

Family**Toronto Lawyers Association's proposals for reform | Sarah Boulby**By **Sarah Boulby**

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(December 3, 2020, 11:30 AM EST) -- The Toronto Lawyers Association (TLA) proposes changes which, unlike the family legal services provider (FLSP) initiative, would enhance access to justice for Ontarians:

1. Increase digitalization and remote hearings. The COVID-19 crisis has accelerated the adoption of digitalization and remote hearings. These changes should be maintained and expanded. A legal system that has no electronic filing and no remote hearings is a high-cost system to the public.

Fixing the technological limitations of the justice system enhances access to justice as: (a) electronic filing and document management is easier to access for most self-represented parties; (b) remote hearings prevent wasted time (and legal fees) for lawyers forced to attend at a physical court site.

For self-represented parties remote hearings reduce time taken off work. Virtual commissioning of affidavits and other documents also reduce costs and time taken away from work. Some self-represented parties do not have the access to devices (iPads/phones/laptops) and Internet access needed to handle electronic documents and remote hearings. For those people it is essential that the courts invest in having laptops on site and in community hubs to ensure equal access.

Online dispute resolution programs that offer alternatives to the traditional family law system have also proven to be effective in increasing access to justice.

2. Expansion of the Unified Family Court across Ontario. Unified Family Courts have specialized judges who are best able to ensure that self-represented parties receive fair hearings. Unified Family Courts are an institution capable of efficiently delivering enhanced access to free or reduced cost mediation services and family law information services to all litigants, including self-represented parties.

An obstacle to the expansion of the Unified Family Courts has been construction or repurposing of physical infrastructure. With remote hearings and electronic filing, in the interim pending the construction of new courthouses, virtual Unified Family Courts should be considered.

3. Pro Bono Students Canada is launching a Family Justice Centre Ontario with volunteer private lawyers and students. This initiative should be expanded.

4. Legal Aid Ontario services for family law should be expanded, with a restoration of the level of services in place until the early 1990s at a time at which, perhaps not coincidentally, there were far fewer self-represented litigants in the family law justice system.

While Justice Annemarie Bonkalo thought it unlikely that Legal Aid Ontario would see any additional funding, research has shown that public support for legal aid programs actually increases when such programs are expanded to apply beyond just lower income individuals.

Further, research has shown that better use of community resources beyond just increased funding may be available for legal aid to expand services.

5. The Law Society of Ontario (LSO) should impose a levy on all lawyer licensees, not just family lawyers, to fund family law services for those whose incomes disqualify them from legal aid but who cannot otherwise afford counsel. This levy should be geared to income.

6. If the LSO concludes that there needs to be an expansion of individuals practising family law to try to drive down the market, then it should expand the licensing of foreign trained lawyers rather than create a new category of lesser trained FLSPs. Unlike FLSPs, these individuals are trained lawyers and can easily be educated as needed to meet Ontario requirements. The LSO could fast-track the licensing of foreign trained lawyers who commit to practise family law for at least five years after their call to the bar.

7. The LSO should continue to support efforts to expand legal coaching and unbundling of legal services by family lawyers. There is scope for low cost delivery of these services in Internet-based law firms, using artificial intelligence. This innovation is already underway amongst Ontario family lawyers.

8. The Mandatory Information Program delivered in the family law courts to all litigants should be improved to provide more direct information and guidance.

9. Efforts should be made to make the legal process for family law less adversarial, as an adversarial process means the legal system is complex, competitive and labour intensive, which creates barriers to justice and makes the process complicated, expensive and slow.

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

10. Efforts should be made to reduce legal complexity in family law, as such complexity drives legal costs and increases the time spent on legal issues.

Justice Bonkalo's "Family Legal Services Review" (the Bonkalo Report) specifically mentioned that "the family justice system is hampered by systemic issues that require significant further attention. Deep-rooted systemic issues continue to thwart simplicity, proportionality, peaceful resolution and affordability. While a simplification of processes and procedures does not fall within the mandate of this review, it has become clear to me that the complexity of the current system is a fundamental problem that needs to be rectified."

The FLSP proposal does not get to the root of the access to justice problem, and so is not a solution to this most pressing access to justice issue in family law.

This is part five of a five-part series. Part one: Association's response to family legal services provider proposal: Overview; part two: Protecting the public from unqualified family law practitioners; part three: More on protecting the public from unqualified family law practitioners; part four: No business case family legal services providers will charge less.

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