

From: [Tracy Clark](#)
To: [Consultation 2018](#)
Subject: Submission regarding Alternate Legal Service Providers
Date: December-03-18 3:01:33 PM
Attachments: [LSBC Submission.pdf](#)

Please find attached my written response to the consultation paper on Alternate Legal Service Providers for your kind consideration.

TRACY L. CLARK
TLC FAMILY LAW PRACTICE
Law Corporation

Tel: 250-563-3630

From: Tracy L. Clark
To: Consultation 2018
Subject: Feedback on Alternate Legal Service Providers
Date: November 29th, 2018

I have for response your request for feedback on your proposal for implementation of Alternate Legal Service Providers in our BC Family Law system. It appears that you have determined that blame for the difficulties in the public obtaining legal assistance in family law matters lays squarely at the feet of the family law lawyers of British Columbia rather than in the lack of funding of alternate legal services such as Legal Aid offices and Duty Counsel services.

What you propose completely ignores the hours and hours of free consultations provided by family law lawyers every day across the province, pro bono services which are only available to clients as a result of a balance of private retainer services funding the office doors being open for all. In this regard, I can confirm that I provide extensive pro bono services. I am happy to meet with non-paying clients to provide them with a clear direction and careful recommendations as to how to best resolve their family matter. It is only my extensive analytical skills obtained through a formal legal education and years of practice experience which now permit me to provide such efficient and free quality services.

What you propose also minimizes the importance of our credentials by presuming that the practice of family law actually requires less maturity and training than historically believed. I entirely disagree. If anything, the practice of family law requires more training and longer periods of supervision by mature, settlement oriented family law lawyers.

What you propose is almost an entire replacement of the services now provided by family law lawyers and yet a further deterrent to retaining women lawyers in private practice. I find this erasure of the Family Law Bar disrespectful and deflating to those of us who have endured:

- a. the extreme rigors and expense of obtaining undergraduate degrees, subsequent Law Degrees and articles;
- b. the financial hurdles of launching private practices in which advertising, Law Society fees, insurance, accounting and staffing expenses often take the lion's share of profit; and
- c. the psychological costs of attempting to maintain a healthy life-work balance in a high conflict profession which demands absolute perfection and punishes even simple human error.

Interjecting lesser trained Alternate Legal Service Providers seems completely incongruous to the rigorous standards of practice currently required by the Law Society of British Columbia. A lower quality of advisors will lead to a lesser standard of advice and a lower practice standard. I believe that bad legal advice can inflate legal costs. I firmly believe that no advice can be preferable to bad advice. I suspect our Practice Insurance providers would agree with me.

The simplest files can quickly morph into complicated matters without the luxury of time for Alternate Legal Service Providers to transfer the file to more qualified Counsel, thereby prejudicing the client. In any event, adding another layer of lesser trained Legal Service Providers will not make legal services any less expensive. The expense of a family law file springs from high overhead costs. Law Society fees, insurance, rigid insistence on practice perfection and time consuming office management protocols definitely increase office overhead and propel legal fees upwards. For Alternate Legal Service Providers to charge less, there must be a corresponding reduction of office overhead and standard of care in practice. With this reduction in standard of care, insurance rates are likely to increase and client confidence is likely to fall.

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I regularly advise people to obtain legal advice from specialized family law lawyers and not to take arm chair advice from their friends, the internet or anyone that simply dabbles in family law. Your Alternate Legal Service Providers fall into this last category of advisors. To assist people in family law, we need the most accomplished, experienced, highly trained lawyers available. The issues in family law are many, incredibly complex and intertwined with other areas of Law. Even after 30 years of practice I regularly face strenuous intellectual challenges in applying the ever changing legal principles of family law.

For the very same reasons the Law Society has historically chosen to protect the public by forbidding non-lawyers from providing legal services, I believe that the proposed introduction of Alternate Legal Service Providers is not now in the public's best interests. I do not believe that lesser trained Alternate Legal Service Providers can properly navigate the treacherous waters of a family law practice. Your proposed new system would be putting the public at great risk.

I do not believe your unsupported statistic that 85% of people fail to obtain legal advice. In my experience, sooner or later at least one and usually both parties will seek out a lawyer for legal advice. Often, this advice is given freely in an initial consultation with a lawyer.

What I see as a huge success in free family law services is the Family Justice Center. If you wish to assist the public, expand the number of mediators at the Family Justice Center. In addition, it is incredibly helpful when the Courthouse hands out the carbon paper package forms for provincial court applications. It would be helpful if a simplified interim provincial court application carbon paper package could be designed and disbursed at the Courthouse as well.

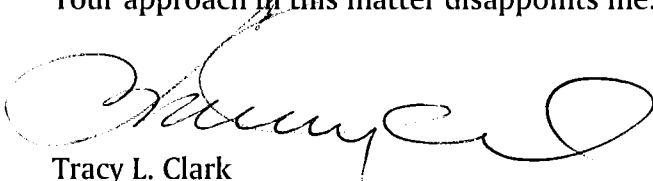
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Where I see the largest gap in services is in the lack of referral opportunities to pro bono services at the Provincial Court level. When people attempt to file their Provincial Court documents, they require assistance at the courthouse counter. Duty Counsel is often stretched too thin to assist in any meaningful way. If you want to provide access to free legal services, train additional courthouse clerks to assist in the completion of provincial court forms and/or provide funding for additional duty counsel to do so.

Clearly, I do not believe any level of the services listed in your proposal, if offered by persons without the benefit of a Law Degree, is appropriate. The issue is one of government funding for LSS and Duty Counsel enhancements and not reduction of qualifications for legal representatives.

Your approach in this matter disappoints me.

A handwritten signature in black ink, appearing to read "Tracy L. Clark", written in a cursive style.

Tracy L. Clark
TLC Family Law Practice
Law Corporation

From: [Stefani Schow](#)
To: [Consultation 2018](#)
Subject: Comments on the Consultation Paper for Creating a Category of Alternate Legal Providers
Date: December-04-18 11:01:03 AM

December 4, 2018

**The Task Force on Creating Alternative Legal Services Providers
The Law Society**

Dear Sirs/Madams:

I would like to thank the Task Force for putting out the consultation paper on possibly creating another category of legal professionals. As someone who has worked in family law for ten years now, it's refreshing to see the Law Society has taken upon itself to find a solution to the crisis in our family courts. While it would be preferable that enough money would come from the government to fulfill the province's legal, international, and moral obligations to its citizens, it does not appear that the government will be able to do so in the near future due to wider economic complications on a number of fronts. Considering the vast problems that British Columbia is experiencing with its housing and fentanyl and stalled capital projects, there is little doubt in my mind that should more money come to the government, legal aid will not be high on the list of recipients. We must forge forward in another way if we are to go forward at all because the longer the society dithers the longer people languish in the system, women become impoverished and children go without seeing their parents.

As someone who has actually represented myself in family court, (with success) I know the process is frightening and confusing to even someone with knowledge about it. In addition, the frame of mind any given person when going through matters like this is usually non-conducive to either compromise or trust. Law is a language, and for most lay litigants, a foreign one and they are as capable as a non-speaker dropped suddenly in a foreign land, wandering aimlessly and sometimes hurting themselves. Just the mere mention of my career in public is enough to set off a litany of complaints and fears to which the best I can answer is "You have to see a lawyer, I can't give you legal advice." It does not seem that this situation is sustainable, and I would personally be grateful for the opportunity to put my considerable experience and skills to mitigate this issue. I find it very distressing and somewhat hurtful that almost all of the comments already posted describe these services as a "dumbing down," "second-rate," or undermining the value of a law degree. While we paralegals may not have a law degree, without the pressure to become legal generalists and learning every aspect of every area of law, we become acute specialists that could answer questions as easily as any lawyer in their field. There are many reasons that one may not choose to pursue a law degree, but that does not mean that person is incapable of practicing good judgement, fairness, compassion, or tact. Moreover, these providers will not be capturing clients from lawyers that would otherwise be serving them. If that were the case, there would be no need for this initiative. Lawyers are still free to charge what they feel is reasonable, take on clients that can afford their rates, volunteer their valuable time, or find a more profitable part of the law that is less ensconced in a public good. I would like to reassure the Task Force that I am sure that I, and my many paralegal peers, will be able to assist in this issue with intelligence, integrity, competence and, obviously, thrift, and I hope that lawyers come to see us as partners in the pursuit of a better community for all. As I would be one of the people expected to undertake this mission, I felt it necessary to comment on what I feel the scope of work should be.

It is with this in mind that I submit the following comments on the Consultation Paper:

Education:

Three things I would add here:

- 1) Whatever exam or proof would be required to become licensed, I would not “grandfather” in people by allowing them to skip the exam. This ensures that everyone is aware and knows what exactly is required of them, and that other lawyers and, more specifically, judges understand the limits of their knowledge. Apparently there were some complaints about the Designated Paralegal Pilot program by judges who did not feel that the paralegals “knew enough.” Having a non-negotiable standardized knowledge base, approved of by the judges in question, should eliminate that problem.

- 2) I would also add a component based solely on the technology commonly used in a Law office today. Thorough knowledge of the hardware/software and its efficient use will save time and money, prevent errors, and allow for the easy catch and correction of errors that slip past. This should significantly reduce the cost to the clients, improve profit margins, and ensure security and privacy. At a certain point in the evolution of all technology, refusal to use it properly or at all becomes an ethical issue.

- 3) While it may be considered under “Fundamentals of Family Law” it is not specifically mentioned so I would like to highlight spousal support and interim distributions as part of the mandatory curriculum. As most family law clients, especially women, only seek out help when they’ve found themselves in dire economic straits, I think it would be important for Paralegals to be able to competently apply for and receive spousal support and interim distributions for their clients, without delay. This would accomplish two goals of calming a desperate client, and rebalancing power that often leads to more incentive to settle without trial.

Mediation

While the court would probably prefer that paralegals stress mediation as a solution to any family law matter, it would appear that parties that insist on or who are forced to represent themselves aren’t predisposed to that remedy. In any case, while it would be good to have paralegals schooled in conflict resolution techniques, mediation should not be their primary focus. Rather, they should have end-to-end training, from first contact to contempt applications, to be able to outline to clients potential negative outcomes and assist in steering the conflict to a more peaceable resolution. Even if the Task Force decides that paralegals should not be able to pursue contempt applications, they should understand the process and be able to assist in a meaningful way any lawyer who takes over the file. I think clients that elect for mediation would benefit from having mediators with real world and extensive experience with court applications, and who could clearly articulate the risks of attending court, and as such, should be reserved for experienced lawyers or judges.

To that end, schooling tends to silo off various aspects of the law and the Law Society should work with schools to ensure that where there is overlap, (filing a CPL in the Land Title office, for instance, or priorities in debt collection). Paralegals should understand the basics of where that overlap begins and ends and how to deal with it, and when they must ethically pass it off to a lawyer in addition to understanding the process end-to-end.

Settlement Agreements:

It would seem counterproductive to the objective of this exercise to exclude agreements from

the purview of paralegals. (That being said, having a lawyer look over a draft agreement is still less expensive than having that person draft the whole thing.) However, should the agreement ever come into question it should be clear that the agreement was drafted by a paralegal, and not a lawyer, and the court should perhaps give more deference to that fact, possibly lowering the bar for the vacating of the agreement if they find it is simply unfair or badly drawn. Alternatively, the Law society could set up a review board that's mandate would be reviewing agreements for clear errors or statutory-barred clauses. They could also review agreements for co-habitation and marriage, a growing sector of family law here in BC which paralegals could practice effectively.

Domestic violence, Drug Abuse and Addiction:

There has been some concern that paralegals should be excluded from matters that involve domestic violence, drug abuse or addiction. While accusations are common, actual criminal proceedings and serious addictions are not so common that they could preclude helping an average, but not wealthy client. When such things do occur there is usually a fair amount of evidence to support that allegation, and increases the complexity of such a case that it might surpass a paralegal's ability to deal with the matter quickly and reasonably. In such cases, where there are potentially provable ongoing or past physical and/or sexual abuse, serious criminal charges, or documented serious mental illness, or habitual and serious drug abuse or addiction, I would exclude the paralegal from representing such clients or representing the spouses of such clients. Any file involving the Ministry where there is a real threat of apprehension of the children, child abuse, neglect, or sexual abuse should be reserved for lawyers as well. However, should a paralegal discover such, they would be held to be "mandatory reporters" of such abuse.

Matters exclusive to lawyers:

While this is personal to me, here are the things that I would not feel comfortable handling as a paralegal:

- 1) Clients that qualify for legal aid;
- 2) Matters involving third parties, with the exception of solely held companies;
- 3) Matters involving foreign nationals, with the exception of the United States;
- 4) Clients with a history of suing their lawyers or filing complaints with the Law Society, where a lawyer has inexplicably withdrawn, or where there has been a lien placed on the file;
- 5) Clients that have **serious** criminal charges and/or **serious** untreated mental illnesses, trauma, or addictions (see above);
- 6) Clients with multiple spouses or previous support orders;
- 7) Clients where there is extensive or suspected extensive non-disclosure of financial dealings;
- 8) Clients that pose a serious risk of flight with a child, or clients who have fled to Canada with children;
- 9) Clients suspected of fraud in any instance;
- 10) Clients in considerable unsecured debt;
- 11) Matters where the paralegal has to hold foreign passports or over \$300,000 in trust;
- 12) Matters where the clients hold assets worth over \$2 million collectively or assets outside Canada with the exception of the United States;
- 13) Clients where complex tax issues might arise;
- 14) Clients defending a *Hague Convention* Application (Although be allowed to apply, but have the matter handled by a lawyer);
- 15) Clients who have repeatedly refused to comply with the requirements of the

FMEP;

16) Clients who have a history of refusing access orders for the children to the other spouse.

Finances

I've done some back of the envelop feasibility calculations and considering basic expenses and using the available resources as effectively as possible, I estimate that possible operating costs run about \$17 - \$20 per hour, including initial "start up" costs. That includes the downtown Vancouver office, file storage, internet, hardware, software, CLE Webinar subscription, and insurance, and is based on a 30 billable hour week, at 1560 working hours per year. This does not include salary, base education, TBD licensing fees, capitalization, membership fees, taxes, interest payments, depreciation, or vacation. However, it does suggest that a paralegal could make a fair or average living and still provide legal services at a lower cost than a lawyer or articling student. Obviously, one could make more or less depending on their particular situation.

Court Appearances

Hopefully by empowering paralegals, court appearances will be minimized, however, Paralegals should, at the very least, be able to play a supporting role in any application in chambers or even trial. One of the main problems with most of the law aid services available in the area is that, while they will give advice, they rarely agree to represent people in court. All the advice in the world will not matter if the client who does not "present well" in trial fails in the final hour by missing deadlines, blabbering, freezing, crying, yelling, or otherwise becoming emotionally involved in the outcome, which they most certainly will be. While I hesitate to say that paralegals should be able to full on present in court, they should be able to confer with a client that wishes to represent themselves during the application, or assist a lawyer or duty consul who will be representing the client. Paralegals should, of course, be allowed to set up trials, prepare materials, trial certificates, and all the sundry tasks associated with the conduct of the trial.

Officers of the Court, Undertakings, Trusts

It does not appear there is any reason to deny that paralegals become "Officers of the Court" and be required to conduct themselves as such. In addition, I see no reason why a paralegal could not take undertakings or manage trust funds since keeping promises and managing a bank account is the responsibility of any grown adult.

Experience

I do maintain some concern regarding experience requirements. My main concern is that senior paralegals who are already comfortable in positions long held at law firms might lack the incentive to "strike out on their own." While it is important for a paralegal to have some experience, placing barriers to new paralegals runs into the same problem as articling students do: someone has to give you permission to work. As it currently stands, part of the lack of potential lawyers in BC is directly attributable to the lack of articles available to students. While providing what is probably invaluable experience, there is no incentive by senior lawyers to host these students or paralegals. I would be wary of placing paralegals in the same predicament, as it would simply create the same problem. Therefore I am curious as to how the Law Society intends to proceed regarding this. Possibly, the Law Society could create more opportunities to practice and learn without having to rely on the private sector as that has proven unworkable with law students. Apprenticeships with other paralegals or in the government systems themselves would be preferable.

Thank you for your time and your consideration. I would like to say that I greatly respect and admire all the judges, lawyers, paralegals, legal assistants and agents that I've had the

pleasure of working with and learning from and I hope we can all work together to find a great and workable solution.

Regards,

Stefani Schow,
Paralegal, Vancouver

From: [Anouk Crawford](#)
To: [Consultation 2018](#)
Subject: Feedback on proposal that non-lawyers be able to provide legal advice & representation
Date: December-04-18 3:33:31 PM

Good afternoon,

I write to set out my concern that it is proposed that paralegals be able to represent parties and provide legal advice in family law matters.

I work in a smaller community, in a small firm and set my hourly rate at a “reasonable” rate. I am not rich. I live in a small house “in the hood”. I do not offer my services free of charge to community members to represent them in their matters. I volunteer in my community, educating other professionals regarding family law and the impact it may have on their own work. I have met with family doctors, school counsellors, principals, front line support workers to support them in their contacts with families in separations. I also volunteer as a board member on two boards and volunteer for community events. I do not offer my services free of charge because I cannot afford it, my little firm cannot afford it.

My practice, since my call to the bar (in Alberta in 2005, in BC in 2006), has been focused on family law and family mediation. In that time, I have never had a day wherein I thought, “I know all that I need to know, this is straight forward.” Rather, I have learned that this area of practice is incredibly complex touching on legal issues in: taxation, corporate law, real estate law, criminal law, contract law, and involves the ongoing study of family dynamics, mental health and peace processes. I find my work rewarding. I am invited to learning in this profession every day. I do not find it to be financially lucrative.

It is my opinion that paralegals are necessary and valuable members of well-run family law practices. Their area of expertise is in court process, court rules and court document drafting. I liken the work of paralegals and lawyers as two boats floating down a river, side by side. Each boat needs the other to create stability in fast moving waters. I do not pretend to have the expertise that my paralegal has. She also, does not pretend to have the skills of: research, strategy, analysis, negotiation, peace processes, client management and court room presentation that I have. We need each other and respect our differences.

I am also deeply concerned that the provincial legislature, and unfortunately some of our colleagues in the legal profession, continue to hold the ignorant assumption that family law is “easy”, “straightforward”, “common-sense”. Nothing is further from the truth. I believe there is also an assumption that family law is a less important, less essential aspect of a stable, democratic society. I propose that nothing is further than the truth. When I consider what field of law would I be prepared to be up at 3am stressing about, preparing for court for, the only answer is family law. Stability and peace in families increases the stability and peace in communities, which inevitably leads to a more stable province and stable nation. Stable family systems support economic prosperity, children who are capable of learning and becoming leaders (because they come from peace supported homes) and policing systems that have decreased burdens. Skilled family lawyers, peace focused family lawyers are ESSENTIAL to creating peaceful communities.

Despite my distaste for the law school experience, that in-depth learning was an essential foundation on the focus on critical thinking, conflict thinking, legal research, and the foundations of law that are CRITICAL to the development of sound practice and the reasonable, ethical representation of clients.

Families deserve better than an underfunded Legal Aid system.

Families deserve competent, well-trained legal representation in the most stressful frightening times of their lives.

I am strongly opposed to non-lawyers being able to represent individuals in court as it will undermine the right of every individual to competent representation.

Sincerely,

Anouk Crawford

Barrister, Solicitor, Family Law Mediator

Vale Family Law and Mediation

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Please be sure to copy my paralegal Michelle Winje on all correspondence, by email.

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