

From: [Julie Fisher](#)
To: [Consultation 2018](#)
Subject: Law Society seeks feedback on alternate legal service providers
Date: November-10-18 2:46:01 PM
Attachments: [image001.png](#)

I have been called to the Bar in BC for 22 years and practice civil litigation with experience in insurance law, disability benefits, personal injury, property damage, construction, contract and commercial disputes. I am presently associate counsel but have started and managed my own small law firm.

I have provided free public seminars and given presentations to the public on legal matters over the years.

I am part of the CBA legal referral service and I answer the phone and emails daily helping direct people to the proper, free services and web information or non-profits for their many legal issues or concerns. There are many outstanding services such as the Disability Alliance of BC that help navigate people through the system. Our libraries throughout the province are also a first point of contact that can direct people to the vast array of free help, information, websites, and support or service providers.

In my view, the vast majority of family law issues should be resolved by a black and white formula set out in legislation so that persons cannot come to court and argue any gray area.

For child protection and criminal or abuse cases, you cannot really avoid a court process.

But for everything else, we should be able to draft a formula for most scenarios that arise on separation and divorce, and craft an effective, efficient dispute resolution hotline to conclude any issues definitively and take this away from the courts, passing it to a tribunal/arbitration/branch.

If the law was clear cut on division of property, child care and maintenance issues, related estate issues etc, then persons could access a Civil Resolutions Tribunal system to debate anything arising from it. I would also suggest funding a Family Dispute Advisor akin to the Workers Advisor used for Worksafe to help people navigate the law and the dispute system available to them. Also, provide medical care coverage for 20 counselling and coaching sessions after a family breakdown for the parents and children to get the emotional help they need to cope and to address their marital issues effectively.

As to adding non-lawyers to the practice of family law or any practice area, I do not believe the benefit or reward will outweigh the risk.

I have met almost no paralegals interested in going to court or taking on more lawyer like duties yet. Anyone with greater confidence will likely turn out to be false and motivated by greed not quality in service, just good sales or marketing skills making a quick buck off the ignorant.

I envision insurance rates and claims rising, and complaint services skyrocketing. Lawyers are

warned from day one not to dip their toe into areas of practice you do not fully understand. Non-lawyers would be wading in deep over their heads with a goal to profit, no accuracy or genuine assistance.

Look at the mess notaries are making of drafting wills and giving poor or incorrect estate planning advice. Much of the current litigation in this area is due in part to cheap, poor advice and drafting from a notary. It costs much more to litigate down the road than it would have cost to prepare the proper documentation and receive correct advice from a knowledgeable lawyer in the first place.

I would recommend taking back this will and estate area of practice from the notaries as estate litigation is on the rise at least in part because of them. This is another area where better drafting of legislation could also largely end these disputes and just make the call for everyone so there is nothing to fight about.

I have often felt that in the medical care system, we could train a family medicine assistant that would replace GPs for regular medical appointments and most basic exams, complaints and services, leaving GPs to oversee 20 of them at time or so, making their practices more profitable and allowing them to serve many more people.

In law, I just do not see this working generally as the legal problems are so complicated, require a lot of up front time collecting proper information and documents to analyze the legal issues effectively. There is no good flow chart for any given legal problem like there is for treating a wart or flu symptoms.

I find it hard to sleep at night because of the limitation periods or other litigation deadlines I may be missing. I know the paralegals and LAAs do not worry about such things. Only a lawyer real does as we understand what goes into a proper legal strategy.

It has been the very rare paralegal or legal assistant I have encountered that really has enough skill or ability to take on more complicated tasks on a file. They look like they should be doing more but they really do not know much at all and require supervision. This may be somewhat less the case in family law where they are largely performing the same tasks, but the analysis and the review of the issues is still best performed by a lawyer.

The solution remains proper funding from the government for legal aid, for family court advisors, family counsellors and coaches to provide post break down care and support, family court amicus curiae or duty counsel to help the court manage lay people who show up on family law matters apply the correct facts to the law.

Clients are billed PST for all legal fees. Such taxes should be applied to better government funding, and legislation should be amended to force solutions on certain legal scenarios so everyone knows going in and coming out how the court will apply the law in a family case.

Move these issues to a telephone or online system and out of the courts. That will help resolve greater volume of cases more efficiently, and any case deemed unsuited can be referred. Non-

lawyers could be trained to be decision makers in this area.

Those are my thoughts for whatever they may be worth.

Julie

Julie Fisher
Associate Counsel

Direct: 604-937-6354 | Email: jfisher@dbmlaw.ca
Main: 604-939-8321 | Fax: 604-939-7584
Suite 211, 1015 Austin Avenue, Coquitlam, BC V3K 3N9

[Website](#) | [Twitter](#) | [Facebook](#) | [LinkedIn](#) | [Free DBM Tax App](#)

This email may contain information that is privileged, confidential and/or exempt from disclosure. No waiver whatsoever is intended by sending this email, which is intended only for the named recipient(s). Unauthorized use, dissemination or copying is prohibited. If you receive this email in error, please notify the sender and destroy all copies of this email immediately.



TEES KIDDLE SPENCER

Lawyers • Mediators • Notaries

DAVID J.F. TEES
W. JAY HAVELAAR
BRETT J. WOODSIDE*
RYAN A. KRASMAN

COLIN L. SPENCER⁺
TAYLOR D.A. STEPHEN*
ROBIN M. HAVELAAR*

*Law Corporation +Member, B.C. Mediation Roster; B.C. Family Mediation Roster

200 - 1260 SHOPPERS ROW
CAMPBELL RIVER, BC V9W 2C8
TEL: (250) 287-7755
FAX: (250) 287-3999
E-MAIL: tks@tkslaw.com

November 13, 2018

VIA EMAIL (consultation2018@lsbc.org)

Law Society

RE: ALTERNATE LEGAL SERVICE PROVIDERS

As per the Notice to Profession dated September 11, 2018, please find attached our submissions with respect to the proposal for alternative family law service provider.

I thank you for giving this your consideration.

Yours truly,
TEES KIDDLE SPENCER

COLIN L. SPENCER

/ka

Enclosure

Feedback on Alternate Family Law Service Providers

I am not a supporter of the proposal. I have practiced Family Law for almost 40 years, the first 13 years before the Unified Family Court in Saskatoon, Saskatchewan. I am a believer that, upon marital breakup, the following should be strongly encouraged:

1. Stop fighting – whatever caused the breakup and whatever conflict there was in the family is now ending. Whatever happened in the past cannot be changed. The future will likely be difficult, however, the parties should be encouraged to be polite, adult and respectful in their interactions with their partner/former partner.
2. The children come first – the children are swept along in these events through no fault of their own. All adults dealing with the situation including counsellors, lawyers, judges and the parents themselves must put the interest of the children first. Taking the “parenting after separation course” is a good first step.
3. The parties need to preserve their money, as best they can. With two households now involving two sets of rent, hydro, cable, telephone etc. they have less money than before they separated. This is not a time to incur large legal bills for a fight that didn't need to occur. A fair resolution can usually be accomplished much quicker, much cheaper and in a more amicable manner through alternative dispute resolution.

I do not believe that, in the vast majority of cases, a junior semi-trained professional will be of assistance. What people really require is to speak to a very experienced “elder” who has practiced family law for decades and has seen the situation play itself out on hundreds, if not thousands, of occasions. Hopefully such an experienced person could convince the separating parties to proceed in a manner that is respectful to the other party, takes the best interest of the children in to account and is economically feasible. I advise separating couples that there are four different modes to try to resolve their issues involving their children and their partner, as follows:

1. With some legal advice regarding the law and how the law applies to the facts of their situation they can sit down and try to work out an arrangement that is agreeable to both, according to law and takes the best interest of the children in to account. I realize that in many situations this is simply not possible because communication has broken down or there is anger, animosity or distrust but, in many cases, it can and should happen. A Separation Agreement would then be prepared by experienced counsel. Both parties would be encouraged to obtain independent legal advice before they sign the document. This is not an expensive way to proceed.
2. Mediation – if the parties are reasonable people mediation is successful approximately 85% of the time. An experienced family law mediator should be able to work with them to obtain a reasonable resolution within 2 or 3 mediation sessions at a reasonable cost, in a reasonable time frame and without the acrimony and stress of the court process.

3. If the parties employ competent, experienced legal counsel, those lawyers should be able to negotiate a reasonable settlement according to law, in the children's best interest and in a reasonable time without legal costs rising beyond what the separating parties can afford. This requires that the separating parties choose experienced lawyers whose preference is to find a reasonable, negotiated settlement and who are prepared to work with the other counsel toward that end.
4. The worst outcome is a contested court hearing. It pits one party against the other. It is slow, expensive, nasty and often leads to further litigation, in future, as circumstances change. It should be resorted to in only in the most difficult cases.

As I am approaching retirement, the path chosen forward by the Law Society will have very little effect on myself or my practice. It will have a large effect, however, going forward, on separating couples and the children of those couples. There have been steps forward such as the introduction of parenting coordinators, the parenting after separation course, the notice to mediate regulation and the collaborative law initiative. I am concerned that qualifying non lawyer legal service providers is a step backward and, in particular, a move toward litigation as opposed to conciliation. Qualified Paralegals acting under the guidance of a member of the Law Society would be useful in some cases.

Respectfully submitted this 13th day of November, 2018.

Author:



COLIN L. SPENCER

I agree:



ROBIN M. HAVELAAR

I agree:



W. JAY HAVLEAAR

I agree:



RYAN KRASMAN

From: [Gordon Turriff O.C.](#)
To: [Consultation 2018](#)
Subject: Family Law Legal Service Providers
Date: November-15-18 9:11:53 PM

Working Group Members:

A. Fees of Legal Service Providers

I assume that legal service providers would be required to deliver bills under section 69 of the Legal Profession Act and that their bills would be reviewable under section 70. If my assumptions are correct, there is no guarantee that fees charged by experienced providers for the work they are allowed to perform would be lower than the fees lawyers could reasonably charge for doing the same work in a different case or for achieving a result in a different case that matches a result achieved in a case by an experienced provider.

There is no principle that would require (or even permit) review officers to discount the value of the work of experienced providers. The market will determine providers' fees, just as it determines lawyers' fees. Decisions of review officers must reflect, not establish, market prices.

B. Solicitor and Client and Litigation Privilege

Unless I unintentionally skipped over it, I saw nothing in your consultation paper on the subject of privilege. In England (as Mr. Lucas knows), the UK Supreme Court decided there was no privilege arising out of the relationship of a client and an accountant who had performed legal work he was permitted to perform. Will you ask the Attorney General to provide for the privileges by statute? If so, and having regard to so many strongly worded statements from the SCC on the subject of privilege, what language would you want Mr. Attorney to promote?

C. Specialist Counsel

Having said all that, I should add that while I accept that the Law Society has the power to create a new class or new classes of providers, I'm not convinced, especially in relation to family law, that creating a new class or new classes of provider is a good idea, just as I have never been convinced that unbundling is even a partial answer to the access problem.

I would go in the other direction by creating a class of specialist counsel for family cases (at least). Admission to the specialist class would follow a "residency", which would be a long period by which lawyers wanting to do family work would acquire a thorough knowledge of the particular problems family cases present and of the ways

family cases can be resolved economically. This would reduce the number of cases that fall into the hands of lawyers who are learning as they go (e.g., the tax implications of dividing property) and would help to limit the amount of expensive fooling around family cases tend to generate. Requiring the involvement of a specialist would also ensure there is always someone in place who has the big picture in mind.

I will vote in favour of the Leask/Nordlinger resolution if I can but I may be on an airplane when the AGM resumes on December 4th.

Gordon Turriff, Q.C.,
1336 West 26th Avenue,
Vancouver BC
Canada
V6H 2B1

(604) 733-1145

gtwhitebook-wilde@shaw.ca

(Bencher-in-Residence,
Peter A. Allard School of Law,
The University of British Columbia,
1822 East Mall,
Vancouver BC
Canada
V6T 1Z1)