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May 4, 2016

To the Attention of
The Honourable Justice Annemarie E. Bonkalo
Family Legal Services Review
Ministry of the Attorney General
720 Bay Street, 7th Floor
Toronto, ON
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RE: The County of Carleton Law Association Response to the Consultation to “Expand Legal Service Options for Families”

This submission is made on behalf of the County of Carleton Law Association (CCLA). The CCLA was formed in Ottawa in 1888 by a group of 60 lawyers, and is now the second largest law association in Ontario, representing over 1700 lawyers in the Ottawa and East Region legal community.

The CCLA is a member of the Federation of Ontario Law Associations, and supports the submissions made by the Federation. The CCLA wishes to add the following submissions to highlight particular areas of concern.

Family Law requires Expertise

1. Family law is increasingly complex, requiring detailed and expansive knowledge of a large number of statutes, case law, and intersecting areas of practice such as immigration, criminal law, business law, tax law, contract law, real estate law, and employment law, as well as an understanding of the emotional and interpersonal dynamics, including racial, gender, class, and cultural awareness, sensitivity to violence and abuse issues, and the significance and relevance of mental health issues. In fact, LAWPRO repeatedly identifies family law as one of the most complex and challenging areas in which to practice.

Family law is also fundamentally important to Ontario families – the consequences of making practice mistakes can be irreparable and severe, from issues impacting the well-being, not merely the best interests of children, to the viability and health of



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families, and other significant human, social and financial costs. Getting it wrong can easily result in significant overall detrimental impact.

The complexity and importance of family law exists despite the fact that many people, including some non-family law lawyers, the media, and members of the general public, often perceive family law as simplistic. There are relatively few “simple” family law cases, however, and, significant errors can be made where a case is wrongly labelled “simple”. Such errors run counter to the goals of access to justice. Providing people with increased access to poorer quality legal services will not improve access to justice overall.

For example, filling out family law forms may appear to be “simple”, but the forms are frequently not filled out properly because many individuals and non-family law lawyers lack a thorough understanding of underlying substantive issues that inform and impact the information required to accurately complete the form.

Similarly, on its face the child support guidelines create the impression that child support determinations are “simple”. This belies the complex issues in determining income, retroactivity, relevance and impact of income tax benefits and credits relating to the child and the child’s expenses, whether special and extraordinary expenses are reasonably necessary, and the numerous other possible exceptions to simply applying a child support table amount.

A third example of an area that, at first blush, appears simple is that of uncontested divorces. An uncontested divorce in the face of a signed separation agreement may appear to be simple. Too often, it is only after problems arise that parties seek legal advice from a family law lawyer who then explores such questions as: Was the separation agreement executed with independent legal advice and full financial disclosure? Does it provide a fair and equitable result? Should the agreement be set aside? Are appropriate arrangements in place for the support and care of the children? Simply applying for a divorce without considering such factors can significantly harm a client’s legal interests.



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Unfortunately, there are numerous other examples in all areas of family law, including variations, custody and access, equalization, other property issues such as trusts, and spousal support.

For this reason, the CCLA strongly believes that family law legal services should be provided primarily by lawyers. Paralegals, working under the supervision of lawyers, can and do provide valuable support services and can cost-effectively assist with tasks such as obtaining in-take information, completing forms, drafting motion records and case conference materials, updating continuing records, and the like. However, an expansion of legal services to paralegals practicing independently is not the answer to access to justice concerns. Most importantly, lawyers have the legal training and skill to provide legal advice in this area – most paralegals do not and cannot.

Improving Access to Justice

2. Any review of access to justice in the family law arena must consider broader approaches and possible solutions to this issue beyond whether the provisions of family law legal services should be expanded to include non-lawyers. The CCLA offers the following considerations:
 - a. We do need better access to family law legal services provided by family law lawyers. This can be accomplished in many ways such as:
 - i. More and improved access to Legal Aid for family law cases so that clients can have financial assistance for important legal issues and lawyers can make a reasonable living providing services on Legal Aid certificates. We believe that investing in funding to expand Legal Aid for family law services would result in a net savings to the administration of justice, taking into consideration, among other factors, the cost of judicial resources and the cost of not having access to legal advice from a lawyer (i.e. including violence issues, cost of policing and the criminal process when family law remedies are not available, the cost of correcting mistakes when poor advice is provided).



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- ii. Better financial accessibility to legal training. The deregulation of tuition for professional programs has resulted in tuition for law schools increasing exponentially in the last 10 years. It is now common for law school tuition to be \$20,000 per year and for law students to graduate with debt of over \$100,000 and more. They then have difficulty finding an articling job and becoming lawyers. There are many well trained lawyers who are keen to provide family law legal services to a wide array of clients, at competitive financial costs, if it was financially feasible for them to do so. Whether it is financial feasible for them to do so is obviously impacted by their debt load and the level of income they require to service that debt. If we want more access to family law legal services, we need to make it more financially feasible for well-trained lawyers to provide these services.
 - iii. Improve support for limited scope retainers and unbundled legal services. There are existing barriers to allowing family law lawyers to provide innovative legal service delivery models, including regulatory, practice and professional liability issues. These need to be reviewed and ameliorated. Limited scope retainers and unbundled legal services offer a viable and effective way to provide greater access to family law legal services, and need to be supported.
- b. A number of steps are being taken to improve the family law court process and its ability to provide a more cost effective result, such as by making case conferences more meaningful and effective at resolving the issues or moving matters forward towards resolution, using rule 2 trials, and applying principles of proportionality. These are important initiatives and will be key to improving access to justice in family law. At the same time, these initiatives make it all the more important to have family law lawyers involved so that effective and meaningful advice can be provided at each stage.
 - c. Striving to improve access to justice requires a broad based view of social justice priorities, including substantive equality. The legal system does not operate in a vacuum. Initiatives to improve access to justice in family law need



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to consider systemic factors that impair access for a number of marginalized and vulnerable populations. Although these systemic issues may appear to be beyond the scope of this review, they have a real and significant impact on the ability of many to access the justice system. Real substantive improvement to access to justice can only be achieved by also addressing broader systemic issues.

We are committed to improving the family law justice system in Ontario. We look forward to continued dialogue with you, the Attorney General, and other stake holders in this endeavor. To this end, should you have questions or desire additional information regarding our submissions, please do not hesitate to be in touch.

Dated: May 4, 2016

D. Lynne Watt
President