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May 31, 2019

To the Attention of
The Law Society of Ontario
Osgoode Hall
130 Queen Street West
Toronto, Ontario
M5H 2N6

Dear Mesdames/Sirs:

The County of Carleton Law Association's Response to the Access to Justice Committee's Request for Input

This submission is made on behalf of the lawyers and paralegals of the County of Carleton Law Association (CCLA). The CCLA was formed in Ottawa in 1888 by a group of 60 lawyers, and is now the second largest law association in Ontario, representing over 1800 lawyers in the Ottawa and East Region. In addition to lawyer members, the CCLA has, since 2010, admitted paralegals to its membership, and currently, 53 licenced paralegals are members of the CCLA.

The CCLA struck a working group consisting of lawyers and paralegals to assist the Board of Trustees in preparing our submission. We have prepared our response to first speak from the lawyer perspective and then from the paralegal perspective.

Lawyer Perspective

The CCLA is very concerned that the Law Society's Access to Justice Initiatives will be insufficient to respond to the recent 30% cut in Legal Aid Ontario (LAO) funding. The cuts will have a significant impact on all areas of service, from Criminal, where the right to liberty is jeopardized; in Family, where parents may lose custody or access to their children and vulnerable spouses the right to support, and in Immigration, where refugees will be returned to countries where they will be persecuted and tortured.

Revamped efforts, as well as additional resources will be needed to combat this threat to Access to Justice. The LSO must urgently lobby the government both to restore funding to LAO, and continue funding Pro Bono Ontario (PBO).



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1. What do you think of the Law Society's current access to justice initiatives?

While the CCLA acknowledges the efforts the LSO has made in this matter, it believes that the LSO should take a stronger stance in lobbying the government regarding the cuts to legal aid and the cut in funding to Pro Bono Ontario.

The CCLA is concerned about the LSO's restrictions on the scope of practise for paralegals and many of its members, but not all, support the expansion of the paralegal scope of practise to include more representation in family law matters. Beneath this submission is a response from our Paralegal Committee.

The encouragement of unbundled legal services may lead to greater claims against lawyers and paralegals for professional negligence and improper conduct. Continued education of lawyers and paralegals on the importance of proper communication and retainer agreements with "unbundled" clients should be continued and enhanced. By the same token, the public should be clearly advised that there is a significant difference when retaining a lawyer in the traditional manner, versus obtaining legal services in an unbundled manner. Members of the public should be apprised that they are NOT receiving the same protection or service as they would if they hired a lawyer in a traditional manner. The LSO should consider ways to make the public more aware of this distinction over and above the LSO's website, such as through public education and the media. Close attention should be paid to optimizing internet searches on common searches the public may undertake, such as child support or personal injury, to ensure the public is aware of the pitfalls of unbundled retainers.

2. Should some of these initiatives be enhanced? If so, which ones and why?

The Lawyer Referral Service (LRS) needs to be revamped. Many of our members have exhausted their patience with the disproportionate number of inappropriate referrals being made. For instance, criminal lawyers complain that complainants who wish to lay charges are routinely referred to them, when LRS staff should immediately be directing them to the police for their own safety. It appears that neither experienced lawyers nor paralegals are employed by the LRS to triage the calls and make the appropriate referrals. Some of our members complain that they spend significant time advising complainants, some of whom are quite vulnerable, because of improper referrals by the LRS. Considering the fact that few referrals from the LRS actually result in retainers, the rationale for charging lawyers to be a sounding board/public resource is long past. Proper triaging could restore efficacy to the LRS to potential clients and lawyers, leading to increased retainers and greater participation in the service by both lawyers and paralegals.



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3. Should some of these initiatives be reduced? If so, which ones and why?

No.

4. Should the Law Society launch new access to justice initiatives? If so, which ones and why?

Greater education of the public of their substantive rights in family law would be helpful with the increasing number of self represented litigants in this area, but also in other areas. Better promotion of checklists and how-to guides (many of which on the law society's website) should be undertaken.

5. What do you or your organization do to facilitate access to justice? Could the Law Society collaborate with you on your initiatives? If so, how?

- Collegiality
- CPD
- Core legal hubs
- Support ProBono Law
- In-kind support to DCAO

6. Should the Law Society institute a levy on lawyers and paralegals to support additional access to justice initiatives?

The CCLA is in strong support of sustainable funding to support additional access to justice initiatives that would include LSO assertively lobbying government for funds for that funding.

7. Do you have additional comments on the Law Society's approach to access to justice?

No, we believe our comments are addressed in this submission.

Paralegal Perspective

The CCLA Paralegal Committee is committed to improving access to justice for Ontarians. The face of legal services in Ontario is changing, and needs to change, in response to the needs of the public. Paralegals are an important part of that change. The focus of this response is in relation to the role paralegals have in the emerging strategies for access to justice.



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Like nurse practitioners are to doctors, so are paralegals to lawyers. The role of the nurse practitioner developed in response to growing health-care demands, limited access to physicians and tight budget constraints.¹ The expansion of the role of nurse practitioners required a team approach to healthcare, and to developing innovative models of care to meet the unmet needs of society.²

It is to the benefit of the public and to legal practitioners to do the same in dealing with access to justice issues. A collaborative approach between lawyers and paralegals, working as a team, will enhance access to justice initiatives in Ontario. In fact, the Law Society Act permits the forming of corporations between lawyers and paralegals. Such a practice would offer a variety of services to clients, and address the client's needs in such a way as to be economical and efficient. In effect, a professional corporation providing the services of both lawyers and paralegals could address the client's needs on many levels, thereby increasing the probability that the client will remain with the firm.

The budget constraints affecting access to justice are two-fold: (1) funding for and access to Legal Aid; and (2) an individual's ability to pay legal fees.

The impact on individuals who are self-represented were noted in the Family Legal Services Review Report³, wherein Justice Bonkalo identified the following impacts of self-representation in family law matters:

1. Self-represented parties were statistically less successful than represented parties;
2. Increased costs for the represented party;
3. Increased stress for both parties; and,
4. Greater burden on the court system when one or both parties are self-represented.

Implementation of the recommendations by Justice Bonkalo and expanding legal aid to include paralegal services would assist in providing access to justice to that group of individuals who do not currently qualify for legal aid, but who cannot afford a lawyer.

The changes proposed to summary conviction matters in Bill C-75, is a setback for access to justice. The proposed changes would remove summary conviction matters from the scope of paralegal practice.

That being said, the following are our answers to the Committee's questions:



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1. What do you think of the Law Society's current access to justice initiatives?

For the most part, the Law Society's initiatives are moving in the right direction.

2. Should some of these initiatives be enhanced? If so, which ones and why?

The expansion of the paralegal scope of practice to include some family law matters should be pursued and developed. Consideration should be given to providing Legal Aid coverage for paralegal services. Most importantly, education should be provided to both the public and to the legal profession about paralegal licensees, the scope of the paralegal practice and the benefits of collaboration within the legal profession between paralegals and lawyers.

Specifically, The Ontario Justice Education Network is an avenue that should be used to increase education regarding the role of paralegal licensees in the legal framework of Ontario.

3. Should some of these initiatives be reduced? If so, which ones and why?

At this time, we would not suggest reducing any of the Law Society's initiatives respecting access to justice for Ontarians.

4. Should the Law Society launch new access to justice initiatives? If so, which ones and why?

Our recommendation for a new access to justice initiative is education, both of the public and within the legal community, of the benefits of paralegal licensees and how paralegals can enhance the legal profession and access to justice.

5. What do you or your organization do to facilitate access to justice? Could the Law Society collaborate with you on your initiatives? If so, how?

We have reached out to the Dean of the University of Ottawa Law School, and suggested that we be invited to make a presentation to first year law school students, to speak directly to them about paralegal licensees and the scope of the paralegal practice. We would recommend that the Law Society consider instituting this a program for law schools across the province, as a way to introduce lawyers to paralegals and to foster relationships between the two professions.



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6. Should the Law Society institute a levy on lawyers and paralegals to support additional access to justice initiatives?

We do not recommend instituting a levy on licensees to support additional access to justice initiatives at this time. We would, however, recommend that the Law Society seek provincial government funding for these initiatives. Given that access to justice would benefit the provincial government with respect to the potential to reduce expenses relating to court appearances, it would be appropriate for the provincial government to providing funding for these programs.

7. Do you have additional comments on the Law Society's approach to access to justice?

We look forward to working with the Law Society on its initiatives for increasing access to justice and to developing the future of the legal profession in Ontario.

The CCLA is committed to improving Access to Justice in Ontario. We hope these submissions will be helpful in moving forward and we look forward to continued dialogue with the Law Society, the Attorney General, and other stakeholders in this endeavour. To this end, we welcome your questions or desire for additional information regarding these submissions.

Sincerely

Ted Mann
President, CCLA