thunder Bay, Welland and Windsor.

[60] LAO has two family law staff offices, which are located in Ottawa and Thunder Bay. In 2013, Ottawa's Family Law Office was renamed the Integrated Legal Services Office to reflect the fact that, in addition to traditional family law services, a wider range of services was being made available to clients. The expanded services include assistance with immigration and refugee matters.

[61] Lakehead University Community Legal Services, which is Lakehead University's SLASS clinic, offers assistance with minor criminal offences, residential tenancies and small claims cases. It does not currently offer family law services. See Lakehead University, *Law Clinic*, online: <https://www.lakeheadu.ca/academics/departments/law/clinic>.

[62] In the two Toronto SLASS clinics and the one at the University of Windsor, students are able to appear on behalf of clients at the Ontario Court of Justice. Three of the clinics (those in Ottawa, Kingston and London) exist in Unified Family Court jurisdictions – in these clinics, it is the staff lawyer who does the court appearances, though the students are still actively involved in working on and preparing the case.

[63] Community and Legal Aid Services Program (Osgoode), Community Legal Aid (Windsor) and Downtown Legal Services (Toronto) offer social work services.

[64] Community Legal Education Ontario, *Steps to Justice*, online: <http://yourlegalrights.on.ca/steps-to-justice>.

[65] The Action Group on Access to Justice (TAG) is catalyzing solutions to Ontario's access to justice challenges by facilitating collaboration with institutional, political and community stakeholders. It is funded by the Law Foundation of Ontario with support from the Law Society of Upper Canada. See The Action Group on Access to Justice, *About*, online: <https://www.theactiongroup.ca/about/>.

[66] Karen Cohl & George Thomson, *Connecting Across Language and Distance: Linguistic and Rural Access to Legal Information and Services* (Toronto: Law Foundation of Ontario, 2008) at 44, online: <http://www.lawfoundation.on.ca/wp-content/uploads/The-Connecting-Report.pdf>.

[67] Law Society of British Columbia, *Designated Paralegals: Pilot Project*, online: <https://www.lawsociety.bc.ca/page.cfm?cid=4029&t=Paralegals:-Pilot-Project>.

[68] Law Society of British Columbia, *Code of Professional Conduct for BC*, r 6.1-3.3(c), online: <https://www.lawsociety.bc.ca/page.cfm?cid=2644&t=Chapter-6-Relationship-to-Students,-Employees,-and-Others>.

[69] *Code of Professional Conduct for BC*, Appendix B – Family Law Mediation, Arbitration and Parenting Coordination, s 7, Commentary, para [6], online: <https://www.lawsociety.bc.ca/page.cfm?cid=2647&t=Appendix-B-%E2%80%93-Family-Law-Mediation>.

[70] Law Society of British Columbia, *Law Society Rules 2015*, r 2-13(2), online: <https://www.lawsociety.bc.ca/page.cfm?cid=4092&t=Law-Society-Rules-2015-Part-2-%E2%80%93-Membership-and-Authority-to-Practise-Law#13>.

[71] <http://business.financialpost.com/legal-post/mitch-kowalski-university-of-calgary-warms-up-canadas-first-family-law-incubator>

[72] Ministry of Justice, *Consultation Paper: Expanding the Classes of Legal Service Providers in Saskatchewan*, online: <https://www.saskatchewan.ca/~media/news%20release%20backgrounders/2016/apr/consultation%20paper%20-%20expanding%20classes%20of%20legal%20service%20providers%20in%20saskatchewan.pdf>.

[73] Legal Information Society of Nova Scotia, *About the Project*, online: <http://www.legalinfo.org/public-navigator-information/about-the-project.html>.

[74] Washington State Bar Association, *Legal Technician FAQs*, online: <http://www.wsba.org/Licensing-and-Lawyer-Conduct/Limited-Licenses/Legal-Technicians/Legal-Technician-FAQs>.

[75] Washington State Supreme Court Task Force on Civil Equal Justice Funding, *The Washington State Civil Legal Needs Study*, online: <https://www.courts.wa.gov/newsinfo/content/taskforce/CivilLegalNeeds.pdf>.

[76] Washington State Bar Association, *Legal Technician Rules and Regulations*, rr D-E at 3-4, online: [http://www.wsba.org/~media/Files/Licensing\\_Lawyer%20Conduct/LLLT/APR%2028%20and%20Regs%203-31-2015.ashx](http://www.wsba.org/~media/Files/Licensing_Lawyer%20Conduct/LLLT/APR%2028%20and%20Regs%203-31-2015.ashx).

[77] Washington State Bar Association, *Legal Technician Rules and Regulations*, Regulations 12 and 14, online: [http://www.wsba.org/~media/Files/Licensing\\_Lawyer%20Conduct/LLLT/APR%2028%20and%20Regs%203-31-2015.ashx](http://www.wsba.org/~media/Files/Licensing_Lawyer%20Conduct/LLLT/APR%2028%20and%20Regs%203-31-2015.ashx) at 21-22; Washington State Bar Association, *Limited Legal Licence Technician Rules of Professional Conduct*, online: [http://www.wsba.org/~media/Files/Licensing\\_Lawyer%20Conduct/LLLT/2015-02-03%20LLLT%20RPC.ashx](http://www.wsba.org/~media/Files/Licensing_Lawyer%20Conduct/LLLT/2015-02-03%20LLLT%20RPC.ashx).

[78] Debra Cassens Weiss, “Seven people pass test to become nation’s first legal technicians” (2 June 2015) *ABA Journal*, online: [http://www.abajournal.com/news/article/seven\\_people\\_pass\\_test\\_to\\_become\\_nations\\_first\\_legal\\_technicians](http://www.abajournal.com/news/article/seven_people_pass_test_to_become_nations_first_legal_technicians).

[79] State of Utah Supreme Court Task Force to Examine Limited Legal Licensing, *Report and Recommendations*, online: [http://www.utcourts.gov/committees/limited\\_legal/Supreme%20Court%20Task%20Force%20to%20Examine%20Limited%20Legal%20Licensing.pdf](http://www.utcourts.gov/committees/limited_legal/Supreme%20Court%20Task%20Force%20to%20Examine%20Limited%20Legal%20Licensing.pdf).

[80] New York State Unified Court System, *Administrative Order of the Chief Administrative Judge of the Courts*, online: <http://www.courts.state.ny.us/COURTS/nyc/SSI/pdfs/AO-42-14.pdf>.

[81] Committee on Nonlawyers and the Justice Gap, *Navigator Snapshot Report – December 2014*, online: <http://nylawyer.nylj.com/adgifs/decisions15/022415report.pdf>.

[82] Association of Family and Conciliation Courts – Ontario Chapter, written submission to the FLSR at 18.

[83] Ontario Association for Family Mediation, written submission to the FLSR at 1.

[84] Community Legal Education Ontario, written submission to the FLSR at 4.

[85] Community Legal Education Ontario, *CLEO’s work with libraries*, online: <http://www.plelearningexchange.ca/ple-for-librarians/libraries-and-justice-partnerships/cleos-work-with-libraries/>.

[86] Family Dispute Resolution Institute of Ontario, ADR Institute of Ontario, Ontario Collaborative Law Federation & Family Mediation Canada, *Joint Reply: FDRIO, ADRIO, OCLF, FMC to Family Legal Services Review: Role of non-lawyers* at 2, online: <https://www.fdr.io/wp-content/uploads/2016/06/Bonkalo-report-2016.pdf>.

[87] *Ibid* at 3.

[88] Ontario Association for Family Mediation, *supra* note 83 at 17.

[89] *Ibid* at 5.

[90] Miralaw, written submission to the FLSR at 2.

[91] Ontario Association for Family Mediation, *supra* note 83 at 19.

[92] Law Society of Upper Canada, *Rules of Professional Conduct*, *supra* note 42, section 1.1; Law Society of Upper Canada, *Paralegal Rules of Conduct*, Toronto: LSUC, 2016, section 1.1.

[93] Dan Pinnington, “Unbundled Legal Services: Pitfalls to Avoid”, *LawPRO Magazine* 11:1 (January 2012) 6,  
online: [https://practicepro.ca/LAWPROMag/Unbundled\\_Legal\\_Services.pdf](https://practicepro.ca/LAWPROMag/Unbundled_Legal_Services.pdf).

[94] National Self-Represented Litigants Project, “Making it Legal: Some Simple Steps for Moving Unbundling to the Next Stage” (12 July 2016), *National Self-Represented Litigants Project Blog* (blog), online: <http://representingyourselfcanada.com/making-it-legal-some-simple-steps-for-moving-unbundling-to-the-next-stage/>.

[95] *Ibid.*

[96] LawPRO, *Family Law Claims Malpractice Fact Sheet*,  
online: <http://www.practicepro.ca/information/doc/Family-Malpractice-Claims-FactSheet.pdf>.

[97] Federation of Ontario Law Associations, *Response to the Consultation on Expanding Legal Services: Options for Ontario Families* at 17,  
online: <http://nebula.wsimg.com/42896faeff3c4dc94ee63c0b038d23ae?AccessKeyId=3D3F376FA8212745C5E2&disposition=0&alloworigin=1>.

[98] The Family Law Coach, written submission to the FLSR.

[99] Federation of Ontario Law Associations, *supra* note 97 at 20-24.

[100] Julie Macfarlane, *NSLRP Submission to the Ontario Family Legal Services Review* at 2, online: <http://representingyourselfcanada.com/wp-content/uploads/2016/05/familylegalservicesreviews submission.pdf>. [Macfarlane, *NSLRP Submission*].

[101] Macfarlane, *Final Report*, *supra* note 9 at 11-12.

[102] Macfarlane, *NSLRP Submission*, *supra* note 100 at 3.

[103] Macfarlane, *Final Report*, *supra* note 9 at 11-12.

[104] Association of Family and Conciliation Courts – Ontario Chapter, *supra* note 82 at 19.

[105] Macfarlane, *NSLRP Submission*, *supra* note 100 at 8.

[106] Association of Family and Conciliation Courts – Ontario Chapter, *supra* note 82 at 21.

[107] Professor Nicholas Bala, written submission to the FLSR at 6.

[108] *Ibid* at 7.

[109] Legal Aid Ontario, *supra* note 56 at 28.

[110] *Ibid* at 20.

[111] *Ibid* at 28.

[112] Morris, *supra* note 32.

[113] Ontario Paralegal Association, *Ontario Paralegal Association Submission to the Family Legal Services Review Consultation* at 14, online: <http://www.ontarioparalegalassociation.com/download/eJzLKCKpsNLXL87MyS4uSSwq0Ss21kvMTazKz0ssL9ZLzs@VN7UwNDG3TDUySk0zMjAyTjOzBJIGySl6BSlpAKTuFA8=/OPA%20Submission%20-%20Family%20Legal%20Services%20Review.pdf>.

[114] Community & Legal Aid Services Program, Downtown Legal Services and Pro Bono Students Canada, joint written submission to the FLSR at 5.

[115] *Ibid* at 8.

[116] *Ibid* at 8.

[117] *Ibid* at 8.

[118] Association of Family and Conciliation Courts – Ontario Chapter, *supra* note 82 at 11.

[119] LAO implemented an across-the-board 6% increase to the income cut-offs for legal aid eligibility in November 2014. There were two subsequent 6% increases to the income eligibility thresholds on April 1, 2015 and April 1, 2016.

[120] Alice Woolley & Trevor Farrow, “Addressing Access to Justice Through New Legal Service Providers: Opportunities and Challenges” (2016) 3:3 *Tex A&M L Rev* 549 at 577.

[121] Noel Semple, written submission to the FLSR at 2.

[122] *Ibid* at 2-3.

[123] *Ibid* at 7.

[124] 25 October 1980, 1343 UNTS 89, Can TS 1983 No 35.

[125] RSO 1990, c P.33.

[126] RSC 1985, c C-46.