



Submission on the Law Society of Ontario's (LSO) Report on Family Legal Services Provider Licence

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Introduction

The OBA makes this submission in response to the Law Society of Ontario's (LSO) Report on Family Legal Services Provider (FLSP) Licence ("Report") and its recommended model for the FLSP Licence ("Recommended Model").

The Ontario Bar Association (OBA)

The OBA is the largest volunteer lawyer association in Ontario, with close to 16,000 members, practicing in every area of law in every region of the province. We provide updates and education on every area of the law to combined audiences of 20,000 lawyers annually. The members of our 40 practice sections include leading experts in their field who provide practical advice to government to ensure the economy and the justice sector work effectively and efficiently to support access to high-quality justice for Ontarians.

This submission was prepared by members of the OBA Family Law Section who represent a wide range of clients within the family justice system, both in litigation and various alternative dispute resolution processes. They have significant expertise in provincial and federal family law legislation, case law, and applicable court rules across the full spectrum of family law issues.

Executive Summary

The OBA acknowledges the LSO's attempt at addressing some of the concerns regarding the scope of practice in recommending this model. The OBA maintains that the concerns initially brought forward in response to the proposed FLSP Licence have not been alleviated with the Recommended Model. The LSO Recommended Model continues to be far too broad in scope given the complexity of family law issues in many cases. In general, the OBA reiterates that it does not support the creation of a separate FLSP Licence as being a viable access to justice solution that can adequately protect the public. Furthermore, the Report raises questions regarding the financial and practical viability of the proposed FLSP Licence, jeopardizing its goal of providing access to legal services for those of modest means.



In its 2020 submission to the LSO,¹ the OBA outlined in detail several fundamental problems with the proposed FLSP Licence and why it was not a viable access to justice solution. In summary, the concerns were as follows:

1. It fails to reconcile the fact that family law matters cannot be reliably identified as “simple” or “complex” at the outset. Family law legal issues can evolve and quickly become complex, making initial categorization of the “issues” virtually impossible in many instances. Furthermore, the complexity of a family law matter is unrelated to the means of the client;
2. It does not provide a workable proposal for lawyers, paralegals and the public to distinguish between in- and out-of-scope activities and by extension, how litigants will know how to distinguish in-and out-of-scope activities;
3. It necessitates such robust training and education that its ability to deliver a competent professional that can provide legal services in a more cost-conscious manner is brought into serious question; and
4. It perpetuates a distracting discussion and directs investment away from other meaningful access to justice projects and initiatives.

After reviewing the Report, in addition to the above concerns, the OBA remains concerned about the viability of the FLSP Licence for the following reasons:

1. The Report does not adequately address the access to justice concerns identified in the Report;
2. Multiple assumptions in the Report give rise to serious questions that the program could ever be financially viable; and

¹ [Submission on the Law Society of Ontario's Consultation on Family Legal Services Provider Licence](#) (November 30, 2020)



3. The practicalities of importing FLSP Licence holders into the family law legal sphere have not been fully considered: for example, necessary changes to the Family Law Rules and forms, and the practicalities of maintaining a family law practice.

Access to Justice Not Adequately Addressed

The Report states that “the (FLSP) licence should address areas of unmet legal needs in family law and have an impact on the challenges of access to justice.

There is an assumption that paralegals will offer more affordable services than lawyers but the Report has not provided any additional information to support this assumption. The Report acknowledges the lack of information on the availability and cost of insurance for potential FLSP Licence holders. Since paralegals would be permitted to take on matters involving matrimonial homes under the Recommended Model, it is more than likely that there would be significant insurance required of paralegals to protect the public. With increased insurance costs and other known costs of running a family law practice, there is no evidence that FLSP Licensees will charge their clients less than some lawyers already offer for their services.

The OBA’s 2020 submission outlined numerous ongoing lawyer-led initiatives aimed at increasing access to lawyer services for those of modest means.² The LSO does not consider these initiatives and their role in increasing access to justice for the middle class.

The LSO has not demonstrated how the proposed FLSP Licence will address unmet legal needs or explained why the ongoing lawyer-led initiatives have not been considered as contributing to this goal.

² [Submission on the Law Society of Ontario’s Consultation on Family Legal Services Provider Licence](#), Appendix B (November 30, 2020) – some examples of ongoing access to justice initiatives listed include alternative billing models and rates (limited scope retainers, flat fees, sliding scale), legal coaching, the [Family Law Limited Scope Services Project](#), [Advice and Settlement Counsel Project](#), [Justicenet](#), pro bono initiatives such as [Pro Bono Ontario](#) and the [Family Justice Centre](#), and free clinics through not-for-profit organizations such as [Women’s Centre of Halton](#) and [Luke’s Place](#)



Financial Considerations

In the Report, the LSO admits that the costs of the program may exceed the money currently set aside. If more funds are required, the LSO would seek to use contingency funds to fund the shortfall.³ The Report also suggests that lawyers' annual fees could be increased to fund the program. The OBA is concerned that such a fee hike would disproportionately impact those lawyers who are currently offering the most affordable legal services across all practice areas, thereby impacting their ability to positively address access to justice issues across the spectrum.

The Report also states that education providers estimated that tuition for the proposed FLSP would be from \$3,630 to \$8,160.⁴ The Report's own Educational Advisor's opinion was that a program of this nature would cost \$4,000 - \$5,000⁵. However, the Report states that only 2% of law clerks or paralegals would pay tuition greater than \$5,000 and only 4% of paralegals (or 40-80 total individuals) would pay \$2,501 - \$4,000.⁶ This does not factor in any additional costs that might be incurred in the course of pursuing this additional education or lost opportunity for income that would factor into a paralegal's decision to pursue the program.

Similarly, the proposed length of a full-time program ranged from 5.5 months to one year, plus field placement and 1-2 years for part-time studies from education providers. The LSO's Educational Advisor recommended a 28-week (two 14-week semesters or approximately 6.5 months) college graduate certificate program model plus field placement.⁷ However, the Report also states only 32% of paralegals would be interested in a training program that was 6 to 12 months and 12% in a 1-2 year program.⁸

While there appears to be general interest from paralegals in the FLSP Licence, there also appears to be a disconnect between the proposed time and financial costs and what paralegals are willing to

³ LSO Report on Family Legal Services Licence, p.53 & 54 – the LSO has set aside \$555,000 but estimates it will cost between \$550,000 and \$800,000

⁴ Report, p.19

⁵ Report, p.20

⁶ Report, p.25

⁷ Report, p.19

⁸ Report, p.25



expend for such a program. There is no data to suggest that paralegals would be prepared to engage in a longer program if its scope of practice was broader as has been suggested in the Report. The LSO has suggested a narrower scope of practice with a shorter training requirement but there is no evidence the paralegals would be interested in such a limited scope of practice. There is a real risk that the FLSP Licence in any form will not attract the numbers needed to be financially sustainable.

The LSO has had the benefit of the expertise of stakeholders in the family law system, education providers and an Education Advisor regarding the appropriate education model for the Recommended Model. To dilute it further against this expertise to increase the viability of the FLSP Licence would contradict the LSO's obligations to the public. The FLSP Licence holder's business model should not be the driving force behind the LSO's decision making on what is considered competent service. The LSO's goal to increase access to legal services is laudable but the objective must be to support "access" without compromising the quality of "justice."

More analysis is needed to ensure that any FLSP Licencing program would be financially sustainable to LSO.

Practice Considerations

The LSO has not involved all the necessary institutions and stakeholders it would take to build a successful FLSP Licencing system. Although a great deal of effort has been put into the necessary training requirements, what is not clear is whether the necessary systemic changes will be made for the FLSP Licence to be viable.

The scope of who is permitted to represent parties in a family law proceeding is defined by the Family Law Rules.⁹ There is no indication that the Family Law Rules Committee is prepared to amend the rules to allow for FLSP Licence holders to represent parties in proceedings. Similarly,

⁹ [Family Law Rules](#), Rule 4.(0.1) defines "limited scope retainer" as "the provision of legal services by a lawyer for part, but not all, of a party's case by agreement between the lawyer and the party". Rule 4(1) outlines that a party may, a) act in person; b) be represented by a lawyer; c) be represented by a person who is not a lawyer, but only if the court gives permission in advance."



there is no indication that the judiciary is prepared to grant permission to non-lawyers to represent parties in family law proceedings. On the contrary, the judiciary has made statements that do not support a FLSP Licence.¹⁰ There has also been no consideration as to what forms would need to be amended or what other procedural issues would need to be clarified to account for FLSP Licence holders of any model.

Similar issues arose when unbundling of services was proposed. Ultimately, the LSO rule change on its own did not allow for success. It was necessary to engage the Family Law Rules Committee, courts and others in order to build a successful and viable plan.

The LSO, in partnership with the Superior Court of Justice (SCJ) and the Ontario Court of Justice (OCJ), has recently launched the Family Law Rights of Appearance Pilot project (FLRA Pilot) allowing lawyer licensing candidates to appear in certain family law matters without requiring permission from the court.¹¹ In their updated Practice Directions, the SCJ and OCJ explicitly state that the FLRA Pilot's goal is "to help facilitate the delivery of affordable family law services."¹² Other lawyer-driven initiatives, such as the Family Law Limited Scope Services Project, have also been endorsed as ways to address the challenge of access to affordable legal services.¹³

Without full cooperation from the courts, the Family Law Rules committee and other stakeholders, the model as proposed or any FLSP Licence is not viable.

Proposed Alternative

We reiterate that the answer to the access to justice problem is not to expand the unsupervised delivery of legal services to additional providers in any capacity but rather, to do the following:

¹⁰ Toronto Star, [Paralegals in family courts 'not the solution,' Toronto judge says](#) (March 14, 2017)

¹¹ [LSO, Lawyer Licensing Process, Rights of Appearance](#)

¹² Superior Court of Justice, [Province-wide Notice to the Profession Regarding Family Law Cases](#) (amended January 10, 2022); Ontario Court of Justice, [COVID-19: Scheduling of Family Matters in the Ontario Court of Justice](#) (January 4, 2022)

¹³ Law Times, [LSO, courts launch Family Law Rights of Appearance Pilot Project to assist A2J](#) (January 4, 2022)



1. Simplify and streamline the family justice system, as detailed in our 2020 submission.¹⁴
2. Encourage alternative dispute resolution processes where appropriate;
3. Support and enhance the numerous access to justice initiatives already under way which assist the public in obtaining the legal advice they need from lawyers; and
4. Support and enhance the variety of community resources, services and supports available from appropriate professionals and organizations.

Conclusion

The OBA has been and will continue to consistently be a champion of access to justice and substantive initiatives that support the public's right to access to justice in a meaningful way. It is a central interest for the OBA's members and the public we serve. The OBA's position is that the FLSP Licence in the currently proposed forms is not in the public interest and does not increase the public's right to access to justice. The OBA believes it is imperative that the LSO look to enhance the existing alternatives mentioned above and in the OBA's 2020 submission.

If there are further LSO motions brought or amendments made, we seek the appropriate time to respond, and therefore ask that no vote happen on newer motions or amendments that do not comply with the 20 day filing deadline.

The OBA will continue to volunteer its expertise in the area of family law in order to enhance and improve ongoing access to justice in Ontario.

¹⁴ [Submission on the Law Society of Ontario's Consultation on Family Legal Services Provider Licence](#), p. 15