

From: Leon Bresler
To: [Consultation 2018](#)
Subject: FW: Notice to Profession: Law Society seeks feedback on alternate legal service providers
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In response to the request for feedback in the Family Law Legal Service Providers Consultation Paper (the “Paper”), please find my reply below.

Summary

The Law Society should direct its focus in providing access to justice at existing process issues rather than to integrate further categories of restricted legal practice areas into the legal profession. There is no guarantee that alternate service providers will be able to deliver their services at lower cost than lawyers. There is no indication in the Consultation paper that the categories of restricted practice areas will achieve the desired objectives or that it will not harm the reputation of the legal profession. Other more feasible alternates should be considered to ensure access to justice, rather than a fragmentation of the legal profession..

Comment

In my opinion the problem to access to justice does not lie with availability of legal providers. The issue is a financial and process one, not the availability of providers. The Law Society should seriously look at process improvements as an alternative. Many matters get bogged down in process with a resulting increase in costs. Such increases in costs will also be incurred in the services provided by the alternate family law service providers (the “Alternates”). My comments below will indicate why financial constraints will remain an issue.

Firstly on an issue of law. The Paper references Section 3 of the *Legal Profession Act* (the “Act”). The Act was passed to regulate the **legal profession**, in particular lawyers and their support staff. It is clear what the Legal Profession is. It is the practice of law by professionals, namely lawyers, not some hybrid concept deemed to be part of the legal profession. The Act is quite clear about it. The Act has been in force for 30 years and only now it is thought that the Law Society is in breach of its provisions? As the Act is currently written the proposed concept of the Paper is *ultra vires*, so I cannot understand why the Law Society thinks it is within its mandate to expand the definition of the profession. Something that is *ultra vires* is not part of your mandate! The Law Society is a creation of statute and limited in scope to regulate the existing concept of what comprises the legal profession. Although the Law Society has the powers of a natural person for execution and other administrative purposes, it has to seek its powers to regulate the legal profession from what is specifically stated in the Act. Since the Act is about the legal profession, the Law Society’s task is to interpret the Act with reference to lawyers. The mandate to “preserving and protecting the rights and freedoms of all persons” does not mean such access is achieved by means other than through lawyers. It means the Law Society has to ensure that all people of all classes have access to justice through the legal profession. From the earliest times the provision of legal services has been done on a basis of remuneration. Nowhere in the Act does it state that legal services have to be provided for free (although lawyers do a lot of pro-bono work) or at a discount. If it is the intention of the legislature to provide discounted or free legal services it can do so... in another act. I do not believe it is in the best interest of the legal profession, or the public for that matter, to have a regulatory body that proposes the demise of the profession it is tasked with regulating.

There is no indication or guarantee in the Paper that the Alternates will be able to provide family legal services at a lower cost. It seems as if this is an assumed fact, which is, in my opinion, without substance. Alternates will have administrative, office and staff overheads similar to many law firms. Those costs are not going to disappear just because there is a new type of service provider. It also takes a significant amount of time to build up a practice and higher fees will have to be charged to offset the lack of earnings during the start-up phase. Invariably costs will creep up over time unless a fee cap is introduced, which is not likely in a free market economy. In the end, the public may land up paying more or the same for services provided by relatively unqualified providers, upon which I will expand more below. From the sounds of the training outlined in the Paper there will still be a significant investment in training including attending a program similar to PLTC, so I am not sure how the Paper's objective to provide the alternate services at a lower costs will be achieved. The Alternates' desire to make profit is not going to go away, so I cannot see how it will improve access to justice. Price determination is an economic concept and the market will very soon determine what that price will be and it will most likely be the same or more than the cost charged by law firms for the services of articled students or paralegals. So where is the advantage to the public?

My problem with the training proposed for the Alternates is that it takes a very narrow view of the issues that are related to family law. The scope of issues facing a practicing family lawyer is far wider than the confines of family law. It could include a myriad of other aspects of law. Once those other areas are encountered and the Alternate runs out of skill, there may be pressure from the client, or out of the Alternate's own volition, to expand the provision of legal services in other areas. That may result in the illegal practice of law.

The legal profession had many issues with trust accounts and undertakings. Now the suggested solution is to expand the scope of newly minted Alternates to open trust accounts and give undertakings. Don't we have enough problems? Will there be a separate liability fund be established for Alternates or will lawyers have to foot that bill? It has to be a separate fund if this initiative proceeds.

In my opinion the Paper is naïve to think that this limited speciality will attract and retain the right people. Lawyers have over the years been drawn to specialities. So have paralegals. It is only once you are in practice, that one can really ascertain the area of law one is passionate about. For the most part it is not intuitive to which practice area one is drawn, until you start practicing law- obviously there are always exceptions. To think that a limited course can educate random people to instantly provide dedicated family law services at low cost while adhering to the strict rules set for the legal profession, requires serious reconsideration.

In paragraph 7 of the Paper it states that only 15% seek legal advice. Is there research that shows that there will be an increase in the numbers provided by Alternates? The Paper mentions "mistrust" in lawyers. Since the Alternates are new service providers they do not come with this supposed stigma. If after all this time, of significant ongoing regulation of the legal profession, "mistrust" is still such a major issue, then what has the Law Society achieved in promoting the profession and correcting the skewed image? Seemingly not much! If mistrust is indeed such a major issue then the Law Society should rather turn its focus on correcting the image of the

profession. I personally find this rationale for promoting Alternates offensive. By including this statement in the Paper for the public to comment on, I believe the Law Society has breached its duty to ensure the honour of lawyers by essentially alleging in this open Paper that there are serious issues with the integrity of the legal profession. No professional needs a regulatory body that makes such allegations. I would advocate for the legal profession to seek an amendment of the Act, to the following effect: Amending Section 3 by adding sub-section "(f) maintaining and promoting the professional image of the legal profession"

The main reason why people do not seek legal services is that they are unwilling to pay. It is not always an affordability issue, but a choice. Some are just not willing to part with their money. How are the Alternates going to overcome that problem? They are in it for profit as much as lawyers are and the public will soon realize its not free and you only get what you pay for. Make no mistake, the costs for Alternates' services will be there and they will not be insignificant! Allowing these Providers to undercut the services lawyers provide will ultimately lead to a decline in qualified lawyers and law firms. That will definitely not be in the public's interest and it is also not in the interest of the legal profession.

How will the Law Society regulate persons that wish to specialize in more than one area of alternate service provider roles? Will Alternates be restricted to one part of the law? I don't think so. If not, then Alternates will in fact become competitors of lawyers, to the demise or at least significant erosion of the established and highly regulated legal profession.

Some more feasible alternatives for consideration might be:

Better use of Mediators to resolve issues or expansion of Family Mediators' powers .

Appointment of more family oriented judges/masters or other court personnel that can make fast administrative decisions;

Streamlined processes that do not involve delays;

Revise the requirements to obtain legal aid;

Develop curricula that allows direct entry into law school without having the need to do an undergraduate degree – thereby reducing the costs of education for lawyers yet covering all essential areas of law;

Develop practical courses/legal clinics in which law students must provide a certain minimum number of hours of legal aid as a prerequisite to earning their degree.

Allow law graduates who cannot find articles, and other unemployed legal graduates, to provide State funded services to people in need of legal services. This will utilize the "extra capacity" that may potentially be readily available to ensure access to justice- but it has to be at the public's cost.

Access to justice is not a right to charity from the legal profession.

Conclusion

The Law Society has made it clear to the legal profession that it's role is to protect the public. The Law Society should do so without causing the demise of the legal profession, since that will not be in the public's best interest. The Law Society should maintain and protect the image of the profession it regulates.

Lastly I may mention I am not in private practice and I have no personal interest in the outcome of

this initiative, but I believe there are better alternatives available to the public to gain access to justice.

Best regards,

Leon Bresler, MBA.

Tel 604-617-3942