

TLABC FAMILY LAW COMMITTEE

TLABC Position Regarding Alternate Legal Services Providers

Editor's note: The Family Law Committee at TLABC proposed the following position statement, which was later approved and adopted by the Board of Governors back in November 2018. It was drafted to inform the discussions (at that time) of the alternative legal services provider proposal being considered by the Law Society. We present it here for the information of our readers.

It is important to note that this position statement is intended to dovetail with the position statement regarding unified family court. It is TLABC's view at this time that much can be done to improve access to justice through the family courts. The most impactful way forward is not to expand actors in the space (with all the complexity that this would entail), but to streamline process. – SM

1. The proposed category will create a two-tier system of family law services, in which parties of means will be able to continue being represented by lawyers whereas parties of modest means will not. It is acknowledged that an informal "two-tier" system is already in place given the prevalence of self-represented parties, the Law Society's proposal will simply formalize a two-tier system.
2. The proposal does not seek to address the root causes of the crisis of access to justice for family law parties. Rather, it maintains the status quo and attempts to create inadequate solutions within the status quo.
3. Specific areas of concern:
 - a. Inconsistency with the mandate of the Law Society, especially given the vulnerability of family law clients and of the children involved:
 - i. The Law Society has had the task of regulating the provision of legal services for the protection of the public. The suggestion that services to family law clients, among the most vulnerable, and by extension their children could be provided by individuals who may not have the requisite training and competency is not in the public interest. (Megan Ellis QC's email to the listserv on this issue on October 5, 2018)
 - b. Family law is a difficult and complex area of law. Many of the clients are unsophisticated and are grappling with a whole range of problems. Family law often overlaps with property law, tax law, wills and estates, bankruptcy and insolvency and corporate law.
 - c. It has been the experience of members of the family bar that family law stakeholders who are not lawyers often provide incorrect advice or do not appreciate the complexity of the issues at hand. This results in improper orders or agreements with adverse, at times long-term, impacts on parties and children.
- d. The Law Society should direct its resources on addressing the systemic causes of access to justice issues. Downloading family legal services to practitioners who do not have the appropriate training and competency is only being discussed because of the access to justice crisis, which the result of an ineffective justice system made worse by inadequate funding of legal aid. The Law Society ought to increase its support for restoring legal aid funding, not give the provincial government a cheap out. Remember that the PST our clients pay on our services was promised to be applied to legal aid and successive governments have not done that. We believe the proceeds of that tax, combined with the federal portion, exceeds legal aid funding. That is reprehensible. The Law Society should not collaborate with this ongoing misuse of funds by permitting this class of clients to receive services from non-lawyers. That is not providing true access to justice; that is taking the pressure off the government to provide it.
4. It is important to note that all of the above concerns are acknowledged and reinforced by paragraph 12 of the consultation paper.
5. It is noteworthy that the programs for alternative legal services providers currently in effect in other jurisdictions are much more limited in their scope than the one proposed by the law society. Those with a broader scope (Ontario and Utah) have not been implemented yet, so there is a lack of data and research about the impact of these programs.
6. The small number of excluded areas in schedule A does not seem to recognize the complexity of other types of family law cases (parenting matters other than the excluded ones, child and spousal support, and division of property and debts other than the excluded ones) and enormous impact that these matters have on parties and their children.
7. If the goal of expanding who can provide legal services is to provide cost effective alternatives for family law disputants, how will the Law Society guarantee that alternative service providers keep their rates low?
8. The Law Society should develop strategies for remedying the challenges of the current system rather than adding to the complexity by creating a whole new group of professionals, family law disputants are already dealing with numerous professionals (lawyers, therapists, accountants, parenting coordinators, mediators, arbitrators, views of the child reporters etc.), two sets of laws and court rules, two court systems, various registry practices, etc. ^V