

## **COMMENTS ON THE LAW SOCIETY OF ONTARIO'S FAMILY LEGAL SERVICES PROVIDER LICENCE CONSULTATION PAPER**

**Prepared by Luke's Place Support and Resource Centre  
for the Feminist Law and Policy Reform Coalition**

**Endorsed by:**

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Woman Abuse Council of Toronto (WomanACT), Toronto, ON  
Women's Advocacy Council, Barrie, ON  
Women's Health in Women's Hands Community Health Centre, Toronto, ON  
Women's Legal Education & Action Fund (LEAF), Toronto, ON  
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## **Who we are**

Luke's Place Support and Resource Centre provides frontline services to women in Durham Region who are leaving abusive relationships and are involved with family law/court, and engages in research, training, education and system reform advocacy at the community, provincial and national levels. For more information: <https://lukesplace.ca/>

In 2020, we established the Feminist Law and Policy Reform Coalition to advance women's equality, eliminate all forms of gender-based violence and improve system responses to gender-based violence through engagement with all levels of government, the community, the media, the family and criminal law systems, police services, child protection services, immigration and refugee authorities and others to raise and advocate for systemic changes to laws, policies and services.

## **Setting the context of family violence**

We share the Law Society of Ontario's (LSO) concerns about both the rate and impact of unrepresented parties on access to justice for those who turn to the family courts for assistance.

Approximately 70% of the women we work with do not have a lawyer. There is no access to justice for women fleeing abuse in this situation.

Most women continue to be subjected to ongoing abuse even after they leave their partner. Indeed, according to Ontario's Domestic Violence Death Review Committee, a woman is at greatest risk of being killed by her partner from the moment he perceives she is planning to leave him, continuing on for at least several months after separation. This, of course, is the very time families often become involved with the family law system.

Many women are traumatized as a result of past and ongoing abuse, which makes navigating their family court case extremely difficult, even if they have a lawyer and almost impossible if they don't.

In addition to the family law issues any separating couple must deal with – parenting arrangements and financial and property issues – women leaving an abusive relationship must also take steps to keep themselves and their children safe. This can involve seeking a restraining order or an order for exclusive possession of the matrimonial home, becoming involved with the police and criminal court and bringing *ex parte* motions; all of which can be complicated.

It is common for abusive men to engage in legal bullying; using the family law proceedings to intimidate, harass and manipulate their former partner in an attempt to wear her down, get her to concede to outcomes the abuser wants or, in some cases, to return to him.

When the abuser is also unrepresented – or when he chooses to self-represent – he has even greater access to his former partner; access he uses to bully and intimidate her.

All of this leads to situations where the safety of women and children is compromised in terms of both court process and court outcomes; some of which can be mitigated when the woman has strong legal representation.

Our comments on the Consultation Paper are informed by this perspective.

### **Access to justice**

We support the three guiding principles informing the development of this consultation paper: access to justice, public protection and viability. However, while we do not oppose the licensing of Family Legal Service Providers (FLSPs) and, as we comment below, see a role for them within the family law system, we are not convinced this will fully address these principles.

Access to justice, in particular, is a complex problem; one that will not be solved – and, in fact, might be exacerbated – by the licensing of FLSPs as presently proposed by the LSO.

As Julie Mathews and David Wiseman write in *Community Justice Help: Advancing Community-Based Access to Justice*:

“Access to justice exists when people can pursue their goals and address their law-related problems in ways that are consistent with fair legal standards and processes; and can obtain, understand, and act on information and services related to the law, where necessary, to achieve just outcomes.”<sup>1</sup>

This will take more than licensing of paralegals.

We understand true access to justice to mean that all members of the community, no matter their status, have access to quality legal representation from highly trained practitioners when they need it. This requires innovation and investment.

We are concerned that the current proposal could create a three-tiered legal system in family law: those with lawyers, those with paralegals and those with neither. Those who will be most disadvantaged in this system are those who have historically been marginalized and disadvantaged: women, new immigrants and those who are Francophone, Black, Indigenous, racialized and People of Colour.

To increase access to justice for women leaving abusive relationships requires a nuanced and multi-faceted approach. The LSO must work with appropriate stakeholders to develop and implement a comprehensive overhaul of the family law/court system, including but not limited to:

- Increased access to legal aid certificates and legal aid clinics focusing on family law;
- Support for lawyers by reducing law society fees and insurance premiums (currently totaling approximately \$5,000.00 annually) and support new lawyers by providing them with exemptions from LSO fees to reduce their overhead;
- Reduction in red tape involved in running a legal practice;
- Steps taken to reduce legal costs for those who have lawyers;
- Making family law procedure accessible to unrepresented parties by eliminating redundancies in the Family Law Rules and discontinuing the use of Regional Practice Directions;

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<sup>1</sup> Mathews, Julie and David Wiseman. *Community Justice Help: Advancing Community-Based Access to Justice*. Community Legal Education Ontario, June 2020.

- The creation of a centralized database of newly called lawyers who charge reduced fees and a centralized network of lawyers who will provide low-bono and pro-bono services;
- Requiring all family law lawyers to engage in education/training about the dynamics of family violence in the family law context. (Indeed, this should be mandated for all law students.);
- Further research in other jurisdictions to learn whether licensing paralegals to provide family law services has increased access to justice;
- Investigating how people who cannot afford a lawyer will be able to pay for the services of a FLSP. Will LAO fund certificates? Will the financial and legal eligibility requirements be different? If LAO funds certificates for paralegal services in family law, will that mean a reduction or end to certificates for lawyers in those areas? We would not support any such outcome;
- Adequate support for Legal Aid Ontario so all those who cannot afford a lawyer and who have serious family law issues can receive a certificate to allow them to hire a lawyer;
- Increased support for programs like Ontario's Family Court Support Worker Program to ensure that women fleeing abuse have the additional, specialized supports they require as they move through the family court process;
- Enabling and supporting community justice help (for example, Family Court Support Workers) who could provide some family law legal services<sup>2</sup>
- Increased support for legal coaching and unbundled legal services.

### **Scope of Practice**

We believe the scope of practice as proposed is too broad.

We propose that FLSPs be authorized to provide:

- Legal information
- Drafting of some legal documents
- Administrative court appearances
- Legal coaching with respect to court rules, procedures and protocols
- Legal services to parties post final order or agreement where there has been a lack of compliance by the other party

These services could be offered in the following areas of family law:

- Uncontested divorces
- Child and spousal support
- Contempt/enforcement of orders
- Separation agreements, paternity agreements, family arbitration agreements as long as the client obtains ILA from a lawyer
- Change of name applications
- Division of property, as long as there is only one home, there are no equitable or trust claims and the claim is not for an unequal division of property

We do not support FLSPs providing services related to parenting orders and decision making, restraining orders or orders for exclusive possession of the matrimonial home.

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<sup>2</sup> For more details see Mathews and Wiseman paper, above

We do not disagree with the list of excluded activities as set out at pages 7/8 of the Consultation Paper. However, we note that, especially in cases involving family violence, it may be difficult at the outset to accurately identify when an issue may overlap with an area that is out of scope. For example, it is common for abusers to play one family law issue off against another: promising not to fight for parenting time or decision-making responsibility if the woman agrees to accept a reduced level of spousal support or not to make a claim for a division of family property. Further, family law issues often overlap with criminal and child protection proceedings, which complicates the legal issues in each area.

For survivors of family violence, post-separation parenting issues are the most complex, nuanced and emotional issues they face. These issues and how the family court responds to them can lead to fatal outcomes for women and children. Further, these matters often cross paths with criminal and immigration law, and can involve interjurisdictional, relocation and child protection issues. Safety concerns, both during and after the family court process are common and serious.

Excluding cases involving family violence from the scope of practice for FLSPs might, at first glance, appear to be a solution to the challenges identified above. However, we strongly recommend against such an approach for two reasons. Many women do not identify the presence of family violence until well into their family law case, which would make it difficult for the FLSP to know whether or not this issue might be disclosed or arise in the future. In addition, if family violence cases are excluded from the scope of practice for FLSPs, women might intentionally withhold this information in order to be able to retain one.

We are concerned the present model creates situations in which a client could start a case with a paralegal, but then find the paralegal unable to act for them at a later stage of the proceedings. For example, in addition to the situation discussed above where family violence is not immediately apparent:

- A paralegal starts what appears to be a custody case but the respondent raises complex property claims
- After starting a domestic family case, CAS issues arise
- A case that appears heading to resolution proceeds to trial

With respect to the specific questions posed by the LSO:

- We do not believe there is reliable research to conclude that licensing FLSPs will increase access to affordable, competent family law legal services. Paying for an FLSP will be as prohibitive for some people as paying for a lawyer. As we will discuss further below, the proposed training for FLSPs is inadequate in the area of family violence.
- We do not take a position about whether the proposed scope will enable FLSPs to develop a viable business model. While we understand the importance of this principle, we feel the focus of the LSO at this time should be directed at the impact of licensing FLSPs on litigants. Once a model has been constructed to address that, it will be time to consider business viability concerns.

### **Competencies**

The Consultation Paper, in Appendix C, sets out 209 competencies for FLSPs, spread across eight areas. One of these – substantive family law – contains a subsection titled “Victims of

Domestic Abuse and Intimate Partner Violence,” but there is no further reference to family violence anywhere in the 209 competencies.

We recommend strongly that family violence be profiled more specifically throughout all eight competency areas. For example, there are family violence issues that relate to:

- Ethics and professional responsibility (eg, duty to report, representing a traumatized client)
- Knowledge of the law (overlapping issues with child protection and criminal law)
- Problem, issue identification, analysis and assessment (screening for family violence, risk assessment, safety planning)
- ADR (not always appropriate in cases involving family violence, safety planning)
- Litigation process (safety issues that can arise during litigation)
- Practice management issues (managing an abuser on the other side, trauma informed interviewing)
- Prohibitions

Indeed, given the prevalence of family violence in family court files, perhaps a ninth competency area should be established that speaks specifically to this issue.

With respect to the specific questions posed by the LSO:

- As discussed above, we do not believe the proposed competencies will ensure the appropriate level of competence to deliver family legal services to survivors of family violence.
- We support a more restricted scope of activities, as we have set out above.

### **Education requirements**

We have significant concerns about the education requirements and the RFI as set out in the Consultation Paper.

Education about family violence is critical – not just for FLSPs but for all legal advisors who can potentially find themselves representing either a survivor or perpetrator of abuse within their family. Education and training for lawyers, mediators, court clerks and other players in the family law system is inadequate at the present time.

The present process to consider FLSP licensing is an ideal opportunity for the LSO to enhance its family violence education and training opportunities for lawyers.

Creating a strong education component for FLSPs, including an articling-like component, would be a way for the LSO to make a commitment to leading the way to increase education and training for all family law/court professionals. The field work (aka “articling”) could take place in a family law office, a community legal clinic or a women’s legal clinic, as long as the FLSP would be exposed to family violence cases in the course of their placement.

We propose that further consultation and discussion about both prior work experience and the articling component of FLSP family law education be undertaken by the LSO with stakeholders as these discussions continue.

The present allocation of 20 hours for “Intimate Partner Violence” (IPV) out of a total of 550 instructional hours is woefully inadequate, unless the goal is simply to equip paralegals to screen for domestic violence and then refer those individuals out.

However the overall educational training program is assigned, the IPV component must be developed and taught by IPV experts, whether or not they are part of the faculty of institutions offering the overall program. These experts should have expertise in family law and intimate partner violence, be experienced curriculum developers for both online and in-person teaching, have experience with online and in-person training and use an intersectional feminist framework that includes the expertise of the lived experiences of survivors of IPV as the basis for the curriculum.

Based on our extensive experience training lawyers as well as community workers, we have many ideas for curriculum content related to IPV that we would like to share with the LSO as this process moves along.

With respect to the specific question posed by the LSO:

- As we have discussed above, we do not believe the proposed training program provides sufficient attention to IPV
- In addition to the instructional hours, a field placement that ensures some exposure to IPV cases should be mandatory
- FLSPs should be subject to mandatory continuing professional development (CPD), including CPD that examines IPV-related issues

### **Recommendations**

Rather than moving in the singular direction of FLSP licensing, we encourage the LSO to engage in robust and expansive consultations and collaborations with appropriate stakeholders to develop and implement a comprehensive overhaul of the family law/court system that would include:

- Enabling and supporting community justice help (eg Family Court Support Workers) to provide some family law legal services
- Changes to family law process to make it more accessible to all
- Financial and other supports for lawyers to allow them to offer more low and pro bono services
- Increased access to legal aid services; in particular, to legal aid certificates for lawyers for family law cases
- Mandatory family violence training for all family law lawyers
- Further research to determine whether licensing paralegals to provide family law services actually increases access to justice.

### **Conclusion**

As we noted at the beginning of this submission, we share the LSO’s concerns about both the rate and impact of unrepresented parties on access to justice for those who turn to the family courts for assistance.

However, as our comments indicate, we are not persuaded that the present proposal will address those concerns and, in fact, believe such an approach may exacerbate them.



We urge the LSO to ensure a clear focus on the implications of FLSP licensing for survivors of family violence and to work with organizations, like those that have signed this submission, who have important expertise to share.

We welcome the opportunity to collaborate on any endeavours to increase access to justice for this very vulnerable population.