



TAB 14

Report to Convocation December 1, 2017

Access to Justice Committee

Committee Members

Howard Goldblatt (Chair)
Cathy Corsetti (Vice-Chair)
Janet Leiper (Vice-Chair)
Raj Anand
Fred Bickford
Robert Burd
Robert Evans
Avvy Go
Carol Hartman
Marian Lippa
Susan McGrath
Malcolm Mercer
Gina Papageorgiou
Susan Richer
Baljit Sikand
Anne Vespry

Purpose of Report: Decision

Prepared by Lesley Cameron

COMMITTEE PROCESS

1. The Extended Access to Justice Committee (the “Committee”) has met to consider the Family Legal Services Review report eight times. The first meeting was on February 22, 2017 and the last on November 8, 2017.
2. The Committee includes the Access to Justice Committee and representatives of all other standing Committees. All benchers were invited to attend the Committee’s meetings.
3. Benchers in attendance at the meeting on November 8, 2017 were Howard Goldblatt, Chair, Cathy Corsetti, Vice-Chair, Raj Anand (phone), Fred Bickford, Robert Burd, Janis Criger, Robert Evans, Michelle Haigh, Carole Hartman (phone), Brian Lawrie, Marian Lippa, Susan McGrath, Malcolm Mercer, Gina Papageorgiou (phone), Susan Richer, Jonathan Rosenthal, and Anne Vespry.
4. Law Society staff members in attendance on November 8, 2017 were Diana Miles, Priya Bhatia, Sheena Weir, Sabreena Delhon, and Lesley Cameron.

FOR DECISION**Motion**

5. **That Convocation approve the Law Society's commitments in response to the Family Legal Services Review report, described at paragraph 22 of this report.**

Nature of the Issue

6. In February 2016, MAG and the Law Society appointed Justice Anne Marie Bonkalo to lead a review to explore whether the delivery of family legal services should be expanded to include legal service providers other than lawyers, such as paralegals, law clerks and law students. The terms of reference were as follows.
1. Identify the legal services at different stages in a family law matter which, if provided by persons in addition to lawyers, could improve the family justice system by better enabling people to resolve their family law disputes.
 2. Identify persons other than lawyers (e.g. paralegals, law clerks and/or law students) who may be capable of providing those family legal services with appropriate safeguards put in place (e.g. education, training).
 3. Recommend procedures, mechanisms and/or safeguards (such as education, training, insurance, regulation and/or oversight) to ensure the quality of family legal services provided by alternative legal service providers.
7. The resulting [report](#) was delivered on December 31, 2016, and contained 21 recommendations (the "Review").
8. Fourteen of the Review's recommendations require Law Society action. These recommendations are briefly summarized below.

Rec #	Law Society Obligation
2	Support the expanded use of unbundled services and address liability concerns
3	Support the use of legal coaching
4	Create a specialised licence for paralegals to provide specified legal services in family law
5 to 9	Specifics of the specialised licence, including areas of practice, permitted services, a paralegal licence prerequisite, and topics for training, including a practical, experiential component
10	Provide regulation and oversight
11	Facilitate collaboration between lawyers and paralegals with family law licences

15	Review the impact paralegals specializing in family law have had on access to justice 5 years after first licence
16	A robust evaluation system in place as soon as paralegals begin specializing in family law And, at the 5 year review, LSUC to consider whether it would be appropriate to allow others to independently provide legal services in family matters
19	Consider whether there is a way to connect the experiential learning of law students with unmet legal needs in family law
21	Rules relating to the unauthorised practice of law to clearly distinguish between legal advice and legal information

Initial Law Society Steps

9. On January 11, 2017, there was a benchers information session about the Review.
10. On February 22, 2017, the Committee reviewed the recommendations applicable to the Law Society and considered a strategic approach to the Review.
11. In March of 2017, the Law Society and MAG issued a [joint press release](#) seeking public feedback on the 21 recommendations, with a deadline of May 15, 2017. The release indicated that the “province, together with the Law Society, plans to release an action plan by fall 2017 to address these recommendations.”
12. On April 5, 2017, the Committee reviewed a preliminary assessment of the Review recommendations applicable to the Law Society. The Committee was advised that the development of a specialized family legal services licence would require a timeframe in the order of 28 months.

Consultation Input

13. On June 7, 2017, the Committee considered the [submissions received](#) in response to the consultation and other information.
14. Over 160 submissions were received from individuals and organisations. The submissions indicated general support for all the recommendations applicable to the Law Society, except for the recommendations related to the creation of a specialised licence.
15. Lawyers, the courts, and others expressed serious concerns about creating a specialised licence for paralegals, including family law complexity, client vulnerability, a lack of reliable data underlying the recommendations, and a need for broader systemic change. They described the proposed areas of practice and services as unworkable, reflecting a failure to understand the realities and complexities of family law.

16. Paralegals and individual members of the public expressed support for the creation of a specialised licence as a way to provide affordable, competent representation for many unrepresented litigants.
17. Legal Aid Ontario, which has had considerable experience working with paralegals, expressed openness to the possibility of some unsupervised paralegal family legal services, but urged a cautious and incremental approach to implementation.

Committee Recommendations

18. On September 13 and 27, October 3 and November 8, 2017, the Committee discussed how the Law Society should respond to the recommendations for its part in the joint action plan promised for the fall of 2017.
19. The Committee was supportive of and had no concerns about the recommendations applicable to the Law Society, to the extent that they do not concern a specialised family legal services licence.
20. The Committee noted the challenges to decision making about a specialised licence, and associated risks. The challenges include opposition from lawyers and the courts, whose support is important to the success of any specialised licence, and a lack of information about the potential impacts, given that such a licence is largely unprecedented. Associated risks include the possibility that the licence will not be of interest to paralegals or others, or will not be financially sustainable for the Law Society or educational institutions offering training for the licence.
21. The Committee noted that the goal is to improve access to justice for the public, and not to serve the interests of either of the two legal professions. It considered what might be done to improve access to justice as soon as possible, without compromising the extensive work necessary to support defensible licensure in the public interest. It landed on the development of two specialised licences: a narrower licence that can be developed more quickly, and a broader licence in due course.
22. The Committee recommends to Convocation that the Law Society for its part, make the following commitment in a joint action plan with MAG.
 1. Develop a licence for licensed paralegals and others with appropriate training to offer some family law legal services, following resource-related discussions with government. Recognising the urgency of the need, this licence will support training in process navigation, form completion, investigating forms such as financial, motions to change, and uncontested divorces, and possibly other areas outside the courtroom context.

2. At the same time, assess what additional family legal services by providers other than lawyers, and including advocacy, are in the public interest, and consider how to develop a further expanded licence, following resource-related discussions with government.
 3. Engage in a robust evaluation of the success of the family law legal services licence for providers other than lawyers, and make any adjustments that are in the public interest.
 4. As part of its priorities, consider experiential training for lawyer candidates in the licensing process, including how they may provide supports for the delivery of family law legal services under appropriate supervision.
 5. Review its rules relating to the unauthorized practice of law and ensure that the rules are as clear as possible concerning the difference between legal information that might be provided by court staff to unrepresented litigants, and legal advice.
 6. Continue to support the expanded use of unbundled services and legal coaching, including offering continuing legal education opportunities and tools to address liability concerns.
23. MAG has been provided with these draft commitments, on the understanding that Convocation must ultimately decide if the Law Society will move forward with the action plan.
24. In partnership with the Law Society, the province will continue to explore ways to increase access to justice in family law, and will announce further steps to build on this joint action plan in the new year.