



40 Dundas Street West, Suite 200, Toronto ON M5G 2H1
40, rue Dundas Ouest, bureau 200, Toronto ON M5G 2H1

Toll free / Sans frais : 1-800-668-8258

Phone / Téléphone : 416-204-5391

Fax / Télécopieur : 416-979-2948

www.legalaid.on.ca

May 1, 2017

Family Legal Services Review
Ministry of the Attorney General
720 Bay Street, 7th Floor
Toronto ON M7A 2S9

Sent via email to: commentsflsr@lsuc.on.ca

Re: Legal Aid Ontario Feedback on Family Legal Services Review

Thank you for giving Legal Aid Ontario (LAO) the opportunity to provide feedback regarding the report of the Family Legal Services Review submitted by Justice Annemarie Bonkalo to the Attorney General of Ontario and the Treasurer of the Law Society of Upper Canada (LSUC) on December 31, 2016.

LAO is Ontario's largest provider of family legal services. Each year, thousands of low-income people rely on LAO for family law information, advice, and representation. In carrying out its mandate, LAO is actively engaged in the design and delivery of innovative and responsive family legal services. LAO is pleased to share its experience and its views on this important family law report.

Recommendations 4 to 16: Paralegals

As discussed in response to the Family Legal Services Review's consultation paper *Expanding Legal Services Options for Ontario Families*, LAO believes that with the proper safeguards and an appropriate framework in place, persons other than lawyers, such as paralegals, are capable of providing, and should be permitted to provide, some legal services in certain family law matters. LAO's submission is available at: <http://legalaid.on.ca/en/publications/submission-Family-Legal-Services-Review-2016-04.asp>

Recommendations 17 to 19: Law Students

Experiential Education

LAO strongly supports Justice Bonkalo's comments and recommendations regarding law students in family court. Through its articling programs, summer student programs, Law Practice Program placements, and partnership with Student Legal Aid Services Societies (SLASSs) and Pro Bono Students Canada's Family Law Project (FLP), LAO has been a leader in the design and delivery of innovative legal services through student programming for years. LAO has witnessed the immense benefit to the development and education of the students themselves, as well as to the family justice system, that these programs provide

LAO echoes the concerns expressed by Justice Bonkalo about the current intensive supervision model required in the LSUC By-Laws for the provision of family law services by students. While intensive supervision is important to the learning process, there exist a range of situations in which direct, contemporaneous supervision is unnecessary. In LAO's experience, law students have proven themselves to be dedicated, intelligent, and committed to advancing access to justice in family law. In many situations, including some in-court matters, they are ready to provide service without the direct accompaniment of the supervising lawyer. Further, continuous supervision defeats the goal of fostering access to justice: if a lawyer must be physically present at all times when a student is providing representation, the client and the family justice system are no better resourced than if the lawyer was doing the work him or herself.

LAO calls on the LSUC to review the requirement that law students be directly supervised at all times, and consider a range of situations, up to and including some court appearances, in which a student can act without contemporaneous supervision. Such a review would allow law student programming to meaningfully address unmet legal need and access to justice in family law.

LAO supports Justice Bonkalo's comments regarding Rule 4 requests for permission – students should be presumptively allowed to appear in court, unless a judge states otherwise. LAO recommends that a presumptive right to appear should apply at the Ontario Court of Justice, Superior Court of Justice and across different regions.

SLASSs and the FLP

Justice Bonkalo recommends that MAG, LAO, law schools, and the family justice community as a whole ensure continued funding for SLASSs and the FLP so as to safeguard their continued operation and foster their expansion. Such an expansion could include:

- More paid SLASS and FLP supervisory lawyers, allowing for a greater complement of students
- New sites in currently unserved or underserved areas
- Expanded coverage by subject matter (divorce, spousal support, etc)
- Law Practice Program (LPP) placements at LAO courthouse offices
- More representation by students, and
- Legal coaching by students.

LAO has partnered with PBSC to fund and deliver the FLP since 1997. Through this ground-breaking program, LAO provides up to 100 Ontario law students each year with supervised volunteer placements in eight courthouses throughout Ontario.

In 2014, the provincial government provided LAO with three years of dedicated funding for family law services. LAO allocated \$2 million of this funding to Ontario's (then) six SLASSs, enabling them to provide family law services to low-income clients. Through these services, students were able to gain valuable experience and reduce unmet legal need by assisting with summary advice, negotiation, document preparation, and representation at mediation and in court, where possible. LAO was pleased to receive extended provincial funding for family SLASS services through to March 2017. Unfortunately, this funding has now ended.

Like Justice Bonkalo, LAO was, and continues to be, impressed with the calibre of service provided by law students, as well as their commitment to access to justice in family law. LAO's expanded student programming has been widely well received by students, courts, and clients alike. Justice Bonkalo's above-mentioned ideas for expansion of SLASS and FLP services are practical, innovative, and much needed.

LAO's funding of family law SLASS services came entirely from the provincial government's three year family law funding. With the conclusion of this funding, LAO is regrettably unable to provide further financial support for extended family SLASS services. There is no question regarding the value of these services; like Justice

Bonkalo, LAO hopes the Review provides an impetus to family justice stakeholders to find ways to continue to fund these services, which are crucial to meeting unmet need in family law.

Other Recommendations

Recommendation 14 – Assistance with Forms

As discussed in our response to the consultation paper, LAO employs many Legal Aid Workers (LAWs) in family law to, among other things, assist clients with completion of their court forms under the supervision of a lawyer. Document preparation services are also provided by articling and summer students, and law students at the FLP. Currently, there is no space on the Family Law Rules forms to identify a person who prepared the document, other than identification of a lawyer of record (on the first page of most forms) or a commissioner (sworn documents only). A space for identification of the person who assisted the client with the forms would give the court a better idea of what assistance the client received, and bring the forms into step with today's family law service delivery.

Public Legal Education Material

Justice Bonkalo calls on MAG to update existing public legal education material to make it more user friendly. LAO supports this recommendation. Online resources in particular should be current, accessible, and relevant to an audience of family litigants. The Family Law Information Program (the online version of the Mandatory Information Program) is currently hosted at LAO, and LAO recommends that steps be taken to ensure that the FLIP be accepted for the purposes of obtaining a MIP certificate of completion, as was intended when these two programs were established.

Thank you for the opportunity to provide feedback on these important topics in family law. In particular, LAO would like to thank Justice Annemarie Bonkalo and the Family Legal Services Review team for their hard work and dedication in compiling an insightful paper full of frank and thoughtful recommendations. Should you have any questions or wish to discuss further, please let us know.

Sincerely,

David McKillop
Vice President
Policy, Research & External Relations
Legal Aid Ontario