From:	Diane Turner
To:	Consultation 2018
Subject:	Feedback on the Alternate Legal Service Provider Working Group Consultation Paper and enabling legislation
Date:	December-28-18 9:38:42 PM
Attachments:	Letter M. Dean 2018-12 - 03.pdf

Please find attached a recent letter addressed to the Parliamentary Secretary for Gender Equity (Ms. Mitzi Dean), which I kindly ask that you post as a submission relating to the *Family Law Legal Service Providers: Consultation Paper*. The letter outlines my views on family law advice being dispensed by non-lawyers and the folly of proceeding in the absence of a legitimate gender-based analysis.

I have written to Ms. Dean urging her to utilize her role to prevent a misguided attempt to deprive women and children of capable legal advice during a time of turmoil and potential physical and psychological violence. I recognize the crisis of self-represented litigants confronting the Courts, but in the area of family law alternate legal service providers are a poor replacement for a properly funded system of legal aid or a well-conceived family duty counsel structure. Since government and society at large favour the creation of families through attitudes, tax and benefit structures, an obligation arises to effectively address family breakdown, rather than treating it as a paper pushing endeavour. Members of the public, in critical instances, will be denied the services of a qualified lawyer and will be shuffled off for sub-standard advice in a two tiered system of justice, with no awareness that their rights are being impacted in a negative manner. I realize the same could be said of the current situation in terms of denial of services. But there is a difference: today there is a financial barrier; in the scheme being proposed, there will be a competency barrier that the privileged in society are prepared to overlook in an effort to save money.

The issue of the certification of paralegals has been a topic of discussion since the 1980's, with Law Society paralegal working group reports going back decades. One must ask what could possibly have been gained by expediting this matter through the legislature this fall; except perhaps the stifling of a profession tasked with safeguarding the rule of law. It is unfathomable that Part 4 of the Attorney General Statutes Amendment Act, 2018 and in particular section 31(re: section 13(5) set out below) was advanced through the legislature in the face of the clear concern and opposition to the course being plotted by the Benchers of the Law Society, which includes the Attorney General of the Province.

31 Section 13 is amended

(a) in subsections (2) (b) and (3) (a) by striking out "of the society***",***

(b) in subsection (3) by striking out "subsection (4)***" and substituting "***subsections (4) and (5)***", and***

(c) by adding the following subsection:

(5) A resolution is not binding on the benchers if to implement the resolution would require the benchers to enact, rescind or amend a rule made under section 15.1.

The submissions on alternate legal services provided to date competently outline the myriad of problems with the proposed course of action and should have been considered before the enacting legislation was passed and particularly in light of a section that prevents the Bar from impeding Bencher determination of the scope of practice for alternate legal service providers.

My criticism does not stem from a conservative perspective that aims to protect status quo. I also understand the issues related to self-regulation and that the protection of the public is the foremost priority of the Law Society. The Judiciary cannot continue to cost effectively act as legal guides for citizens and the efforts of the Working Group are a genuine attempt to address a pressing social issue, that must be resolved through creative thinking. But the manner in which the Attorney General Statutes Amendment Act, 2018 was advanced was not intended to generate thoughtful discourse. As evidenced by the debates in Hansard, it was presented as more of a statutory house-keeping initiative. In the hope of protecting the public and providing access to justice the BC government and Law Society are not only selling litigants short, but are undermining both the independence and strength of the Bar. It is occurring at a critical point in the evolution of our country's legal processes and in the age of populism, when the vitality of the Bar is more critical than ever. I agree with the characterization of the rights obtained in the area of family law as being "new, fragile, hard won and in need of protection", as outlined in the submission by Karen Nordlinger, QC.

An excerpt from the recent speech of Madame Justice Rosalie Abella on the issue of an independent judiciary should remind us all of the hazards of letting our guard down (reprinted in the Globe and Mail October 27, 2018). "*Many countries around the world are having existential crises over their national identities. They have made Faustian bargains, selling their democratic souls in exchange for populist approval. Their humanity has been the victim. So have their minorities. So have human rights. This, to me, is unconscionable*."

Diane I. Turner, Q.C.
Barrister & Solicitor
Kelliher & Turner
Suite 16 Shoal Point
21 Dallas Road
Victoria, BC V8V 4Z9
Phone: (250) 386-5566
Fax: (250) 386-6804

www.kelliher-turner.com
dturner@kelliher-turner.com

KELLIHER & TURNER
BARRISTERS AND SOLICITORS

Steven M. Kelliher* sk@kelliher-turner.com
Declan C. Redman dr@kelliher-turner.com
Diane I. Turner, Q.C. dturner@kelliher-turner.com

www.kelliher-turner.com

December 3, 2018

Mitzi Dean MLA
104-1497 Admirals Road,
Victoria, BC V9A 2P8

Via Email: mitzi.dean.MLA@leg.bc.ca

Dear Ms. Dean:

Re: BILL 57 - GENDER-BASED ANALYSIS

I am writing to you in your capacity as the Parliamentary Secretary for Gender Equity on the assumption that role entails ensuring that gender equity is reflected not only in government budgets, policies and programs, but also in the legislation it passes. I must first commend your tireless efforts and interest in the challenges that confront your constituents. What follows is not a criticism of you personally, but a recognition of the flawed milieu in which you are compelled to function; one which has failed to acknowledge the necessity for vigilance in the protection of human rights.

The drafting of Bill 57 and the consultation paper that spurred its production do not appear to have engaged a gender-based analysis. There are many familiar with the practice of family law who believe that the rights and lives of women and children will be negatively affected by this initiative. This letter was undertaken late last week in hopes of urging you, as the Parliamentary Secretary, to declare the need for scrutiny of this legislation from a gender equity perspective, before it progressed. It was surprising to find that a controversial Bill, introduced on November 19, has, despite repeated calls for consultation, already received Royal Assent.

On the morning of November 19th you spoke passionately about the social cost of failing to ensure that women achieve equality. You outlined enhanced support for women and children affected by violence, but by the afternoon session that pledge was seemingly forgotten by your colleagues. Women and children cannot find safety when their interests are ineffectively legally represented and as you know, they are particularly at risk during divorce and separation.

It was incumbent on the government to consider the arguments of those who feel these proposed measures are harmful to the pursuit of equal status for women in society. The Government of British Columbia must act as the guardian of the rights

Steven M. Kelliher* sk@kelliher-turner.com
Declan C. Redman dr@kelliher-turner.com
Diane I. Turner, Q.C. dturner@kelliher-turner.com

www.kelliher-turner.com

of all citizens, before expanding the privileges of the Law Society of British Columbia. In particular, adding the following section to the **Legal Profession Act** without the capacity to ensure the protection of the rights of women and children, is an abdication of governmental responsibility.

> **Licensed paralegals**
> **15.1** The benchers may make rules establishing the scope of practice within the practice of law of licensed paralegals or a class of licensed paralegals.

There are many who believe the above section should have been express in stating that paralegals cannot engage in certain aspects of family law, particularly when constitutional protections of the participants will be engaged. The Attorney General instead has seen fit to ensure legislatively that the lawyers of this province have no say in the scope of practice for alternate legal providers. The practice of family law is not only an exercise in procedural navigation, it requires broad knowledge of current substantive law.

In the course of the practice of law I have witnessed countless examples of gender bias: the categorization of 'major crime' as *excluding* cases of sexual violence against women and children (cases prosecuted largely by women); the repeated thwarting of an effort to advance a policy that named domestic violence for what it entailed, violence against women perpetrated by their intimate partners; the description of anti-violence organizations as 'special interest groups'; funding cuts to victim based advocacy groups, including VAWIR community coordination committees and sexual assault centres; a pathetically funded system of legal aid for child protection and family law cases and among many other trends, a disturbing opinion on the part of many law students and members of the Bar, that family law is an undesirable area of practice, some expressing it is a domain best left to female practitioners.

That disquieting and persistent attitude has now been be formalized, both by the Law Society of BC and this Government. The Attorney General Statute Amendments Act has attacked many in the base of support upon which it relies to retain its authority. It is alarming that BC is engaged in a headlong rush to further disenfranchise those whom this government was expected to defend, particularly those facing unique challenges. What structure will support a paralegal in serving indigenous women or those with special needs stemming from disability or immigration complications who are now served by committed, largely female, family lawyers?

The issues are complex and have been glossed over in debate. Attached please find two submissions to the Law Society Working Group on Alternate Legal Service Providers, which clearly outline significant and pressing concerns. The Alternate

KELLIHER & TURNER
BARRISTERS AND SOLICITORS

Steven M. Kelliher* sk@kelliher-turner.com
Declan C. Redman dr@kelliher-turner.com
Diane I. Turner, Q.C. dturner@kelliher-turner.com

www.kelliher-turner.com

Legal Service Provider Working Group consultation paper is also attached for your convenience. You will see, for example, of the stated 70% of people who do not access a family lawyer, there is no assessment of the percentage that are women. In addition, despite the Law Society's concern about retaining women in the practice of law, there is no indication or analysis of how many women that practice family law will be negatively impacted by this initiative.

It is apparent that the interests of women and children are being disregarded yet again in the press to save the justice system the expense and aggravation of dealing with unrepresented litigants and the government the money that would be required for an adequately funded family legal aid system.

The laudable goal of providing 'access to justice' can only be achieved with a proper analysis of the potential impact of these measures on women's lives. I regret that the dismay felt by countless women, after so many years of working toward substantive equality, cannot adequately be conveyed in a letter. I urge you to continue your efforts to contribute to that struggle and to address the hypocrisy which underlies this 'access to *justice*' initiative. There are many ready to offer their assistance to you in that regard should you choose to rely on them.

Yours sincerely,

Diane I. Turner

From:	Kari Boyle
To:	Consultation 2018
Subject:	Boyle Submission re Alternate Legal Service Providers
Date:	December-30-18 1:22:56 PM
Attachments:	KD Boyle - Submission to LSBC re alternate service providers final.pdf

---

I am pleased to attach my submission.

Thank you very much
Kari

Kari D. Boyle
Coordinator, BC Family Justice Innovation Lab
604-838-2149
www.bcfamilyinnovationlab.ca
@kariboyle
@bcfaminnovlab

December 31, 2018

VIA EMAIL

Miriam Kresivo QC
President Law Society BC and Chair of the Legal Service Provider Working Group
Law Society of British Columbia
845 Cambie Street
Vancouver BC V6B 4Z9

Dear Ms. Kresivo:

Re: Family Law Legal Services Providers: Consultation Paper

I write this submission on my own behalf and not on behalf of any organization.

I wish to make four inter-related points:

1. Thanks to LSBC:

First, I wish to thank the Law Society of BC (LSBC) for all its work over many years on this important initiative to create a new category of regulated alternate legal service provider (ALSP). Change of this kind takes time, perseverance and courage. The BC justice system needs the kind of dedicated leadership that this initiative represents. I fully support this direction and offer some suggested improvements below.

2. Support for other submissions:

Second, I would like to express support for, and to adopt as part of my submission, portions of the submissions of M. Jerry McHale Q.C. and A2JBC (written by Jane Morley, Q.C.). In particular, I adopt their articulate comments on the following points:

a. There is an access to justice crisis and an urgent need for change (A2JBC and McHale);
b. Change should be guided by the needs of clients (in this context families and their children) using a "user-centred approach" (A2JBC);
c. The proposal can be improved by adopting the Family Law Act's policy statement that "resolution out-of-court is preferred" (McHale);
d. Efforts should also be made to simplify the existing system rather than replicating it (McHale);
e. We need a variety of initiatives working together to address the A2J gap. Creating an additional category of regulated legal service providers is one important part of a healthy ecosystem of approaches to improve access to justice in BC (A2JBC).
f. It will assist the LSBC to use the A2JBC Triple Aim and to incorporate the four pillars of culture change: collaboration, experimentation, user-centredness, and evidence-based approaches (A2JBC);
g. Research and further thought is needed with respect to the business model assumed by the proposal including with respect to whether a new category of service providers would be able to make services more affordable for the public, whether the new model will attract a sufficient number of practitioners and the applicable standard of care (McHale). I suggest that this research can be done simultaneously with the development and implementation of the new model and some experimentation is needed here in BC to answer these important questions.

3. Additional comments:

Thirdly, I make the following additional comments:

a. Contrary to the oral comments at the December 4th 2018 AGM, this initiative is not an attack on lawyers. The proposal doesn't attempt to replace lawyers but to add additional much needed services i.e. lawyers plus paralegals (as a first new category) as a starting point. This presents opportunities for lawyers and ALSPs to collaborate together to provide the best combination of services for clients.

b. We have an opportunity to learn from similar initiatives in other sectors. At the AGM on December 4th I made some oral comments including reference to healthcare initiatives involving additional categories or regulated healthcare practitioners. **I attach my notes for your information**. In my view, moving in this direction in the BC justice system may exacerbate fear amongst lawyers but it will not cause the sky to fall, particularly if the approach involves careful design and an experimental innovation approach (learn as we go).

c. The LSBC's support for the ASP initiative should not weaken its ongoing support for unbundled legal services:
    i. Mediate BC's unbundled legal services project was initiated by the LSBC in 2015 in order to meet a perceived service gap – first in mediation and then more broadly.
    ii. Neither should be seen as silver bullets to solve the A2J crisis. As Jane Morley Q.C. points out, both are part of a healthy ecosystem of processes needed to support A2J and need continued support.

4. Suggestions for improvement:

Fourthly, I make the following suggestions for improvement:

a. **Mediation**:
    i. The proposal includes acting as a family mediator as a service that could be carried out by ALSPs. In my view, this is not necessary as family mediators are already well regulated (through the organizations, including the LSBC and Mediate BC Society, set out in the Family Law Act Regulations, Part 3).
    ii. I fully support ALSPs representing clients at mediation. Mediation works much better if the parties have access to legal advice and guidance before, during and after mediation. However, the LSBC has been clear that mediation is not the practice of law and in my experience acting as a mediator requires a very different skillset than advocacy.
    iii. While I greatly appreciate the LSBC's support for mediation, it is inconsistent and unnecessary for the proposed initiative to consider regulating family mediators.

b. **A different approach** to enhancing mediation services in the province:
    i. In his submission, Wayne Plenert has suggested two separate initiatives that could support the effective use of family mediation to improve access to justice. I suggest a slightly different approach.
    ii. It seems to me that a significant gap area relating to family mediation is agreement writing which is considered to be the "practice of law". Certified Family Law Mediators are able to draft agreements arising out of family mediation. Family Justice Counsellors create binding agreements for those

issues within their mandate (parenting arrangements and child support). Any other family mediators can only produce "memoranda of understanding" at the conclusion of a mediation for fear of being accused of engaging in the "unauthorized practice of law". Some of the most capable family mediators I know are those who are not practicing lawyers and they are often more affordable for families. It is an extra expense for parties to hire a lawyer to draft an agreement after the fact and that lawyer does not have the full context as they were not present during the mediation discussions. It would be more efficient and affordable for families if their chosen mediator could memorialize the outcome of the mediation in a binding agreement.

iii. I offer to work with the LSBC to design an initiative to test an expansion of the role of family mediators who are not lawyers to create binding agreements. This could involve a form of credentialing with specified levels of training/education, experience and/or supervision. Many other types of innovation may be possible if the LSBC is willing to allow careful design and experimentation.

c. **Scope of the initiative**: The proposal is immense in its scope. The justice sector's traditional method of reform has been to design a large and detailed initiative in advance and implement it all at once with a summative evaluation after one or two years. Not only does this take significant resources and time, it fails to benefit from the input of users and other "outsiders" and does not build in the ability to learn along the way. My experience with innovation to date has been that is much better to start small, take an experimental approach, gather feedback and continuously improve. In this context, starting "small", might mean beginning with a limited scope of practice (with narrower education and credentialing requirements) and continuing the dialogue and learning as the experiment evolves. Jerry McHale's submission (page 4) includes a suggestion for a limited scope that is worth considering. Another benefit of this approach is that it may result in much needed services being offered to the public at an earlier date than trying to implement the entire thing all at once.

Thank you for this opportunity to comment.

I would be pleased to discuss my comments in more detail at your convenience.

Yours very truly,

Kari D. Boyle
Retired Lawyer

Kari D Boyle **Dec 4, 2018**

I am not a family law practitioner. However, because it became evident to me that the family justice system in BC is critically important and in need of urgent reform. I greatly respect the family lawyers who devote their expertise to assisting families in BC. I am an active member of the A2JBC Leadership Group and Coordinator of the BC Family Justice Innovation Lab but I speak today on my own behalf.

Comments in response to the resolution to withdraw the consultation paper and request to the Prov gov't:

I wish to speak against the (amended) resolution on two grounds: we need to learn from other sectors in BC and the resolution is not consistent with our training or ethical obligations as BC lawyers.

1. Other sectors:

- Not too long ago the BC medical establishment fought against home births saying they were unsafe for mom and baby
- They argued safety required birth in a hospital setting conducted by a qualified physician. Their initial protestations were firmly grounded in a concern for public safety.
- Women began to rebel against the medicalization of birth
- BC passed legislation in 1998 requiring registration of midwives and the College of Midwives of BC was created
- The initiative started small – midwives delivering babies within a hospital setting
- Today, women can choose to use the services of a midwife where they wish including to give birth at home
- Research shows that home births are just as safe as hospital births; the initial fears were not realized
- We have witnessed a huge cultural shift in healthcare including an expansion of categories of healthcare providers including nurse practitioners.
- A similar shift is needed in BC justice – we must do something to explore this approach – and soon.

2. Our training and ethical obligations:

- This consultation paper is not an attack on lawyers; it is a suggested response to a serious access to justice crisis in the province
- It is certainly what the public is calling for (Prof Julie Macfarlane – empirical evidence; Justice Bonkalo's support for paralegals was not lukewarm or conditional on legal aid)
- As Mr. Veenstra pointed out, this issue has been debated many times of the last decade. It is not new and action is needed.
- The solution outlined in the paper is not perfect, and the engagement process employed could have been improved

- But, like the experience of the midwives, and like other healthcare roles such as nurse practitioners, this is an approach that needs to be carefully considered, debated and discussed – not rejected out of hand. And that is just what the second part of this amended resolution attempts to do. It attempts to tie the hands of the Benchers without further discussion which is not in the best interests of the public or profession. It attempts to shut down the entire process (a similar approach to the original resolution).

- Rejecting out of hand goes entirely against our training and experience as lawyers. We were taught to think deeply, to get to the heart of the matter, to engage in spirited debate over complex and difficult issues. The resolution suggests that, instead, we should shut down discussion entirely.

- I support the letter delivered by A2JBC and urge that this resolution not be permitted to stand in the way of thoughtful and fulsome discussion or in the way of consideration of family-centred, collaborative, innovative experiments to improve A2J in BC

Thank you

From:	Jennifer Muller
To:	Consultation 2018
Subject:	Submission to Law Society on Alternate Legal Service Providers Consultation Paper
Date:	December-30-18 10:10:56 PM
Attachments:	Submission to Law Society BC on Alternate Legal Service Providers Consultation Paper.pdf

---

Hello,

Please find attached my comments on the Alternate Legal Service Providers Consultation paper.

Thank you,

Jennifer Muller

December 30, 2018

Miriam Kresivo QC
President Law Society of BC and Chair of the Legal Service Provider Working Group
Law Society of British Columbia
845 Cambie Street
Vancouver, BC V6B 4Z9

Dear Ms. Kresivo,

Re: Family Law Legal Services Providers: Consultation Paper

I would like to thank the Alternate Legal Service Provider Working Group for their time and efforts in exploring the question of how others in addition to family law lawyers may provide the public with increased access to legal services.

Given the significant gap in the population between those that qualify for legal aide and those income earners able to afford on going legal representation for family law matters, there is a dire need for innovations that may improve access to justice for ordinary British Columbians. Research indicates that rates of self representation have been increasingly on the rise over the past two decades. There is no data on the numbers of people who do not attempt at all to access the family justice system due to the high cost of legal services, and who are unable to represent themselves due to barriers such as language or education. The current family justice system is inaccessible to most ordinary middle income earners in British Columbia.

Contrary to the beliefs of many, increasing legal aide is not going to change the ability of middle income earners in accessing the family justice system. Middle income earners will never qualify for legal aide and middle income earners can not afford the high cost of legal services. The suggestion of increased legal aide as the antidote to the access to justice crisis in family law stands in the way of finding real solutions and innovations to improving access to legal services for the public.

The proposal to explore a new category of family law service providers is much needed in providing more opportunities for the public to access legal services. The notion that anything less than a family lawyer may put the public at risk does not make sense when we are currently allowing the public to enter our court rooms alone, without any legal representation, and attempt to represent themselves, often facing legal counsel on the other side. The public should have the right to decide for themselves whether or not having some access to legal advice is better than having none at all. That said, I do have some questions with regard to the specifics related to the type of specialized training the FLSPs may indeed receive and what educational backgrounds they must have in order to enter such training. This will undoubtedly impact the scope of service and requires more consultation and discussion.

Further and related to the above query around the type of specialized training is the issue of cost. Given that affordability is a significant factor in whether or not the public accesses legal services, it is extremely important that efforts are made up front to address and prevent FLSPs fees from becoming prohibitive. If this is not addressed adequately then there is no point in exploring this initiative further as the same issues around affordability will surface.

In my view, as a member of the public and as a user of the family justice system, the public has a right to access affordable legal services. The Law Society and the Alternate Legal Service Providers Working Group has shown a significant effort to innovate and explore alternate access to legal services for the public. It is my hope that further discussion and consultation will refine this initiative and result in increased service provision for the many British Columbians in dire need of legal services.

Yours Truly,

Jennifer Muller
Former Self Represented Litigant

From:	Ann Lee
To:	Consultation 2018
Cc:	Monique Steensma
Subject:	Submission for feedback re. alternate legal service providers
Date:	December-31-18 12:32:02 PM
Attachments:	MBC feedback to LSBC 2018-12-31.pdf

Please find attached Mediate BC Society's feedback to the consultation paper. Thank you for the opportunity to participate in this initiative. Feel free to contact me if you have further questions.

Best wishes for 2019!

Cheers,

Ann Lee
Manager, Roster Program
Mediate BC Society

T: 604-684-1300 ext. 101
TF: 1-877-656-1300 ext. 101
F: 604-684-1306
E: ann.lee@mediatebc.com
W: www.mediatebc.com

MediateBC
177 - 800 Hornby Street, Vancouver, BC V6Z 2C5
Telephone 604-684-1300 Toll free 1-877-656-1300
Fax 604-684-1306 Email info@mediatebc.com
Web www.mediatebc.com

Introduction

The Law Society of BC (LSBC) has distributed a Consultation Paper (Paper) on Family Law Legal Service Providers (FLLSP). The LSBC has asked for input from different groups including justice system stakeholders.

Mediate BC (MBC) wishes to provide its input to this Paper.

Family law disputes can be both expensive and traumatic, and we commend the Law Society on making efforts to meet the needs of underserved members of the population.

MBC will restrict its input to those aspects of the Paper that are within the expertise of Mediate BC, namely the process of mediation. Our input will follow the requested framework set out in paragraph 21 of the Paper.

About Mediate BC

Mediate BC Society shares a mandate to protect the public interest with the Law Society of BC. We have operated mediator rosters for 20 years, and Mediate BC's Family Roster is included in the *Family Law Act Regulation* by which a family dispute resolution professional qualifies to mediate family law issues. Additionally, the Notice to Mediate (Family), Notice to Mediate (General), Notice to Mediate (Motor Vehicle), and Notice to Mediate (Residential Construction) Regulations, as well as Small Claims Rule 7.3 all have MBC as the designated roster organization.

We currently and historically have led and participated in justice service sector initiatives aimed at innovations in family mediation service to increase access to justice, including:

- Family Unbundled Legal Services project
- Technology Assisted Family Mediation Project
- Child Support Eligibility Mediation Project
- Sliding Scale Family Mediation Program
- Northern Navigator Initiative.

Proposed Scope of Practice

Schedule A of the Paper sets out the proposed Scope of Practice for the FLLSP. That scope includes:

- attend at mediations within the scope of permitted activities,
- act as mediator, and
- prepare a written settlement agreement in conformity with the mediated settlement.

MediateBC
177 - 800 Hornby Street, Vancouver, BC V6Z 2C5
Telephone 604-684-1300 Toll free 1-877-656-1300
Fax 604-684-1306 Email info@mediatebc.com
Web www.mediatebc.com

Paragraph 21 – Does the framework include any legal services that you consider should be excluded?
Yes – by including "acting as mediator" as a legal service.

We understand that the neither the *Family Law Act* nor the LSBC considers "acting as a mediator" to be the practice of law. It is also our understanding that the LSBC asserts jurisdiction for regulating lawyer members of the Law Society who act as mediators because it is an activity undertaken by lawyers.

MBC agrees that acting as a mediator is not the practice of law.

If the objective of the initiative is creating new categories of members who provide legal services, that is to engage in the practice of law, then there is no rationale to include acting as a mediator – not a legal service – to the Scope of Practice.

It is the view of MBC that the practice of mediation is completely separate and different from the practice of law. Mediation is a process whereby individuals can resolve disagreements between them. The mediator does not act for either party. The mediator controls the process whereby the disagreement is resolved. The mediator applies a different skill set from that of a lawyer acting for one party to a dispute.

Family Roster mediators on the Mediate BC Roster are already regulated by Mediate C and family mediators who qualify under the Law Society's requirements are already regulated by the LSBC. Anyone who wishes to provide high quality family mediation services, including FLLSP's, can take the training and obtain the experience required to join the Mediate BC Roster or become a LSBC certified family law mediator. There is no need for an additional level of regulation.

It is therefore MBC's suggestion that this scope of practice be deleted.

Paragraph 21 – Does the framework achieve the desired outcomes?
Not Necessarily.

The overall objective of the Proposal is improved access to legal services. Leaving aside for the moment the statement that mediation is not a legal service, mediation services are presently offered to the public. MBC sets the standards for, maintains a roster of, and disciplines both non-lawyers and lawyers when they are practising as mediators.

The public is protected through this work done by MBC.

MediateBC
177 - 800 Hornby Street, Vancouver, BC V6Z 2C5
Telephone 604-684-1300 Toll free 1-877-656-1300
Fax 604-684-1306 Email info@mediatebc.com
Web www.mediatebc.com

There is no necessity or purpose for the LSBC to expand beyond the existing model for non-lawyer mediators.

Paragraph 21 – Is the framework likely to achieve the desire outcome? If not, how might it be modified to achieve the outcomes?

At the present time, non-lawyer family mediators are not permitted to draft binding agreements or court orders that incorporate the terms of a settlement concluded in a family mediation. The LSBC considers the drafting of those agreements or consent orders to be the practice of law. It would be a practical and financial benefit to the parties of a mediation if the non-lawyer family mediator could prepare these documents.

The purpose of this LSBC initiative is to expand the legal services that can be performed by non-lawyers. MBC believes that the non-lawyer family mediators on our Family Roster can, with proper training and safeguards, perform this legal service.

MBC offers to work with LSBC, resources permitting, to establish the training and other safeguards that would be required.

Training and Standards of Conduct for Mediators

If the LSBC does not accept MBC's suggestion regarding the deletion of mediation from the scope of practice, then it is essential that the FLLSPs be properly trained. It is the view of MBC that the standards the LSBC has developed with respect to lawyer mediators must be more rigorous and comprehensive when applied to FLLSPs.

MBC has considerable experience in developing standards to be applied to mediators including those who do not practice law. MBC offers its experience and expertise to the LSBC if and when it develops these standards for the new FLLSPs.

Paragraph 21 – What you like or dislike about the framework

We like the fact that Family Law Legal Services Providers will be able to attend at mediations.

We like the framework when it more clearly sets out the arrangements between lawyers and family mediators and improves the interactions between lawyers and family mediators.

We strongly recommend that FLLSPs should receive specific training for appearing in this role. MBC offers to collaborate with the LSBC, resources permitting, in developing this aspect of the education and training of the Family Law Legal Services Provider.

MediateBC
177 - 800 Hornby Street, Vancouver, BC V6Z 2C5
Telephone 604-684-1300 Toll free 1-877-656-1300
Fax 604-684-1306 Email info@mediatebc.com
Web www.mediatebc.com

Conclusions

Mediate BC strongly supports the need for system reform to improve access to justice for BC families. We thank the Law Society of BC and the Alternate Legal Service Provider Working Group for this needed work and for thoughtfully considering our feedback.

Adding a new class of service providers to family mediation is not a helpful reform and not within the scope of the LSBC's mandate as mediation is not the practice of law.

MBC proposes that non-lawyer family mediators on our Family Roster be permitted to draft binding settlement agreements and consent orders arising out of mediated settlements in which they participated as a mediator. MBC looks forward to working with the Law Society on this proposal.

From: John Nelson
To: Consultation 2018
Subject: Re: Alternate Legal Service Providers
Date: December-31-18 2:19:39 PM

Dear Madams and Sirs,

I write to provide my submissions to the Law Society of British Columbia regarding the Family Law Legal Service Providers: Consultation Paper and do so as a lawyer who practices solely in family law.

I urge the Law Society to abandon the idea that alternate legal service providers have any place near a family law file. I am not concerned that Alternate Legal Service Providers will take business away from family law lawyers, but will rather will actually increase family law work because files that would have normally settled quickly under the guidance of two competent family law lawyers may not settle where there is the involvement of non-lawyer service providers. In short, I am concerned that allowing Alternate Legal Service Providers to practice in British Columbia will only increase costs and reduce positive outcomes for family law parties.

Solutions cannot be crafted without first understanding the problems which face family law parties:

A. MENTAL HEALTH OF THE PARTIES DRIVES UP THE COST OF RESOLUTION

In my experience, the majority of family law files that go to trial are because one of the parties has mental health issues (usually undiagnosed), such as borderline personality disorder or a narcissist personality disorder which causes them to behave irrationally. A narcissist is not going to court to obtain an order that they are entitled to, but rather to have a platform for their grievances and to emotional punish the other party in a public forum. A narcissist, by virtue of who they are, misuses the court system which increases the costs of the other party.

It is almost impossible to settle a file opposite a narcissist or similar unless the vulnerable party accedes to all of the unreasonable demands of the narcissist. Where a party has a mental health issue, the cost of family law resolution increases exponentially due to the cost of trial and or unnecessary hearings leading up to trial. I have had several clients over the years abandon their family law case simply because they ran out of money, with such a scenario applying equally across gender lines.

Whether the person abandoning relief was either the father or the mother, in all of the examples that come to mind, the abandonment of the application was not in the best interest of the children involved.

One of our most effective tools to refute the unfounded allegations of a party with mental health/interpersonal challenges is to have a full section211 report prepared. However (and with respect), section 211 reports prepared by the Justice Access Center are not a substitute for reports privately prepared by psychologists who have extensively more training and experience with these personality types. Section 211 reports prepared by the Justice Access Centers, although free of charge, are rarely useful for the court because of the authors lack of training to identify nuanced family violence, mental health challenges at play, or negative behavioural patterns.

B. INCOME DISPARITY BETWEEN THE PARTIES

Access to economic relief by the more vulnerable party is often out of reach due to the simple fact that the party does not have the financial resources to hire a lawyer to apply for spousal support, child support, or property division which they have a clear legal right to. Having a "cheaper" service provider doesn't undo the fact that parties on the "weak" side of the economic ledger cannot afford any services until they first obtain an order for economic relief. This problem plays itself out again and again. The financially weaker party often abandons their legal claim to financial resources because they cannot source the fee for a competent lawyer to make an interim application for spousal or child support or an application for an interim distribution of property which would then fund an interim support application or a trial.

POTENTIONAL SOLUTIONS

I would urge the Law Society to reject the use of Alternate Legal Service Providers and instead contemplate the use of the following proposals:

1. Continued Use of Designated Paralegals: this solution already exists but is being little used due to a lack of promotion/marketing among the legal community.

2. Family Law Tribunal for Parenting Time and Review of Parenting Decisions: given that the law regarding the best interests of a child is codified by section 37(2) of the Family Law Act, matters involving parenting time and parenting decisions could be dealt with by a specialized tribunal with the following characteristics:

    a. Adjudicators would be senior family law practitioners who are already licenced as parenting coordinators

b. That parties using the tribunal would already have parenting responsibilities by agreement or order of the court

c. There would be automatic canvassing of a child's views where the child is 12 years of age or older either with a hear the child report or by an interview conducted by the adjudicator. The views of younger children could be canvassed with leave of the adjudicator.

d. Mental health screening for the parties.

e. Evidence of the parties by viva voce testimony with maximum time limits of 60 minutes per party and 30 minutes for cross-examination

f. Hearings could potentially occur between 5 – 9 pm to accommodate the fact that most parties work during normal court hours.

g. That the adjudicator would be able to make an order that the parties cannot return to the tribunal for a specified length of time except with leave of an adjudicator

h. That adjudicators would receive special training as to common issues in family law litigation: personality disorders, parental alienation, and family violence.

i. Parties could apply to put the matter back into the court system where the complexity of the matter was beyond the capacity of the tribunal process

3. Special Master's Chambers for Child and Spousal Support: that applications for child and spousal support be made in special chambers hearings. As support is tied to a payor's income, quantum of support also fluctuates thus necessitating short and simple applications. Therefore, the idea of a "final support order" is a false one. Parties should not have to pay for the added expense to obtain an interim order or wait for trial itself to obtain such an order. It is proposed that these special chambers hearings would have the following characteristics:

a. No requirement to first attend a JCC

b. maximum of a one-day hearing except by leave of the court.

c. Automatic right to cross-examine parties on their affidavits before the master where the income of the parties is in issue

d. That the parties can convert a support hearing into a settlement conference by consent.

e. That the governing legislation be amended to allow a master to make a support order without that order being deemed either "interim" or "final."

f. That calculations for spousal support interfacing with property division could only be made at trial by a judge, but that a master would not be precluded from making a spousal support order prior to trial where such an order did not reference property division.

4. The Notice to Mediate Act should be expanded to include a notice to arbitrate.

5. Services Provided by Judicial Access Centers: that the government stop providing the service of preparing section 211 reports through the Justice Access Centers. However, it is proposed that Justice Access Centers continue to prepare hear the child reports and also expand their services to provide parenting supervision with written reports.

6. Free Parenting Supervision: that the Law Society Foundation fund non-government organizations to train volunteers to provide free parenting supervision with written reports. Both this proposal and the one above would reduce the need for multiple court applications as to the terms of supervision orders, which most often are tied to lack of an agreement of the parties as to the identity of an unpaid supervisor (i.e. no person will agree to be the supervisor or if they do, there is disagreement between the parties as to the suitability of the proposed supervisor) or who pays for the paid supervisor (if one is even available in that community). Ultimately, these two proposals directly benefit children who need to see both parents regardless of what is going on in their parents' lives.

FURTHER CONSULTATION

If allowing Alternate Legal Service Providers to practice in BC is not rejected by the Law Society then the next step is for the Law Society to host feedback meetings in major centers throughout the Province so that Benchers can meet with lawyers and the judiciary (separately) to discuss the challenges and solutions facing the practice of family law and access to justice. The Law Society should also accept written submissions without publishing them on the Law Society's website in order to promote candor of the submissions. Solutions cannot be found if there cannot be honest and open dialogue as to the problems, of which I have only identified some in this letter.

All of which is respectfully submitted,

John D. Nelson

Sincerely,

John Nelson
John Nelson Law Corporation
300-848 Courtney Street

Victoria, British Columbia
V8W1C4

Phone 250 940 3593
Fax 250-940-3587

From: Stefani Schow
To: Consultation 2018
Subject: Follow-Up to December 4th Comment
Date: December-31-18 2:47:10 PM

Back on December 4th I sent you a very detailed response to your request for commentary regarding your proposal to license alternative legal providers or what will more likely be paralegals to provide legal services. I hope it was helpful. In the ensuing time I have read with interests some of the commentary posted and have begun to feel that I have neglected a few issues in my first submission. I would like to follow up on these now and flesh them out a little. My main response falls on three issues:

1. The ability to respond to people with mental illnesses
2. The complexity of family law.
3. The economic feasibility of running a business

First off, I would like to point out that I have a undergraduate degree where I minored in psychology and have a continuing interest in the development of this industry, so I speak from some little experience on this. While even I was hesitant to allow paralegals to work with people with severe mental illnesses, what qualifies as an actual mental illness is a debatable point. Even the most experienced neuroscientist would say that the brain is not fully or even well understood, and the definition of what a mental illness is shifts radically from generation to generation. Nevertheless, there are plethora of counselors, crisis call line workers, shelter attendants, social workers, police, nurses, physicians assistants, hostage negotiators, and mentalist, Derren Brown who all practice some sort of psychology, up to and including, traumatic and life and death issues, without being run down by the College of Physicians. Moreover, almost half of the population will suffer from some sort of mental disorder at some time in their life, including lawyers themselves.

We deal with the sick every day, in a variety of ways and the world does not stop spinning on its axis. I see no reason why a lawyer would be any better prepared to deal with your garden variety narcissist than an experienced paralegal, nor do I know of any law school that requires a base education in psychotherapy to pass the bar. The only reason I reserved the severely mentally ill for lawyers is because they will know the exact procedure to act for very sick clients and deal with whatever fall out would occur from any confluence with the Mental Health Act. This is hardly the everyday work of the typical family law lawyer. In many cases, a less intimidating presence of someone not a lawyer, or someone who seems to identify with the struggles of the average lower or middle class person may be a comfort. This may allow for more candid conversations, especially with pathologies like Avoidant Personality Disorder, Borderline Personality Disorder, Autism Spectrum, Bipolar Disorder, Body Dysmorphic Disorder, OCD, and, the almost predictable depression that occurs when your life is falling apart.

"The law is 'complex'." I am not sure I agree with that premise, however, assuming that it is true, that does not make the law unknowable. If that were so judges would be scientists, constantly questioning what is a "judgment," assembling control groups, talking in theories and questioning *stare decisis* as if it were a proposition that the earth is flat. Child support falls on a grid from which there is little deviation, division of property is math. These are easily understood concepts if one reads the case law, something that paralegals are trained specifically to do. If the law is so complex that it's not knowable by a paralegal who is trained to do nothing but try to understand it, how is it knowable to a lawyer who must occupy their

minds with everything else? The Law Society deems a person who has just passed the bar capable, why is a three or five year paralegal, who has practiced exclusively in family law any less capable? It seems that some commentators are conflating the word "lawyer" with "old and experienced" (And probably more often than not, *male*), and "paralegal" with "young and inexperienced" (And the reality of who is a paralegal in this province: *female*). I have even personally witnessed a first year paralegal school a third year lawyer on why the paralegal could not just call up the provincial court and ask for a family law file that the firm did not officially represent.

Title does not necessarily denote skill, and there are a myriad examples I could point to, ask any major car manufacturer. A senior or ambitious paralegal could run circles around a first year call lawyer, why leave all that talent on the table? I find it not without irony that some people seem to think that this would disempower women, when most of these "alternative legal providers" will most certainly be women if the paralegal population is tapped for this. I cannot think of anything more empowering than women helping other women. It is not neuroscience.

Lastly, as far as running a economically feasible business, flawed as it sometimes is, there is no more powerful force than the free market for the creation of higher quality at lower prices. If the business is well run, competition should not be an issue, if it is poorly run it will be forced to dissolve or run better. This is not to say it should not be unregulated, paralegals should have the same obligations as lawyers, the same insurance, the same responsibility to the truth. However, lawyers were entrusted with a monopoly with the understanding that they would operate in a fashion that would be beneficial to society as a whole. That is clearly not happening, and it is obvious to the judicial system, the public, and even the international agencies that measure these things. The system as it stands is simply no longer workable regardless if whether the businesses run or fail.

Moreover, the addition of people whose varied background might help to create more efficiencies in the operation of law firms would lower the price without any loss on the part of the lawyers. The fact is that lawyers do not necessarily make good CEOs and vice versa, which is why they can almost always be found in pairs. BC and most specifically, Vancouver, for a variety of reasons is expected to suffer a minor to major economic correction if the fund managers are correct (and they most often are.) This will put pressure on everyone, lawyers, the government, businesses, clients, and marriages. We must work together if we are to stave off the worst ravages of such an event. For that we need creativity, intelligence, cooperation, humility, and mutual respect.

In conclusion, I thought I would follow up as these were the three most prominent issues that seemed to arise on the commentary, and which I only partially addressed in my previous comment. I hope this has been helpful to the Task Force and look forward to whatever decision it chooses to make.

Respectfully yours,
Stefani Schow, Paralegal

From: Emma Neary
To: Consultation 2018
Subject: Comments on consultation for alternative service providers
Date: December-31-18 3:20:41 PM

Dear Sirs/Madams:

I am a member in good standing and practice exclusively in the area of family law.

I oppose the draft proposal for alternative legal service providers.

To begin with, I am concerned that the Law Society is not focusing on lobbying and working with the government to establish a better Legal Aid System. If the standards for members of the public who could qualify for legal aid were reconsidered, along with the rate that legal aid lawyers are paid, it would ensure that a greater portion of the population had access to lawyers who are qualified to provide them with the full weight of our legal training an experience. It has been said before in previous submissions, but bears saying again - Families in British Columbia deserve a better funded Legal Aid System.

In response to the draft proposal, suggesting that alternative legal service providers can provide legal services to clients in the area of family law implies that the work family lawyers do is not that difficult. In fact, the opposite is true. I believe that family law requires more training at both at the onset of one's career and also on an ongoing professional basis than most other areas of law. If lawyers, who have the full weight of our legal education, articling, mentoring and years of experience, continue to grapple with the issues of the practice of family law, I cannot see how someone with less training could provide adequate services to clients.

Quite frankly, the fact that some of our colleagues in the legal profession, in addition to the provincial government, believe that a lesser class of individuals can adequately provide extensive services in family law is insulting to those who practice in the area family law. Nothing about family law is easy or straightforward. I would ask all of those considering these responses to ask themselves - if you were getting a divorce, would you proceed with hiring an alternative service provider to represent you? Or a lawyer? I guarantee that everyone would chose the services of a fully qualified lawyer, even if the issues seemed straightforward. Anything less could not guarantee that your interests and rights were fully protected.

The services as set out in Schedule A are, in my opinion, far too broad. How can someone who is not a lawyer provide all of these services to clients? The training that we undertake in law school, articling and in the practice of family law is extensive. The majority of our learning occurs "in the field". Family law is a complicated and multifaceted area. Many people who practice exclusively in the area continue to grapple with questions related to issues such as property division (especially with excluded property and claims to unequal division of property), determination of income for child or spousal support and the parenting arrangement that best suits the interest of the children. That is because the issues that arise in family law can and often are, complicated. Complicated issues are not limited to files where there are significant assets to be divided or where the parties have high incomes. I regularly discuss legal issues with other counsel. None of us feel as though we know everything there is to know about family law. The area is constantly evolving, and also intersects with other areas such as estate planning, taxation, corporate law and real estate. In addition, there are emotional issues which are heightened during this stressful time. Nothing about family law is easy or straightforward. It is not an area in which we can carve out issues that an alternative service provide can advise and represent clients on

At the consultation meeting with the lawyers in Victoria, the Benchers asked us to let them know how we could determine which issues were "simple" and therefore could be areas that an alternative service provider could assistance with. There are no "simple" issues in family law. Something that starts out as being straightforward can very quickly become complicated. Someone who does not have the training of a legal education (and by that I mean law school, articling and experience practicing in the area, not the proposed education for alternative legal service providers) would likely not be able to spot these issues that might, and often do, arise.

I oppose the proposed framework put forward in Schedule A. The scope of services is far too broad and should not be provided by anyone who is not a fully qualified lawyer. A few issues in particular raise serious concerns for me. Determination of income for child and spousal support can be a complicated and difficult task. This is not solely limited to areas where there are third parties outside the spousal relationship involved. As an example, people who are sole

proprietors are able to make deductions from their income that must be scrutinized when calculating income for support purposes. Further, issues of determination spousal support are always complicated and advice in this area should not be provided by anyone who is not a lawyer.

It might be possible for an alternative legal service provider to provide some assistance to a member of the public on child support where both parties are employed an earning salaried income from an arm's length party. However, issues relating to imputation of income where a spouse is under-employed are, in my opinion, beyond the scope of anything that alternative legal services providers should be doing. Accordingly, even basic issues of child support are beyond the scope of services that should be provided by any such individual.

All issues relating to property division should be dealt with by a lawyer, not just issues of pension division. This will allow a lawyer to properly address any issues relating to excluded property or unequal division of property and debt. Often, the family home is the only, or the major asset to be divided. Equal division is not always appropriate. We would be doing members of the public a huge disservice by allowing alternative service providers to give advice on how this, or any asset (or debt), should be divided,

Settlement Agreements should only be drafted by a lawyer. A pre-approved form for drafting agreements would not be sufficient to deal with the individual issues that arise on files.

Alternative service providers should not be allowed to participate in mediations or attend court. This is where the majority of our training comes into play. This is where competent representation is most important. Members of the public do not deserve to have someone who is not fully qualified represent them at this crucial time.

Further, I do not believe that alternative service providers should be able to deal with matters in Supreme Court, or be officers of the court. They should not be able to draft orders, give any type of legal advice, communicate with another party, represent client's in settlement discussions, give and receive undertakings, operate a trust account or enforce orders.

Upon review of the models from other jurisdictions, if any model of alternative service provider is to be implemented, I believe that the model from Washington State would be most appropriate. This model does not stray beyond the scope of what someone who is not a lawyer should be doing, while also assisting clients in the preparation and understanding of the general framework of the issues in a family law case. It would be of assistance for these individuals to be stationed at the courthouse, able to provide services to people when they attend to file documents. This would allow alternative legal service providers to engage with members of the public early on in proceedings and assist them in preparation of materials to ensure completeness of the basic information required for contested applications. It is as the time of filing that most members of the public require assistance. Providing assistance and information at the courthouse would, in my opinion, go a long way to providing assistance to members of the public.

Thank you for your consideration of my feedback in this matter.

Kind Regards,

Emma R. Neary
Lawyer

HORNE COUPAR LLP
LAWYERS + NOTARIES

Phone: 250-388-6631
Fax: 250-388-5974

1% FOR THE PLANET
MEMBER

Victoria (Main) Office:
Suite 300, 612 View Street
Victoria, BC V8W 1J5
Canada
www.hornecoupar.com
Oak Bay (Satellite) Office:
302 – 2250 Oak Bay Avenue
Victoria, BC V8R 1G5
Canada

From:	Nancy Cameron
To:	Consultation 2018
Subject:	Submission: Family Law Legal Service Providers
Date:	December-31-18 3:47:07 PM
Attachments:	Consultation 2018 submission.pdf

Attached please find my consultation submission.
Your truly,
Nancy Cameron, Q.C.

1438 West Hasting Street
Vancouver, B.C.

nancy@nancy-cameron.com

NANCY CAMERON, Q.C.

BARRISTER & SOLICITOR

Collaborative Law **Family Mediation**

December 31, 2018

To: The Law Society of BC, Alternate Legal Service Provider Working Group
by email: consultation2018@lsbc.org

From: Nancy Cameron, Q.C.

Re: Family Law Legal Service Providers: Consultation Paper

Date: December 31, 2018

Thank you for taking a step towards attempting to address the significant access to justice crisis we are facing. I appreciate the Law Society's attempt to do so, as well as the opportunity to take part in this consultation.

How we define a problem of course begins to set the stage for how we think about resolving the problem. I would like to adopt the Access to Justice BC's definition of access to justice: "Access to justice means enabling people to avoid, manage, and resolve civil and family legal problems and disputes".

By defining access to justice in this manner, we can open our thinking to a broad range of services to fulfill this goal. As a practitioner who has, for decades, focused her work in the legal arena to consensual dispute resolution, I will focus my remarks in two areas: first, on comments to Schedule A partially through a consensual dispute resolution lens and secondly, on how we can best look upstream from the courthouse doors to try to support the public in the quest to access justice.

Comments to Schedule A framework:

- For many years, lawyers in British Columbia have struggled with providing unbundled or limited scope services in an ethical, cost-effective, and accessible manner, while still working diligently to provide quality, competent services. In the last couple of years, lawyers dedicated to providing these services have joined together to share models of practice in their commitment to increasing access to needed and appropriate legal services to the public. At first glance Schedule A appears to take the work of these practitioners in defining what discrete legal services can be offered and how they can be offered and coupled this work with the assumption that a new class of legal service providers can provide these services cheaper than lawyers can.

1438 w. HASTINGS STREET, VANCOUVER, B.C. V6G 3J6 · PHONE: (604) 689-1766 FAX: (604) 689-1760
Nancy Cameron, Q.C., LLB, personal law corporation
nancy@nancy-cameron.com

- The underlying assumption that paralegals can provide limited scope services in a more affordable manner than lawyers can is an assumption that girds the consultation paper yet does not appear to have any research or factual underpinning. As a sole practitioner, I know first hand the overhead costs of running a business. Professional fees and insurance, accounting and bookkeeping services ancillary to maintaining a trust account, office space compatible with the need for private and privileged client interviews, phone and internet services, and continuing professional development are all bare-bones requirements for being able to provide the services as set out in Schedule A. I am concerned that the underlying assumption: stripping out the cost of a law school education and replacing it with the (as yet unknown) cost of an "alternate service provider" education will significantly decrease the cost of providing services is something we have no evidence for.

- An underlying concern about how such a change in service providers may play out is a concern that many of these service providers may end up working in larger firms, where the savings that may manifest in having a lower paid professional will significantly be used to cover the overhead and profit of the firm, as opposed to being passed on to the consumer. This, of course, will not address the access to justice crisis.

- I am puzzled, reading through the list of Schedule A legal services, where giving legal advice actually fits in. "Advise about how agreements or court orders may affect a client's rights and obligations" is obviously a form of legal advice, but appears to be drafted to confine legal advice to a type of legal information. However, "Represent a client in settlement discussions and prepare settlement agreements and orders incorporating settlements within scope of permitted activities," obviously requires a full and complete ability to give legal advice.

- This raises, among other issues, the issue of privilege. Will conversations between family law legal service providers and their clients have the same privilege as solicitor-client privilege?

- Advocacy: Like legal advice, Schedule A appears to skirt around the issue of advocacy. By limiting the role of the family law legal service providers to that of a "McKenzie Friend" in the courts, the assumption is that explicit client advocacy will be outside of the scope of services. However, "representing a client in settlement discussions" clearly requires the service provider to act as an advocate. Advocacy in family law matters is complex. Being an advocate in consensual dispute resolution processes is extremely complex. Not only is it necessary for the advocate to have a thorough knowledge of how the law impacts the facts of the case, but the advocate must also understand the range of outcomes that may occur in a court as well as a deep understanding of the clients needs and interests, and how the client prioritizes these. By excluding court advocacy from Schedule A but including settlement advocacy, the

1438 w. HASTINGS STREET, VANCOUVER, B.C. V6G 3J6 · PHONE: (604) 689-1766 FAX: (604) 689-1760
Nancy Cameron, Q.C., LLB, personal law corporation
nancy@nancy-cameron.com

implication is that settlement advocacy is somehow easier and requires less skill than court advocacy. As someone who has struggled with the complexity of settlement advocacy herself, has written on the subject and teaches extensively on the subject, I am deeply concerned that the consultation paper appears to prioritize court advocacy as "only in the realm of lawyers" and implies that settlement advocacy is a lesser, more easily parsed out, skill.

- Some thoughts about limiting scope of practice to matters relating to allegations of domestic violence, sexual abuse and substance abuse: These areas, as well as mental health problems, are the most taxing of family law cases. There is of course no substitute for highly skilled professionals in these areas, whether they are lawyers, mental health professionals, or other groups of professionals. Anyone practicing in these areas must be extremely competent. However, automatically excluding the ability of a client to access a particular service provider because of the client's experience disregards the concepts of self-determination and agency for survivors. I would urge that these concepts, client self-determination and agency, not be disregarded. If these recommendations are really about increasing access, we cannot say "access for some but not access for all" or we are encouraging people to hide what may be their deepest and most significant concerns in order to be able to access certain services.

How to think about access to justice from outside the lawyer box

I have come to believe that as lawyers, our greatest impediment to being able to increase access to justice is our inability to view what is happening for people far before they reach the court house. As those of us who work in the justice system have seen the access to justice crisis play out in the number of self-represented litigants, our tendency, of course, is to focus in and around the courthouse as we try to imagine more affordable ways to provide services. However, I have come to believe most people do not want to be in a courtroom, do not want to have to spend any money or time navigating the complexities of court forms and processes, and mostly just want to resolve their issues quickly, efficiently, and in a manner that "feels fair" to all. So how do we gain some insight into how to provide these services? What services are actually needed?

- Widen the consultation. Lawyers are going to see the answers through the lens of our work. Schedule A is a clear example of this. However, other service providers: mental health professionals, community workers, financial specialists, leadership in indigenous communities, school counselors, youth whose parents have gone through divorce, and of course the larger public all have important voices that need to be brought into the consultation process. I urge the Law Society to expand the consultation.

- Bring some consensual dispute resolution practitioners onto the working group. We work daily with the public that never wants to enter a court room. We believe

1438 w. HASTINGS STREET, VANCOUVER, B.C. V6G 3J6 · PHONE: (604) 689-1766 FAX: (604) 689-1760
Nancy Cameron, Q.C., LLB, personal law corporation
nancy@nancy-cameron.com

passionately in self determination and providing services that allow people to resolve matters in the least intrusive, most supportive process that will lead them to resolution.

- Consider how to expand and make affordable personalized assessment services. Assessment – how to put together a process for this couple that is the least intrusive, most supportive and most likely to lead to success, is an important first step. This can be done by trained professionals that do not have to be lawyers. Look at supporting assessment services that are cost-effective and readily available, and also link people to legal information and non-adversarial legal advice. Maybe this is the first step for training new service providers.

- This is probably the most radical thing I have to add, but it is late on New Years Eve and I have to get this submitted before the deadline: Examine the conflict of interest rules. Lawyers actually do have the skill to determine whether or not one lawyer can draft a joint divorce for a couple. A lawyer can draft a child support agreement for a couple. Lawyers can develop the skill to have conversations with parents about what mom and dad each want for their children, and can draft an agreement which properly reflects this. People going through separation and divorce often have congruent needs, and are not all defined by the adversarial paradigm. They are often insulted by the very suggestion that, having come to agreement, they now need independent legal advice. Not only are they insulted, they are wary that they will be drawn into an adversarial battle not of their making. Sometimes, the existing law society rules themselves increase the cost of justice. These rules, while made to protect the public, also increase legal expense. Can we be smarter about how we assess what is a conflict and what is not?

I thank you for the opportunity to participate in this consultation.

Yours truly,

NANCY CAMERON, Q.C.

1438 w. HASTINGS STREET, VANCOUVER, B.C. V6G 3J6 • PHONE: (604) 689-1766 FAX: (604) 689-1760
Nancy Cameron, Q.C., LLB, personal law corporation
nancy@nancy-cameron.com

From: peter.ata@hush.ai
To: Consultation 2018
Subject: Consultation - Draft Proposal for Alternate Legal Service Providers
Date: December-31-18 4:04:53 PM
Attachments: [redacted]

December 31, 2018.

Dear Law Society,

Regarding your important review of offering expanded Alternate Legal Service Providers in Family Law (BC), I offer my family's strong support for expanding these helpful alternate services, as long as high professional standards are in place. These standards must include full protection which matches current conditions and publicly-recognized concerns like Predatory Marriage, which affect many families in BC.

I am writing as a legal services client and member of a family with very recent experience in a difficult, and contentious Family Law situation; and we were forced to hire lawyers simply beyond our budget. Therefore, more available, Alternate Legal Service Providers in Family Law, would very likely assist us in resolving a difficult, very troublesome situation. All of us involved have found that the legal process has been painful, and dragged on for a long time, without any sign of resolution (6 months, so far.)

From my own current experience with experienced BC Family Law practitioners, I'm surprised to find that even though ethical and professional standards are set in place for BC Lawyers, apparently these standards do not protect our family from a lawyer crossing ethical boundaries to actually help create a Predatory Marriage situation for an elderly widower. [redacted] Therefore, I think its is reasonable to ask that more care be taken to adopt stronger standards for the new era of Alternate Legal Service Providers in Family Law.

For your background information, I am sharing [redacted] and one reference to the recent CBC news and Toronto Star investigation into Predatory Marriage (September 4, 2018), which identifies this as a real concern facing families across the country and explains how the Marriage Act is involved. These information items are enclosed below:

** CBC news internet link: (Sept. 4, 2018)
https://www.cbc.ca/radio/thecurrent/the-current-for-september-4-2018-1.4808812/he-secretly-married-her-in-a-campaign-to-take-her-money-predatory-marriages-put-elderly-at-risk-say-expert-1.4806202

[redacted]

Sincerely,

Peter Atamanenko
P.O. Box 4346
Quesnel, BC V2J 3J4

encls.

From:	Dom Bautista
To:	Consultation 2018
Subject:	Revised: Tick Tock! In the name of #AccessToJustice, is it time to regulate BC Paralegals?
Date:	December-31-18 4:05:40 PM
Attachments:	Tick Tock! In the name of #AccessToJustice, is it time to regulate BC Paralegals_ .pdf

---

Hello Alternate Legal Service Provider Working Group, here is the revised version.

Thank you for the opportunity to participate in your consultations. I would be happy to discuss my suggestions, if you wish.

Attached: Tick Tock! In the name of #AccessToJustice, is it time to regulate BC Paralegals?

Warmly, Dom

Dom Bautista
Executive Director
Amici Curiae Friendship Society
legalformsbc.ca
604.551.2727
@LCCDomBautista

(pronouns: he/his/him)

Amici Curiae acknowledges that our work takes place on the unceded homelands of the Musqueam, Squamish, and Tsleil-Waututh Nations.

Warmly, Dom

Dom Bautista
Executive Director
Law Courts Center
604.551.2727
@LCCDomBautista
www.bclawstaffrecruiting.com
www.legalpresents.shop

The Consultation Paper (Paper), issued last September 2018, contains a court-centric proposal to improving access to justice, which, as an informed citizen, I feel does not go far enough and does not acknowledge a more numerous and accessible legal service provider: paralegals. In limiting my comments to the contents of the Paper, I offer our law society a two phased solution to jumpstart more meaningful access to justice, as the public deserve more than what has been a reluctance and effectively, paralysis in implementing meaningful change. I also include a path to how the provision of legal services ought to be in our province.

Having danced around the access to justice flame since 2010, I have debated whether to oppose the Paper on principle or to support it from a pragmatic lens. I am grateful to Law Society of Ontario president Malcolm Mercer, QC, for encouraging me to take a principled yet pragmatic response because the longer we wait, the longer that the unrepresented and underprivileged will continue to be denied access to adequate legal services.

Specifically, and from a principled and pragmatic lens, like that of Professor Jerry McHale, QC, I want to encourage our law society to further explore the introduction of another means to alleviate the heavy yoke of access to legal services by licensing paralegals.

While I make reference to the Amici Curiae Friendship Society's work, I do not want to speak on behalf of our volunteers. And while the paralegals are very dear to me, I will leave it to individuals to advocate for themselves.

In a few hours, 2019 will bring in a new leadership, and possibly a new direction for the Alternate Legal Service Provider Working Group. To each of the members of last year's group, Amici Curiae has been blessed with your generosity of time and support. You have trained us, given us practice materials, invited us to voice our concerns on the tightening client identification rules, and visited our operations. *Thank you.*

Judging from the published submissions to the proposed expansion of legal service providers, the idea that paralegals have a role in access to justice has predictably failed to pass the crucible. And notwithstanding the non-binding results of the resolutions that were voted on at the last AGM, it is fair to say that the benchers will proceed with regulating paralegals, regardless of what this consultation, will yield. (My view of the access to justice lessons from the 2018 LSBC AGM is here.)

Consequently, there are two questions which should be considered: what should paralegals be allowed to do, and what should the timing be.

While meaningful consideration of these two issues will take time, I also recognize the tension that the public, through the attorney general's office, will not accept any more delays. The passage of Bill 57, the *Attorney General Statutes Amendments Act, 2018* on

November 27, 2018 provides the clearest signal of what is in store for the provision of legal services.

Accordingly, a two phase solution should be implemented to buy our law society time: firstly, to review the unchanged status of family law Designated Paralegals' (DP) ability to appear before courts and tribunals, and for the law society to initiate and negotiate an agreement with the courts on the expansion of scope of DPs to include what is set out in your Paper, and secondly to regulate paralegals and then retire the designation of DPs.

Phase 1: Expanding the Scope of the existing DP programme

There is no such thing as perfect justice. There is no magic bullet. The work that takes place at the front lines is messy. Absent access to lawyers and legal professionals, the public has been choosing to do it themselves or give up. However, there is the potential to use already existing DP programme to improve access to justice, simply by going for the "low hanging fruit" as encouraged by Chief Justice of British Columbia Bauman at the Justice Hack last September 29, 2018. The premise of going for the low hanging fruit is logical, but requires a few adjustments in order to buy you time to get properly positioned to thrive.

The existing DP programme, as set out in the *Code of Professional Conduct for British Columbia* (*Code*) Chapter 6 and Appendix E, presents the most apparent structure to effect immediate improvement in access to justice. Since its inception in January 2013, a number of barristers and solicitors alike, who have been willing to leverage their practice with DPs, continue to deliver cost effective services to their clients. Supervision has been the key.

Two of the three facets are effectively operational that let individual DPs of supervising lawyers give legal advice, and give and receive undertakings on file specific circumstances. However, the third leg of the the DP programme which allows family law DPs to appear before the courts and tribunals under limited circumstances is effectively non-operational. Although our *Code* permits DPs to appear in court as permitted by the court, there is little evidence to say DPs have, and presently, the courts do not permit appearances. Practically speaking, there were also few sensible opportunities for a DP to appear in court, as much of the allowed scope (which resulted from a protracted negotiation between your predecessors and the judges), could be done by desk Order. The intervening years, I asked both the law society and the SCBC to revive it, and each pointed to the other. The public deserves better.

Looking ahead and anticipating the effort that our law society is about to expend, does it not make sense to widen the scope of practice for the DP programme and let the benchers decide on which practice areas to roll out first? Moreover, the DP programme should be adjusted by expanding the rigourous list of what DPs are permitted to appear in court for,

as currently suggested in the Paper. Better still, allow DPs to do what articled students (who are also supervised) are allowed to do.

Phase 2: The Scaling up the Number and the Regulation of Paralegals

Our law society needs to create the necessary environment to allow for paralegals to scale up in numbers while protecting the public's interest. Regulate all paralegals, instead of giving paralegals the choice of being licensed or not. Those who choose not to be regulated should not be allowed to identify themselves as a paralegal.

But there is a grave issue of lack of supply. There will not be enough paralegals that can provide limited scope family law services, even if they were to be regulated by 2019, to make this plan effective. There were not enough paralegals in 2012, when DPs were established, and there will not be enough by 2022, the year that I anticipate when the first batch of paralegals will be called to the bar.

Assuming no tsunami-like issue such as money laundering takes over the benchers' agenda, the benchers should approve regulating paralegals by late 2019 and fast track the rules for promulgation by 2020.

Moreover, it is possible that the public will not appreciate the distinction between a licensed and unlicensed paralegal, as there is no such thing as an unlicensed lawyer.

Accordingly, one last set of low hanging fruit that they should be undertaken immediately:

a. Review and define what makes for a paralegal;
b. Integrate this new definition in communications with the public;
c. Provide a business case to the legal profession for the regulation of paralegals;
d. Operate a registry for paralegals and publish it on your site; and
e. In the interim, invest in developing the advocacy skills of paralegals. Operate mock JCCs, chambers applications, tribunal appearances. Host non-mandatory PLTC for paralegals to be delivered at night or weekends.

Looking Forward to High Level Fruit: Regulation of All Legal Service Providers and Greater Public Consultation

Bill 57, the *Attorney General Statutes Amendments Act*, 2018, having received royal assent, has changed the protocols of how legislative changes that involve our law society and courts come into law. While not everyone shares this view, our government, instead of waiting for a submission from our law society, decided to legislate in anticipation of a recommendation for the licensure of paralegals. All that remains is for our law society to finish its work.

Our law society is process-driven and changes, big or small, still have to navigate a labyrinth before making it to the benchers' table; no result is guaranteed.

And given all the work that has to be done to find solutions to improve access to legal services, the final plan has to be principally pragmatic, to make it worthwhile. I urge you to heed the recommendation of paragraph 96 of the 2014 report of the Legal Services Regulatory Framework Task Force to take on a broad approach and leave it to the wisdom of the incumbent benchers to decide on the details.

Thus, it is time to regulate all legal service providers so everyone plays by the same rules. The public would be thankful for the clarity and would benefit tremendously from the simplification.

Legal professionals should include but not be limited to: (in alphabetical order) advocates, immigration consultants, mediators, notaries, paralegals). Presently, within the *Code*, one will find references to advocates and designated paralegals. Immigration consultants and notaries are self-regulated. Mediators are self-regulated, sort of.

Second, while you are rewriting the rules and the *Code*, *please* do away with the term "non-lawyer" and adopt the term "legal professional".

Third, regulate by certifying all legal service providers. Effect standards, such as competence, character and integrity, to parallel what lawyers have.

If all lawyers, regardless of how they have acquired their knowledge, have to write the same exam as one of the conditions for licensure, the same rule should apply to every legal professional candidate. No exceptions should be allowed.

As a minor note, once all legal professional rules are in play, our law society can then eliminate designated paralegals.

Finally, I want to encourage you to take advantage of this opportunity brought about by a major deficiency - as your consultation has largely excluded the public.

Mr. Colin Feasby of Osler Hoskin & Harcourt used the term *insiders versus outsiders* when he acted on behalf of the appellant Mr Pintea, at the Supreme Court of Canada last April 2018. "This case (*Valentin Pintea v. Dale Johns, et al.* 2017 SCC23) is about insiders and outsiders. Everyone in this room is an insider – SRLs are outsiders."

Your deliberations about changing the delivery of legal services has thus far been about insiders versus outsiders. Compared to the many presentations to the members of the bar, our law society had one public focus group event.

Notwithstanding the ticking clock, it is crucial for the consultation to include the users of legal services - the public. This can be remedied by deploying the the 25 elected benchers (governors) to host consultations, in the same way that then president Turriff, QC did when our law society celebrated its 125th anniversary in 2009. The elected benchers, who represent the various counties of our province, can be asked to go to their local trusted institutions like community centres and public libraries to present the plan to the public for feedback. You can also consider delegating the appointed benchers to assist. Once done, the benchers can report back to the task force before tabling the final plan.

Conclusion

I am grateful to the members of the Alternative Legal Services Providers task force for receiving my submission. I want our law society to do well because when you lead, which is not easy, we, the public can take comfort in that you are protecting our interest to heart. I am optimistic that the final version will reflect the many suggestions that will allow the public greater and meaningful access to legal services.

Yours truly,
Dom Bautista

From: Alberto Mejia LeGresley
To: Consultation 2018
Subject: Feedback on Family Law Legal Service Providers: Consultation Paper
Date: December-31-18 4:06:51 PM

Dear Ms. Kresivo,

Thank you for leading the Alternate Legal Service Provider Working Group.

I am a Certified Instructor by the Ministry of Advanced Education in BC. I was a self represented litigant in BC Supreme Court where I led a three week trial, not because I wanted to but because I had no choice, I could not afford a lawyer. I used several pro-bono services throughout my five year case and the most useful by far was the pro-bono Amici Curiae Paralegal Clinic.

There's plenty of research that shows the public is not being served and are already representing themselves not because they want to but because they have no choice.

Some lawyers in their position state the system is fine and the government should fund family law Legal Aid. Money to fund lawyers to fulfill the public's need is not a solution. The society's primary mandate *is to uphold and protect the public interest in the administration of justice.* Lawyer's refusal to change and adapt to the market, puts them in the same category as SEARS and the Bay: they will cease to exist because they refuse to serve the public and provide services affordable to the public. Weather we have paralegals helping the public or not, lawyers will still become SEARS and the Bay if they don't make drastic changes in their profession to serve the public. Having access to legal: services is a basic part of the structure of a civil society.

If lawyers were fulfilling the needs of at least 90% of the public, we wouldn't even be thinking of paralegals helping the public.

This service is already being offered successfully in other places in Canada. Lawyers may not see this new category as necessary but WE the public need it. I support the letter submitted by MP Murray Rankin.

Sincerely,
Alberto M. LeGresley

From:	Nora Mejia
To:	Consultation 2018
Subject:	Feedback on Family Law Legal Service Providers: Consultation Paper
Date:	December-31-18 4:34:40 PM

Dear Ms. Kresivo,

Thank you for putting this group together.
I support the letter submitted by MP Murray Rankin.

Help to the public from alternate legal service providers is already being offered successfully in other places in Canada. Why not in BC? We the public desperately need this; families need this; children need this and any other person who through their life time WILL need legal advice or help.

A new Class of Legal Professionals will start to address the needs of the public, it is a great first step in finding a better way. Change desperately needs to happen to benefit the users of the service. WE need it.

Thanks again,
Nora M.

From:	Michele Ross
To:	Consultation 2018
Cc:	info@bcparalegalassociation.com
Subject:	Family Law Alternate Legal Service Providers: Consultation Paper
Date:	December-31-18 4:38:41 PM
Attachments:	image002.png LT Law Society of BC.pdf

On behalf of the BC Paralegal Association, please see attached our written submissions in response to the Family Law Alternate Legal Service Providers: Consultation Paper.

Michele Ross, President
BCPA Registered Paralegal
BC Paralegal Association
PO Box 75561, RPO Edgemont Village
North Vancouver, BC
V7R 4X1

BC PARALEGAL ASSOCIATION

PO Box 75561
RPO Edgemont Village
North Vancouver, BC V7R 4X1

December 31, 2018

Law Society of British Columbia
845 Cambie Street
Vancouver, BC
V6B 4Z9

VIA EMAIL consultation2018@lsbc.org

Dear Sirs:

Re: Family Law Legal Service Providers: Consultation Paper

This letter is submitted on behalf of the BC Paralegal Association (the BCPA) in response to the Family Law Legal Service Providers: Consultation Paper (the Consultation Paper) prepared by the Alternate Legal Service Providers Working Group.

The BCPA is a not-for-profit organization made up of over 900+ paralegals, paralegal students and industry related organizations in British Columbia and run by a board of volunteers. The BCPA was formed in 1979 to promote the growth and professional development, continuing education and networking of paralegals in British Columbia. Our goal is to support and advocate for the paralegal profession.

A. Previous Work done by the Law Society of British Columbia

The proposal of legal services being provided by non-lawyers is not a new concept. The BCPA believes it is important to keep in mind the previous work done by the Legal Services Providers Task Force and the Legal Services Regulatory Framework Task Force. In the report dated December 6, 2013, the Legal Services Providers Task Force made five conclusions, as follows:

1. It is in the public interest that legal service providers other than lawyers and notaries should be regulated unless operating under the supervision of a lawyer or other regulated legal service provider such as a notary public.
2. A single regulator of legal services is the preferable model (rather than distinct regulators for different groups of legal service providers).
3. If there is to be a single regulator of legal service providers, the Law Society is the logical regulator body.
4. Creating some method to provide "paralegals" who have met prescribed educational and practical standards with a certification would assist greatly in giving definition to that function when working under the supervision of a lawyer. Further, the regulation of non-lawyer, non-notary legal service providers of limited scope legal services should be included in the purview of a single regulator of legal services and that the Law Society should move to create a process by which that can take place. Other groups should not be regulated by such a body at this time.
5. There is no certainty that a single-model regulator of a number of different groups of legal service providers will improve access to justice, and it is uncertain that one would

> be able to create empirical evidence to prove this end. There is no way to find the answer without trying it, and the Task Force therefore concludes that it should be tried.
>
> (emphasis added)

As a result of the conclusions, one of the recommendations of the Legal Services Providers Task Force was "That the Law Society develop a regulatory framework by which other existing providers of legal services, or new stand-alone groups who are neither lawyers nor notaries, could provide credentialed and regulated legal services in the public interest." That report was unanimously approved by the Benchers.

In the report dated December 5, 2014 by the Legal Services Regulatory Framework Task Force, a recommendation was made that the Benchers seek an amendment to the *Legal Profession Act* to permit the Law Society to establish new classes of legal service providers to engage in the practice of law, set the credentialing requirements for such individuals, and regulate their legal practice. That report was unanimously adopted by the Benchers.

The BCPA participated in both the Legal Service Providers Task Force and the Legal Services Regulatory Framework Task Force. The BCPA also worked with the Law Society on other initiatives including access to justice and the designated paralegal as we believe a collaborative effort is necessary from all stakeholders on the issue of access to justice.

B. The Consultation Paper

The BCPA is supportive of initiatives aimed at increasing access to justice and is pleased to see that the Law Society has outlined the concepts of alternate legal service providers in the Consultation Paper released in September 2018, along with the proposed framework. It is the BCPA's position that paralegals play a key role in providing an affordable alternative by offering trained and skilled legal services to the public at a reduced hourly rate. As indicated in the Consultation Paper, "The purpose of the consultation is to provide the Benchers with input that can be refined to ensure the end product advances the object of improving access to affordable, competently delivered legal services in an area of need, while maintaining public interest in the administration of justice."

It is helpful to note that the *Code of Professional Conduct* describes a "paralegal" as a non-lawyer who is a trained professional working under the supervision of a lawyer and that a lawyer may employ as a paralegal a person who possesses adequate knowledge of substantive and procedural law relevant to the work delegated by the supervising lawyer; possesses the practical and analytic skills necessary to carry out the work delegated by the supervising lawyer; and carries out his or her work in a competent and ethical manner.

There is much criticism amongst lawyers about alternate legal service providers providing a lower quality of legal services. It is important to keep in mind, as stated in the Consultation Report, that it will be necessary to complete an education and training program approved by the Law Society, which would be "tailored to ensure the provider is able to provide legal services within the scope of the limited license in a competent and professional manner." The

Consultation Paper also indicates that as the education process is developed, there will be further opportunity to provide feedback.

On the topic of education, it may be useful to consider the process to become a paralegal in Ontario. This requires completion of a two year college program by an accredited school. The Law Society of Ontario outlines the curriculum and a review of the curriculum is performed every five years. It also requires a period of articling as well as a written licensing exam. While the BCPA is not providing any specific suggestion on length of education in these submissions, it should be noted that an educational program of similar duration in family law would allow an alternate legal service provider to become extremely well-educated and trained in that one specific area of law, which is more than what is required of articled students in BC, given that family law is an elective course in law school. It is anticipated that part of the education and training would include how to identify when an issue arises that is outside of the limited scope and we would anticipate that alternate legal service providers would have a mandatory obligation of continuing professional development based on a set number of hours per year, to be determined by the Law Society.

The BCPA suggests that what has been done in other jurisdictions with non-lawyer legal service providers should not be overlooked. It has been established by other jurisdictions that paralegals and other legal service providers can be properly trained to competently discharge some legal tasks. Paralegals in Ontario have been regulated for over ten years. While they have been permitted to work in the areas of small claims court, traffic court, minor criminal matters and tribunal work, Ontario is now expanding the scope to permit paralegals to provide some form of family law legal services. Additionally, Washington State has created Limited Licensed Legal Technicians (LLLTs), which permit LLLTs to assist in family law matters. Since 2003, Arizona has had Legal Document Preparers (LDPs) who can prepare or provide legal documents in matters relating to divorce, separation, paternity, custody, child support and parenting time. In Utah, the creation of Licensed Paralegal Practitioners (LPPs) has been approved by the Utah Supreme Court and LPPs will be able to work on temporary separation, divorce, paternity, cohabitant abuse, civil stalking, custody/support and name changes in a scope similar to what is included as Schedule A to the Consultation Paper.

In terms of the framework proposed in Schedule A of the Consultation Paper, it should be noted that some of the items identified are tasks that are already being performed by paralegals and designated paralegals, albeit under the supervision of a lawyer. The BCPA states that paralegals have a solid foundation in which to further build on and are in an excellent position to offer affordable legal services to the public. Practical experience in the legal field over years of specialized work should not be overlooked. There is also a “common sense” approach that is inherited through years of experience by family law paralegals that plays a critical role in decision making when managing a family law case, which includes:

1. Relationship building with clients. Typically, the client’s first point of contact is to call the paralegal. A paralegal is often dealing with conflicts that arise on a file, and is able to address a client’s concern and diffuse misunderstandings when they exist.
2. Solid communication skills and the ability to comfort and diffuse escalating emotions of a client.

3. Management of file and ability to use common sense through years of specialized experience working in family law, and understanding which material facts must be gathered from the client to present a client's claim.
4. Understanding the legal issues of a family law case but most importantly, understanding when a lawyer needs to be consulted for challenging issues that must be addressed by a lawyer.
5. Skills in legal research, ability to understand the substantive law and procedural law, the common law and the *Supreme Court Family Rules.*
6. Drafting court documents for purposes of chambers applications, summary trial, including trial and/or appeal work.
7. Specialized experience in the area of family law offers a solid foundation to paralegals.

Years of experience in a specialized field such as family law provides a paralegal with a high-level capacity to assist clients and perform tasks outlined in Schedule A of the Consultation Paper, as will be detailed below. Also, once education and training requirements have been established by the Law Society for alternate legal service providers, this will add to the established skills and knowledge that paralegals have been gained through practical experience and mentorship.

Keeping in mind that the object is to improve access to legal services, we respond to paragraph 21 of the Consultation Paper as follows:

- What do you like or dislike about the framework outlined in Schedule A?

  As indicated above, paralegals and designated paralegals currently perform some of the identified items in Schedule A, which we have summarized in Schedule A to these submissions. Accordingly, we believe that paralegals who have been performing these types of services have a solid foundation for becoming alternate legal service providers. The BCPA is in support of alternate legal service providers being regulated, which provides protection to the public.

- Is the framework likely to achieve the desired outcomes? If not, how might it be modified to achieve the outcomes?

  In order to achieve increasing access to justice, it will be necessary for alternate legal service providers to charge less than lawyers. An alternate legal service provider is not a lawyer, so it makes sense their rate be reflective of that, similar to how a paralegal does not charge the hourly rate of a lawyer. Further, perhaps at least initially, alternate legal service providers would have to consider ways in which to keep overhead costs to a minimum whether by offering mobile services, working from home or having a virtual office. As is expanded on below, we know that licensing paralegals has worked in Ontario, a system which has been in place for ten years. However, as set out the Legal Service Providers Task Force report indicates, there is no way to find out the answer without trying it.

BC PARALEGAL ASSOCIATION
PO Box 75561
RPO Edgemont Village
North Vancouver, BC V7R 4X1

- Does the framework miss any types of legal services that you consider should be included?

  The framework does not miss any types of legal services that we consider should be included.

- Does the framework include any legal services you think should be excluded?

  We do not believe the framework offers legal services that should be excluded.

- Should the service providers be "officers of the court"?

  It is recognized that the proposed framework does not include alternate legal service providers appearing in court, except in a McKenzie Friend-like role. However, if consideration is given to allowing alternate legal service providers to attend court on limited matters similar to articled students, they should be "officers of the court".

- Is there a broader possible scope of practice, not contained in the framework that is appropriate for alternate legal professionals who are engaged in collaborative or non-adversarial processes?

  This question likely requires further exploration. Collaborative files can involve family corporations and/or family trusts and other exceptions in the framework, which is outside of the alternate legal service provider limited scope.

- What services contained in the framework are the most complex and fraught with risk of significant and/or enduring harm to the client (or their children) if not performed by an experienced lawyer? How are those risks mitigated now where they are performed by less experienced lawyers?

  The matters that are complex and fraught with risk are those listed in the exceptions. What needs to be remembered is that any matter that goes to court or trial is outside of the scope of an alternate legal service provider. For example, a contested custody matter that is scheduled for trial or a summary trial to determine a payor's income. These are not within the scope and can only be handled by a lawyer. In family law matter, it is not uncommon for trial dates to be set at a very early stage in the proceedings and often at the judicial case conference stage. Those types of matters would continue to be handled by lawyers, as they are now. As mentioned above, it is anticipated that the education and training would include how to identify when an issue arises that is outside of the limited scope.

- Should the proposed new service providers be subject to the same (or similar) professional conduct/ethical responsibilities as lawyers? Should they be subject to the CBA Best Practice Guidelines for lawyers practising family law?

The BCPA believes that alternate legal service providers should be subject to the same (or similar) professional conduct/ethical responsibilities as lawyers, similar to paralegals in Ontario being subject to the Paralegal Rules of Conduct[1]. Alternate legal service providers should also be subject to the CBA Best Practice Guidelines.

- Are there any other reforms to the provision of family law legal services that could be addressed through the use of alternate legal service professionals?

  In the event the Benchers reject the recommendations of the Alternate Legal Service Providers Working Group, the work should not be abandoned completely. Other variations of the proposed framework and scope should be considered.

Comment has been made that there is no evidence that the cost of alternate legal service providers will be less than lawyers. It may again be useful to look at Ontario. The licensing fees for paralegals in Ontario is approximately half of what a lawyer pays (paralegals pay approximately $1,000 per year). Insurance for paralegals in Ontario is considerably less than that of lawyers, given their scope is limited. In terms of hourly rates, the offices of Precision Paralegal Services LLP[2] have paralegals that generally charge $80 per hour (for less than seven years experience) and paralegals that generally charge $95 per hour (for over seven years experience). Further, we understand that paralegals in Ontario also perform flat rate services, as do LDPs in Arizona. Along the same lines are non-lawyer mediators, who charge less than a mediator who is a lawyer. The reality is that if alternate legal service providers charge the same as lawyers, there will be no benefit to the public and this will not assist in addressing the unmet need. Further, it is most likely that a client would choose a lawyer over an alternate legal service provider, if the rates are the same.

We are aware that there is also concern that alternate legal service providers will take work away from lawyers. With respect, we disagree this will take work away from lawyers. The population that would engage alternate legal service providers are the British Columbians who are middle to moderate class; the individuals that cannot afford lawyers but who do not qualify for legal aid. It seems reasonable to expect that British Columbians who can afford to retain lawyers will continue to do so.

The BCPA disagrees with any suggestion to simply abandon the work being done by the Alternate Legal Service Providers Working Group. As indicated in the report dated December 5, 2014 by the Legal Services Regulatory Framework Task Force, "What is unlikely to change over that time, however, is the pressing need in our society to help British Columbians have better access to justice." It appears that many lawyers are critical of the proposed framework and indicate it is broader than other jurisdictions. It has been suggested in other submissions that there be further consideration, consultation and research. It should be noted that the Legal Services Regulatory Framework Task Force consulted with lawyers and other legal service providers in 2014 and sought input as to the areas where there is the greatest need and whether it is desirable to create new classes of legal license that would permit properly

[1] Law Society of Ontario, Paralegal Rules of Conduct, online http://lso.ca
[2] Precision Paralegal Services LLP, online http://www.precisionparalegal.ca

BC PARALEGAL ASSOCIATION
PO Box 75561
RPO Edgemont Village
North Vancouver, BC V7R 4X1

credentialed and regulated service providers to fill those roles. Only 58 responses were received. Given the written submissions posted online and the attendance at the Law Society's Annual General Meeting, lawyers are now engaged in this process. The BCPA hopes that the Law Society will continue with efforts towards alternate legal service providers to define the scope, and not simply abandon the process altogether.

The BCPA was pleased to hear of the introduction of the *Attorney General Statutes Amendment Act, 2018*, into the legislative assembly on November 19, 2018 which includes amendments to the *Legal Profession Act* to expand the types of professionals to be able to provide legal services to the public to include "licensed paralegals", who would be permitted to provide a limited scope of services. We are also aware that at the Annual General Meeting on December 4, 2018, an amended Resolution was passed directing the Benchers to request that the provincial government not pass regulations to bring the licensed paralegal amendments into force until the Benchers have had more time to complete their consultations regarding licensed paralegals and not to authorize licensed paralegals to practice family law under the authority provided in the amendments to the *Legal Profession Act*. Again, the BCPA hopes that the Law Society will consider the previous reports and the conclusions and recommendations made, when considering the Resolution passed at the Annual General Meeting. It is the BCPA's hope that the legislation pertaining to "licensed paralegals" is enacted. The issue of regulation and licensing of paralegals in BC has a long history. Given the access to justice crisis in BC and now that the government has taken the steps with the amendments to the *Legal Profession Act,* it's time to move forward with this.

The BCPA is extremely happy to see that the Law Society is taking steps to be proactive by releasing the Consultation Paper, and to increase access to justice for British Columbians who are currently unable to afford professional legal assistance. The BCPA would like to be involved in establishing the framework for education and regulation as part of a plan for alternate legal service providers.

Not one option alone will solve the access to justice problem in BC. The BCPA's position is that paralegals play a key role in facilitating improved access to justice and being *part* of the solution. Change is not easy and is often resisted, but is a constant in every professional field and law is no different. With proper education and training and regulation, the BCPA believes paralegals wishing to become alternate legal service providers can provide access to affordable, competently delivered legal services in an area of need, while maintaining public interest in the administration of justice.

Respectfully submitted,

BC PARALEGAL ASSOCIATION

Per: MICHELE ROSS
President

BC PARALEGAL ASSOCIATION
PO Box 75561
RPO Edgemont Village
North Vancouver, BC V7R 4X1

Schedule A

Activity in proposed scope of Schedule A to Consultation Paper	Current Paralegal Tasks	Comments
Establish a contractual relationship with a client not represented by a lawyer or with a client who is represented by a lawyer where the client consents	Paralegals have operational carriage of a file and are an integral part of a relationship with a client.	Based on a paralegal's experience dealing with multiple clients, this is a task that can be successfully achieved by a paralegal as an alternate legal service provider.
Conduct client interviews to understand client objectives and obtain relevant facts.	Interviewing clients and fact gathering are tasks performed by paralegals.	A paralegal as an alternate legal service provider can successfully perform this task.
Advise a client about available legal options (including about retainer a lawyer where the matter appears to be beyond the scope of permitted activities)	Based on legal education and experience, paralegals can provide legal information to clients about legal options available. In addition, designated paralegals can also provide legal advice.	A paralegal as an alternate legal service provider can successfully perform this task.
Take instructions to begin legal process, including advising about and deciding on which forms to use and completing forms and organizing service for the client	Paralegals accept instructions from established clients if the supervising lawyer approves before work commences. Paralegals draft pleadings and complete court forms for clients, as well as organize service.	A paralegal as an alternate legal service provider can successfully perform this task.
Communicate with another party's representative, or with another party where unrepresented.	Paralegals often communicate with another party's representative or an unrepresented party under the supervision of a lawyer.	A paralegal as an alternate legal service provider can successfully perform this task.
Advise about the anticipated course of legal proceedings, including where and when the client may need a lawyer to become involved.	Paralegals communicate with clients about the anticipated course of legal proceedings, under the supervision of a lawyer. Given education and experience, paralegals have an understanding of when a lawyer may need to become involved.	A paralegal as an alternate legal service provider can successfully perform this task.

BC PARALEGAL ASSOCIATION
PO Box 75561
RPO Edgemont Village
North Vancouver, BC V7R 4X1

Activity in proposed scope of Schedule A to Consultation Paper	Current Paralegal Tasks	Comments
Attend at mediations within the scope of permitted activities.	Under the scope of designated paralegals, this is a task that designated paralegals can do.	A paralegal as an alternate legal service provider can successfully perform this task.
Act as mediator.	Paralegals and designated paralegals can act as mediators, provided they complete the necessary education and training.	Upon completion of required education and training, a paralegal as an alternate legal service provider can successfully perform of this task.
Prepare orders within the scope of permitted activities.	Paralegals have extensive drafting experience and prepare orders.	A paralegal as an alternate legal service provider can successfully perform this task.
Advise about how agreements or court orders may affect a client's rights and obligations.	Designated paralegals are permitted to give legal advice.	A paralegal as an alternate legal service provider can successfully perform this task.
Refer matters beyond scope of permitted activities to a lawyer.	Paralegals have a solid understanding of when matters need to be referred to a lawyer and currently follow this procedure.	A paralegal as an alternate legal service provider can successfully perform this task.
Accept referrals within scope of permitted activities.	Not applicable	A paralegal as an alternate legal service provider can successfully perform this task.
Represent a client in settlement discussions and prepare settlement agreements and orders incorporating settlement within scope of permitted activities.	Paralegals are involved with settlement discussions and prepare settlement agreements with a lawyer's supervision.	With proper education and training, a paralegal as an alternate legal service could successfully perform this task.
Give and receive undertakings.	Paralegals can offer or accept a lawyer's undertaking with specific instructions about a specific undertaking on a specific file, over which the lawyer is exercising sufficient supervision.	With the proper education and training, a paralegal as an alternate legal service provider could give and receive undertakings.

BC PARALEGAL ASSOCIATION
PO Box 75561
RPO Edgemont Village
North Vancouver, BC V7R 4X1

Activity in proposed scope of Schedule A to Consultation Paper	Current Paralegal Tasks	Comments
Operate a trust account.	Paralegals are not permitted to operate a trust account.	With the proper education and training, a paralegal as an alternate legal service provider could operate a trust account, similar to that of paralegals in Ontario.
Enforce orders.	Paralegals are involved with preparing documents to enforce orders, with a lawyer's supervision.	A paralegal as an alternate legal service provider can successfully perform this task.

We have confidence that paralegals as alternate legal service providers could perform the above noted tasks; however, any of the above that require appearance in court would be outside of the limited scope based on the proposed framework.

From:	BullyFreeBC
To:	Consultation 2018
Subject:	Comment - "Law Society seeks feedback on alternate legal service providers"
Date:	December-31-18 8:46:51 PM
Attachments:	top.letterhead

December 2018

Re: Law Society of BC website > News (11 Sept 2018) > Law Society seeks feedback on alternate legal service providers

Reference - Alternate Legal Service Provider Working Group, *Family Law Legal Service Providers - Consultation Paper*, page 7: "We are seeking your views on what should be the permitted scope of practice for alternate family law legal professionals."

Comment from the BullyFreeBC Society - BFBC
1. Agency mandate
2. Interests represented
3. Scope of the proposal
4. BullyFreeBC response

Closing notes

1. Agency mandate

The BullyFreeBC Society is a member-funded provincially registered non-profit organization. As stated in the Constitution (2011) the purposes of the Society are:
a. to consult with various levels of government regarding anti-bullying legislation;
b. to assist government, companies and non-profit organizations to develop anti-bullying policies;
c. to educate the public about bullying;
d. to conduct research into bullying; and
e. to work with other groups to carry out the above purposes.

2. Interests represented

This submission is intended to represent the interests of those who could foreseeably experience harm as a result of the proposal with particular concern for conflicts of interest and power imbalances that might cause unfairness. The groups potentially affected include:

- people in BC who need and cannot afford a lawyer
- applicants, registrants, and graduates of the proposed LSBC professional accreditation program(s)
- members of the Law Society of BC (LSBC) who will be working with the alternate legal service providers
- service providers outside the licensing system who will not be eligible for LSBC membership

3. Scope of the proposal

The LSBC Consultation paper focuses narrowly on the proposal for a new category of alternate legal service providers.

But there is a larger context in which to consider this innovation. This larger context includes > Bill 57, recently introduced and passed legislation that expands LSBC governance to incorporate licensed paralegals, > the network of self-governing professions in BC, and > the National Occupation Classification (NOC) system that analyzes and categorizes occupations in Canada.

> Bill 57 – Attorney General Statues Amendment Act, 2018, Part 4 – *Legal Profession Act* Amendments
https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/41st-parliament/3rd-session/bills/first-reading/gov57-1

Although the inclusion of paralegals in the Legal Professions Act was a part of a larger bill, this change is the start of a critically important experiment for access to regulated legal services in BC.

According to the Ministry Attorney General: "Amendments to the Legal Profession Act will expand the types of professionals able to provide legal services to the public to include licensed paralegals, who will be permitted to provide a limited scope of services. The amendments will provide authority for the Law Society of British Columbia to make rules establishing the scope of practice for licensed paralegals or classes of licensed paralegals. Licensed paralegals will be governed by the general framework of the Legal Profession Act, and will be regulated by the Law Society of B.C. The amendments will also clarify the rules governing the insurance program that the Law Society of B.C. provides to its members. Both amendments have been requested by the Benchers of the Law Society of British Columbia on behalf of the Law Society of B.C.'s membership."
https://news.gov.bc.ca/releases/2018AG0097-002221

> Self-regulating professions: The Law Society of BC is just one of many self-governing professions in BC. The Canadian Information Centre for International Credentials lists more than 100 regulated professions in BC. Diversification rather than amalgamation appears to be the evolutionary pattern for professions that merit and require self-regulation.
https://www.cicic.ca/935/RepertoireProfessions.aspx?sortcode=2.25.26.27.30.31&cat=1&p=2

Given the purpose of self-regulation, there is also a question as to whether or not lawyers are the best candidates to govern paralegals. Are there no skills and requirements for paralegals that are outside the skills and requirements for lawyers? And why would lawyers be responsible establishing a training and accreditation program for another profession? Does this happen in other occupation groups?

> NOC: "The National Occupational Classification provides a systematic classification structure that categorizes the entire range of occupational activity in Canada. Its detailed occupations are identified and grouped primarily according to the work performed, as determined by the tasks, duties and responsibilities of the occupation."
http://noc.esdc.gc.ca/English/noc/Introduction.aspx?ver=16#F

The classifications for lawyers (4112) and paralegals (4211) are not in the same NOC major group. Paralegals and Notary Publics, however, are in the same major group and these occupations share a classification.
http://noc.esdc.gc.ca/English/noc/Occupations.aspx?val=4&ver=11

This would argue for partnered governance over paralegals and Notary Publics, or possibly combining all legal professions under one framework (similar to the Health Professions Act), or designating each profession as a separate self-regulating entity. However, the NOC occupational assessment and analysis does not indicate that lawyers and paralegals belong together in an exclusive governance pairing.

4. BullyFreeBC response

There appear to be many reasons to review and reconsider the proposal for a new category of alternate legal service provider in BC. It is unclear where this new role would fit in a changing governance landscape, given that the transition of paralegals into the new regime has not yet started.

And as outlined in Bill 57 it will be some time before they have representation on the Board - "SECTION 80: *[Legal Profession Act, transition – elections]* provides that the requirement that the rules require one bencher be elected from the members who are licensed paralegals does not apply until there are at least 30 members who are licensed paralegals."

Adding a third category of alternate legal service provider to LSBC governance in the midst of this upheaval and reorganization seems risky as it is unclear what effect the changes

already underway will have on access to justice, and how these changes in service delivery are to be evaluated.

Additional objections to the proposal have been raised in earlier comments by experts in these matters - family law lawyers. They have pointed out the legal complexity of family situations and the risk of clients suffering real and irreparable harm from bad advice that binds them to an outcome against their best interests. Family law is one of the most challenging areas of law because of the emotion involved and the bitterness and revenge that can occur between spouses, common-law or otherwise.

People involved in service delivery appear to share concerns about allowing non-lawyers to offer representation on family law matters because of these challenges. Some areas of law are fairly straightforward- conveyancing as an example - but family law can forever change a person's life if managed ineffectively.

There is the further problem of potentially devaluing the services offered by lawyers, and putting them in the quandary of how to deal with a junior category of professionals who might be risking the reputation of the LSBC with sub-standard representation efforts. But these failures might be an opportunity for experienced lawyers to achieve easy wins for their own clients. These are new ethical dilemmas that should be avoided.

As well, there is cause to be concerned for the alternate legal service providers. They will be attempting to negotiate and argue on behalf of clients in an adversarial relationship with lawyers who hold professional dominance over them and can potentially cause them trouble if they are not sufficiently agreeable and deferential. This is a power imbalance designed to encourage abuse. And there is potential for conflicts of interest in benchers and lawyers making rules and deciding on discipline for the new legal service providers who will be competitors to LSBC membership and with no representation in governance or oversight.

So in response to the invitation for views on what should be the permitted scope of practice for alternate family law legal service providers, BullyFreeBC advises that the idea of developing this role under governance by the LSBC should be generally reconsidered.

In closing, please note:
This commentary has not undergone legal review. The writer is responsible for any errors or omissions.
Upon email request to info@bullyfreebc.ca, copies can be forwarded for direct access to links.

Thank you to the Law Society of BC for this opportunity to participate in the review process. BullyFreeBC would welcome involvement in any future discussions on access to legal services and access to justice.

****

Diane Rodgers
Project Coordinator & President
BullyFreeBC Society
Website: www.BullyFreeBC.ca
Twitter: @bullyfreebc
Email: info@bullyfreebc.ca

****

From:	Elba Bendo
To:	Consultation 2018
Subject:	West Coast LEAF and Rise Women"s Legal Centre Submissions re ALSPs
Date:	December-31-18 11:09:32 PM
Attachments:	West Coast LEAF - Rise Submissions ALSPs LSBC.pdf ATT00001.htm

---

To Whom it May Concern,

Please accept these submissions on behalf of West Coast LEAF and Rise Women's Legal Centre in response to the Law Society Alternate Legal Service Provider Working Group's request for feedback on a draft model for creating a limited scope license in the area of family law.

31 December 2018

Via e-mail to consultation2018@lsbc.org

The Law Society of British Columbia ("Law Society")
845 Cambie Street
Vancouver, BC
V6B 4Z9

Dear Members of the Law Society Alternate Legal Service Provider Working Group ("Working Group"):

Re: Alternate Legal Service Providers ("ALSP")

Please accept these joint submissions by West Coast Legal Education and Action Fund ("West Coast LEAF") and Rise Women's Legal Centre ("Rise") in response to your request for input regarding the proposal to establish a new class of legal service professionals who would hold a limited scope licence to practice in the area of family law.

Organizational Background

West Coast LEAF is a BC-based feminist legal advocacy organization. Our mandate is to use the law to create an equal and just society for all women and people who experience gender based discrimination. In collaboration with community, we use litigation, law reform, and public legal education to bring about systemic change. We have particular expertise in gender equality and access to justice and have done in-depth research and advocacy for a mixed model of legal service delivery to meet the needs of individuals in BC in the area of family law.

Rise is a community family law legal clinic serving low-income, self-identified women in the Lower Mainland. Rise was founded by West Coast LEAF and the Peter A. Allard School of Law at UBC. Services at Rise are delivered primarily by upper year law students. Rise delivers in-depth training to its students on family law and substantive equality, and seeks to encourage students' professional responsibility to act in the public interest.

Overview

We agree with the Working Group's finding that there is a significant gap between the services offered and those needed in family law and we are encouraged by the Law Society's efforts to improve "access to affordable, competently delivered legal services in an area of need, while maintaining public interest in the administration of justice"[1]. However, we are concerned about the potential of the proposed class of limited

[1] Alternative Legal Service Provider Working Group, *"Family Law Legal Service Providers: Consultation Paper"* The Law Society of BC (September 2018), online: <https://www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/Alternate/Consultation-feedback_2018-12-07.pdf> at 2. ["*Consultation Paper"*]

scope licence practitioners in family law to adversely impact the substantive equality rights of women and all people who experience gender based discrimination.

The aim of our submissions is not to comment on whether the Law Society should move forward with establishing a new class of legal service providers, but rather to outline some possible unintended consequences of the current proposal, suggest alternative approaches, and encourage the Working Group to undertake further research prior to making its final recommendation.

Our apprehensions are three-fold. First, we are concerned that the current proposal entrenches a two-tiered system of service that disproportionately disadvantages women. Second, we feel that further research is required to understand which segments of the population of BC can be expected to benefit from ALSPs before the new class is established. These expectations must be made transparent to the legal profession, ALSPs and to the general public - this is necessary if the Law Society and the public are to judge the success of the ALSP project in meeting the goal of increasing access to justice. Third, in our view, it is crucial that the implementation of this new class of service providers not detract from the Law Society's obligations to advocate for increased legal aid funding, consider alternative approaches to the provision of services by lawyers, and support the development of family law as a field of practice. We detail each of these concerns below.

The creation of a tiered system of legal representation and its impact on gender equality

Though many of the details governing the new class of legal service providers remain to be determined, it seems clear that they will not be able to address all aspects of family law cases and will likely receive less training and supervision than family lawyers. Any disparity in the quality of services that results from this lack of knowledge and mandate will be disproportionately and differently experienced by women and individuals facing gender-based discrimination.

Cuts to legal aid funding in 2002[2] have had a severe, disproportionate, and continuing impact on women whose need for legal representation is overwhelmingly in the areas of family and civil law. Conversely, women are less likely to be able to afford quality legal representation, given that they are often at an economic disadvantage in comparison to their spouses.[3] After the breakdown of a relationship, women, particularly those with dependent children, experience a more significant and long term income drop than men.[4] Women's earnings relative to men's continue to be impacted by pay inequity, the unequal division of household labour and caregiving to dependents, and family violence. Data from the University of Toronto showed that women's median income during the year their marriage dissolved dropped by almost a third, to 71% of its pre-separation level, while men's decreased by only 6%. Four years after separation, women's incomes had still not recovered to the same levels as their ex-partners'.[5]

As a result of these economic inequalities, the ALSP system will likely be disproportionately accessed by women. While access to ALSP's may be a considerable improvement on having no assistance at all, as is

---

[2] Laura Track, "Putting Justice Back on the Map: The Route to Equal and Accessible Family Justice" *West Coast LEAF* (February 2014), online: < http://www.westcoastleaf.org/wp-content/uploads/2014/10/2014-REPORT-Putting-Justice-Back-on-the-Map.pdf> at 12

[3] Marjorie Griffin Cohen, Ivan Limpright, & Ken Peacock, BC Fair Wages Commission Report and Recommendations to the Minister of Labour (British Columbia Fair Wages Commission, 17 January 2018) at 10, 13 & 45.

[4] Research and Statistics Division, Department of Justice, "JustFacts – Economic Consequences of Divorce and Separation" (2016), online: <http://www.justice.gc.ca/eng/rp-pr/fl-lf/divorce/jf-pf/ecds-cfds.html>.

[5] Tahany M. Gadwalls, "Impact of marital dissolution on men's and women's incomes: A longitudinal study" (2008) 50(1) Journal of Divorce and Remarriage 55.

currently the case for many women in BC, it is critical to recognize that this proposal will permanently entrench a two-tiered system of legal service where women are disproportionately receiving assistance from the lower tier.

While a comprehensive training program, including training on family violence, screening for family violence, and knowledge of substantive equality issues impacting family law, may help prepare ALSPs to provide much needed assistance to women, the fact that there will necessarily be limitations on their scope of practice creates substantive equality concerns. Issues of child custody and family violence cannot necessarily be separated from property division, including pension division, since a woman who has experienced family violence is unlikely to be in an equal bargaining power when the parties sit down to divide economic rights and responsibilities. Many women already walk away front their economic entitlements due to fear or lack of representation. While unequal property division after separation is not the only reason for women's economic equality in British Columbia, it is one important contributing factor.

Mobility cases, another category of legal issues currently excluded from the proposed scope of practice for ALSPs, are also significantly gendered. A review of case law in British Columbia since the introduction of the *Family Law Act* demonstrates that the vast majority of mobility cases are brought by women, with well under half of such applications being successful. Some of these cases involve women fleeing violence, but many are brought by women seeking greater educational and economic opportunities. Not only can the decision to deny women the ability to relocate have a serious impact on their safety and economic wellbeing, but the decision to move or stay is inseparable from issues of parenting time and child support.

Even where family violence is not present, a just result may not be achieved where parties have access to different levels of legal assistance. Rise student clinicians, for example, do not appear in Supreme Court, and Rise has witnessed first-hand how this limitation in access to representation leads to asymmetric bargaining power. Regrettably, we find that private counsel will frequently refuse to agree to fair and reasonable property division agreements when they know that the student on the opposing side will be unable to attend court. The fact that these positions have changed drastically in the rare cases where we have been able to obtain qualified counsel for the client, and litigation is realistically "on the table" speaks to the bad faith behind these negotiations. We can extrapolate that there could be a similar impact on bargaining power in any case where a client is represented by an ASLP who does not have the same ability to address issues globally or to litigate as counsel on the opposing side.

We urge the Law Society to seriously consider the systemic impact of a two-tiered legal system, where women are disproportionately accessing service providers in the lower tier, and take active steps to mitigate the adverse impacts of this imbalance including by ensuring training for ALSPs is rigorous, mandatory, and available at a low-cost. Any delineation of scope of practice must be determined through extensive consultation with the Law Foundation and the many family law and anti-violence advocates throughout the province.

The lack of clarity regarding the legal representation needs ALSPs will meet

The Consultation Paper highlights the significant need for affordable family law legal services; however, it does not address the central question of whose needs the ALSPs are intended to meet.

Data from the Washington State Bar Association's Limited License Legal Technicians program indicates that the average rates for Washington-based technicians range from $100 and $150 per hour of

representation.[6] While these fees are lower than those charged by lawyers, this cost is still out of reach for most low and middle income earners; indeed, the Washington program is explicitly intended to meet the access needs for those with incomes between $75,000 and $100,000.[7]

In turn, the income threshold to qualify for legal aid in BC remains at $2,210/month for a single parent of one child[8] which amounts to an annual income of approximately $26,000. Not only is this threshold too low to cover people living below the poverty line, but it is also compounded by the fact that 60% of applicants for legal aid are turned down by the Legal Services Society ("LSS") due to budgetary limitations, with women accounting for 70% of those turned away.[9]

Between increased education costs and the cost of operating a business (especially in the lower mainland), it is unclear how ALSP's could be expected to operate for much less than those involved in the Washington program, while still making a profit. If the BC ASLP program does follow the example of the Washington program, we may well see that those individuals with incomes between $26,000 and $75,000 (which includes the average British Columbian) will remain unable to access legal services, despite significant investment in the new ALSP program.

If the ALSPs can only be expected to serve the next richest segment of the population that currently can't afford lawyers, but are unlikely to be affordable for the average British Columbian, then this mandate needs to be transparent to lawyers, ALSPs, and the general public. Further, the LSBC will need to communicate to all those concerned about how the resources required to start and run this program can be balanced with the need for (creating and advocating for) other innovative solutions that will reach those most in need, including the average British Columbian.

Alternatively, if the new class of professionals is expected to meet the needs of all British Columbians, considerably more detail is required to explain how the ALSP model being proposed will remain affordable to low income earners.

In our submission, it is essential that the Working Group undertake further research to understand how much family lawyers currently charge and earn, and to support the creation of a model which outlines what the Working Group expects ALSPs to charge and who they are expected to serve. This data is necessary in order to measure the ultimate success of the ALSP project, and so that the gaps in access to justice that will almost certainly persist despite the creation of ALSPs can be openly and honestly identified and targeted.

The need for alternative approaches to address the access to justice crisis

While ALSPs can meet some of the demands for legal representation, the project and the proposed amendments to the *Legal Profession Act* must not curtail the Law Society's obligation to advocate for publicly funded legal aid nor absolve lawyers from their duty to ensure that their services are accessible.

---

[6] Mary Juetten, "The Limited License Legal Technician is the Way of the Future of Law" ABA Journal (8 December 2017), online: <http://www.abajournal.com/news/article/the_limited_license_legal_technician_story_start_with_whw>.

[7] *Ibid*.

[8] Legal Services Society, "Do I qualify for Legal Aid" *Legal Services Society* <https://lss.bc.ca/legal_aid/doIQualifyRepresentation.php>.

[9] Mark Benton, "Legal Aid BC Update" *Legal Services Society* (December 2017), online: <https://lss.bc.ca/assets/media/legalAidUpdates/legalAidBCupdateDec2017.pdf> at 1.

In fact, much room remains for the Law Society to encourage an "inward looking" approach to legal services, providing support for lawyers to undertake more pro bono and low bono work, and fostering collaboration among lawyers and supervised paralegals, advocates, and students. Such an approach could result in the reinvigoration of the legal profession's ethical obligations to promote access to justice, and more broadly, act in the public interest.

We note that the Legal Aid Task Force found in its 2017 report, *A Vision for Publicly Funded Legal Aid in British Columbia, ("Legal Aid Vision Report*"), the Law Society has remained silent on key matters regarding legal aid for almost 15 years despite its public interest mandate set out in section 3 of the *Legal Profession Act.*[10] In producing that report, the Task Force heard from 854 lawyers in BC regarding the economics of practicing legal aid. Those lawyers reported that hourly tariffs of $150 would likely allow them to break even on a legal aid retainer and that amendments to administrative requirements by the LSS and continued professional development programs could facilitate their ability to take on cases at these rates.[11] This survey was aimed at understanding the economics of participating in legal aid, nevertheless, the findings pose some important questions that have been left unanswered by the Consultation Paper, primarily whether lawyers can be supported and systems can be put in place for lawyers to provide fees akin to those that will be provided by ALSPs.

Conclusion

While we welcome the Law Society's efforts to address the access to justice crisis in family law, we are concerned about the unintended consequences the proposed amendments could have on gender equality. ALSPs must receive rigorous training, have the ability to provide the type and quality of legal support needed by all individuals including women, and be able to charge hourly rates that are financially accessible. We recommend that further research and consultation be undertaken to determine the details of the new proposed class of service providers including training, scope of practice, and projected hourly rates.

Lastly, we respectfully note that the Law Society has an obligation to support the advancement of family law as a field.[12] In *Beyond Wise Words*, the Family Justice Working Group referred to family law as the "poor cousin" in the justice system finding that family law is regarded as an undesirable area of practice by many law students and emerging lawyers having "lost its place in most Canadian law schools".[13] It has long been recognized that the low status of family law is, in part, attributed to the gendered way in which the legal system devalues family law matters as being private matters that are outside the scope of 'real law'.[14]

The choice to move forward with family law as the first area of practice to be expanded to a new class of practitioners makes sense given the great need for legal representation. However, the decision in and of

---

[10] *Ibid* at para 63.

[11] *Law Society of British Columbia* (3 March 2017), online: <https://www.lawsociety.bc.ca/Website/media/Shared/docs/publications/reports/LegalAidVision2017.pdf> at 25. [Note that this was the average hourly rate for a sole practitioner to break even. The report assesses the general average rate to be closer to $175.]

[12] Family Justice Working Group, "Meaningful Change for Family Justice: Beyond Wise Words" *Action Committee on Access to Justice in Civil and Family Matters* (April 2013), online: <https://www.cfcj-fcjc.org/sites/default/files/docs/2013/Report%20of%20the%20Family%20Law%20WG%20Meaningful%20Change%20April%202013.pdf> at recommendation 4. ["*Beyond Wise Words"*]

[13] *Ibid* at 13.

[14] Mary Jane Mossman, "Gender Equality, Family Law and Access to Justice" (1994) 8.3 International Journal of Law and Family 357 at 19.

itself has the potential to contribute to the devaluing and gendering of the field of family law. If the Law Society is to move forward with the introduction of a new class of legal service providers in the area of family law, it must recognize this potential consequence and assess what it can do to counteract it including encouraging public resources, research, continued legal education, and advocacy in the area of family law.

Sincerely,

Elba Bendo, Director of Law Reform
lawreform@westcoastleaf.org

WEST COAST LEAF

Rise WOMEN'S LEGAL CENTRE