

## FAMILY LAW REPORT – MAY 2019 PLENARY – VALERIE BROWN

Dear Presidents:

Family Law is currently in a state of transition, with the expansion of the Unified Family Courts, changes to the Divorce Act and other legislation which change the “language” of family law, and the delivery of family law services, and who provides them. Many of these changes have yet to crystallize, but I offer the following updates.

### **Family Law Service Provider License (FLSPs)- Update**

As an access to justice initiative, Justice Bonkalo was appointed to lead a review to:

1. Identify the legal services at different stages in a family law matter which, if provided by persons in addition to lawyers, could improve the family justice system by better enabling people to resolve their family law disputes.
2. Identify persons other than lawyers (e.g. paralegals, law clerks and/or law students) who may be capable of providing those family legal services with appropriate safeguards put in place (e.g. education, training).
3. Recommend procedures, mechanisms and/or safeguards (such as education, training, insurance, regulation and/or oversight) to ensure the quality of family legal services provided by alternative legal service providers.

On December 31, 2016, after receiving submissions from various organizations, including FOLA, the Family Legal Service Review Report (the “Bonkalo Report”) was released. The Bonkalo Report made 21 recommendations, including:

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.
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.

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 Ontario and LawPRO should consider providing incentives for lawyers to make legal coaching an integral part of their practice.
4. The Law Society of Ontario should create a specialized licence for paralegals to provide specified legal services in family law.
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7. Paralegals wishing to specialize in family law should first be required to complete the current requirements for a paralegal licence.
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12. Legal Aid Ontario should apply its interdisciplinary model to family law, using paralegals licensed in family law wherever possible.

In response to the Bonkalo Report, the Law Society determined, at its December 1, 2017 Convocation, to create a specialized license for non-lawyers to provide services in the area of family law.

The Family Law Action Plan, sets out that the Law Society of Ontario will:

1. Develop a licence for licensed paralegals and others with appropriate training to offer some family law legal services. Recognising the urgency of the need, this licence will support training in process navigation, form completion, investigating forms such as financial, motions to change, and uncontested divorces, and possibly other areas outside the courtroom context.
2. At the same time, assess what additional family legal services by providers other than lawyers, and including advocacy, are in the public interest, and consider how to develop a further expanded licence.
3. Engage in a robust evaluation of the success of the family law legal services licence for providers other than lawyers, and make any adjustments that are in the public interest.
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6. Continue to support the expanded use of unbundled services and legal coaching, including offering continuing legal education opportunities and tools to address liability concerns.

The Law Society began its consultation process by meeting with various interest groups on February 5, 2018 to discuss the action plan moving forward for competency based credentialing, including FOLA, the Ontario Bar Association, The Advocates Society, Toronto Law Association, the Family Law Association, and various representatives from the LSO, including the Treasurer.

The LSO confirmed that the scope of practice had yet to be determined, but that they are seeking a licensing process that is safe, effective, and of high quality. They expect the process to take 24-48 months but indicated that this could be longer depending on whether further steps were required to ensure the new licensing process was of high quality.

The LSO conducted teleconferences with bar representatives in March 2018 to discuss views, primarily on scope of practice.

In the fall, the Family Law Working Group, a sub-committee of the Access to Justice Committee, held working groups to develop a list of activities in family law that will comprise the preliminary framework for the proposed scope of permissible activities. In March 2019 the Law Society hosted further working groups for further development and validation exercises regarding the scope of practice.

The next steps will take place in the coming months, with the goals of mapping the competencies, which are the knowledge, skills, and abilities necessary to support the provision of services in family law based on the range of activities that could be performed by a family legal services provider. The competencies form the basis of the education, training and assessment that will be required for licensure (which will be the next steps).

### **Unbundled Family Law Services Project**

A dominating theme in the recommendations of Justice Bonkalo was the provision and promotion of unbundled services by lawyers. Although the Law Society set out their commitment to support expanded use of unbundled services, their focus has been narrowly on the FLSP Licensing.

The Private Bar has responded to this issue with the Ontario Family Law Limited Scope Services Project, which is a private-bar driven collaborative effort in response to the Bonkalo Report recommendations. The project is intended to fill the gap for middle income families who do not qualify for Legal Aid, but realistically cannot afford a lawyer to conduct all of their case.

The Advisory Committee is made up of members from the Ontario Bar Association Family Law Section; the Federation of Ontario Law Associations; the Association of Family and Conciliation Courts - Ontario Chapter; The Advocates' Society; the Family Lawyers Association, the Superior Court of Justice and Ontario Court of Justice; experts in non-traditional legal services delivery; and researchers. The Chair of the Project's Steering Committee is Tami Moscoe, Senior Family Counsel at the Superior Court of Justice, and the Senior Program Director is Helena Birt, private family law practitioner who will be speaking at this Plenary regarding this Project. The Project team also works with Legal Aid Ontario, the Law Society, LawPro, and Community Legal Education Ontario (CLEO).

Notably, the Law Society does not have representation on the Committee and is not part of this initiative.

The Family law limited scope services, also known as “unbundled” legal services, provide an option between full representation and no representation at all. The Ontario Family Law Limited Scope Services Project's aim is to improve access to family justice for middle- and lower-income Ontarians by:

1. increasing the use of limited scope retainers (such as court document drafting or in-court representation on a single appearance);
2. legal coaching (lawyer assists client by offering advice, guidance and support); and
3. summary legal counsel (scheduled lawyers provide day-of-court assistance for a fee to unrepresented litigants not eligible for Legal Aid) in family law cases.

The Project facilitates access to and use of these services through a website hosting a province-wide roster of trained lawyers willing and able to provide such services, located at <https://www.familylawlss.ca/>, which launched earlier this year. Prospective clients are able to search the website by location, type of service and service provider.

The Project's research and evaluation component will study the perceptions of judges, lawyers and other justice system professionals, as well as clients, the advantages and value of this type of service, as well as its limitations and how service delivery can be improved.

The Project has received a \$250,000 grant from the Law Foundation of Ontario, which will be spread over the three years of the Project.

The Summary Legal Counsel Services (day of court counsel) commenced in Barrie in November 2018 (training was held June 2018). Subsequent training took place on December 5<sup>th</sup> at the OBA (available by webinar).

In order to qualify to be on the Roster for Summary Legal Counsel, you must:

1. Be a Lawyer in good standing with the Law Society of Ontario.
2. Have three years or more of family law experience.
3. Have at least 30% of your practice devoted to providing family law services.
4. Have participated in a training session for the provision of SLC services.

The Program is actively looking for other jurisdictions to roll out the Program and you are encouraged to consider this an option for your association.

### **BILL C-78 (Divorce Act)**

On May 22, 2018 the federal government introduced Bill C-78, amending among other statutes, the *Divorce Act*. Highlights of the amendments include:

- Changes the language of custody and access to “decision making responsibility”, “parenting time”, and “contact orders” for third parties;
- Provides definitions “best interests”, including and defining “family violence”;
- Requirement that parties protect children from conflict arising from the proceeding and direction to use family dispute resolution processes where appropriate;
- Counsel has obligation to inform and encourage parties to use dispute resolution processes where appropriate;
- Creates test and onus for mobility cases. Parties must give notice in writing of the change 60 days in advance;
  - If Shared custody – moving party has onus to prove move is in child’s best interests;
  - If Primary care – presumption in favour of that parent

The Bill is currently in committee (senate) and is expected to pass this year.

## **Legal Aid**

As will be discussed in the Legal Aid Committee Report, funding to Legal Aid is being cut by 30%. This will undoubtedly affect those involved in Family Law Matter.

## **Family Claims Online Service**

On February 25, 2019, the Family Claims Online service (which you can access here: [www.Ontario.ca/familyclaims](http://www.Ontario.ca/familyclaims)) will expand to enable Ontarians to initiate simple divorce applications online at any time. The existing joint divorce online filing process is also being enhanced to permit property claims on consent.

The service will continue to allow users to pay court fees online securely by credit or debit card and enable users to create profiles in order to save filings in progress and view the history of their filings.

This expansion follows the province-wide launch of the service in November 2018.

## **Guided Pathways to Family Court Forms**

The Ministry announced that the Community Legal Education Ontario's (CLEO) Guided Pathways to Family Court Forms tool continues to expand.

In addition to helping users complete the forms required to apply for a simple or joint divorce and file a separation agreement with the court, the tool now leads users through many forms required to apply for corollary relief, including custody, access, support, property division, and a restraining order (with or without a divorce claim). To learn more, visit <https://www.cleo.on.ca/en/projects/guided-pathways-family-court-forms>.

Family Claims Online and Guided Pathways are complementary online services that aim to strengthen the Ontario family justice system by making it more efficient and easier to use.

[Instructions for setting up your ONE-key and Justice Services Online accounts.](#)

## **Unified Family Court Update**

In February, 2018, the Federal Budget was released, confirming the federal government's support of the expansion of the Unified Family Court. The Unified Family Court was previously present at 17 locations. 8 additional located were targeted for phase one of expansion, being Pembroke, Belleville, Picton, Kitchener, Cayuga, Simcoe, Welland and St. Thomas. Further, the government made a commitment to creating 12 new Family Judicial Positions. The goal is for phase one to be completed by May 2019.

On April 11, 2019 the Minister of Justice announced 9 of these 12 appointments.

It remains unclear how and when the UFC will be rolled out province wide as part of the second phase. Unlike phase one which was relatively low cost, making use of current infrastructure, phase two will require the creation of facilities to physically house the Unified Family Court and thus far no plan for that has been announced. With the target date for provincial roll out being 2025, it is unclear how that will happen.

Valerie L. Brown  
Family Law Chair