

**Joint Reply: FDRIO, ADRIO, OCLF, FMC**

**to**

**Family Legal Services Review: Role of non-lawyers**

**Justice Bonkalo**

**on behalf of the**

**Attorney General of Ontario**

**April, 30, 2016**

## **Attention: Family Legal Services Review**

We represent leading Dispute Resolution organizations in Ontario with expertise in Family disputes. Our organizations establish standards, training, and on-going education for our members. Our members are not only lawyers, but also mediators, arbitrators, mental health and financial professionals.

We believe that Justice Bonkalo's review of family legal services, as set out in the mandate below, requires a response that encompasses more than a review of the current court system. Her mandate is 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 these 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 alternate legal service providers.**

In our view as mediators, arbitrators, collaborative lawyers, mental health and financial professionals, the best context for addressing the above is to ask: How can we help Ontario's families in transition get the assistance and services they need in order to achieve durable, affordable, fair, and efficient outcomes for themselves and their children?

This question has been addressed in the conclusions of the Cromwell Report in 2012, which encouraged a more holistic, client-centred approach. Most recently, the Ryerson Family Legal Innovation Zone Report noted that not all families need or want to be serviced in court. If there are community-based services with appropriately trained, accredited and supervised professionals who could assist with screening, education, triage and dispute resolution, only those who needed or wanted to go to court would be in the court process.

The issue of what standards and safeguards are needed for separating families is a separate topic; however, by re-directing those who have been screened for appropriateness to more supportive and holistic alternatives, the number of unrepresented clients in court could be considerably reduced. If screening and diversion are done at an early stage those remaining in the family court system should be able to have their matters heard in a more efficient and cost-effective manner. These families might be better able to afford legal representation or to qualify for legal aid.

Those who remain unrepresented in court, by need or choice, will continue to require assistance on legal issues from individuals with expertise in family law. It is unacceptable to lead families to believe that paralegals, particularly unsupervised, can provide a similar level of service as lawyers. Given the current back-log in family courts there is also no guarantee that paralegals will be more affordable than lawyers, particularly lawyers offering services at legal aid rates. Adding law students and paralegals to the current court system without a concerted effort to divert people to safe alternative resolution processes will merely serve to institutionalize a two-tier justice system in Ontario.

We have chosen to respond to the above 3 mandate steps themselves rather than the specific questions provided, which relate more to paralegals and others working within the current court system:

**1. 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:**

**A. Prior to a Court Application – Outside the Court System:**

- **Information and Education** – in addition to web-based information accessible in different languages, separating spouses need to be able to speak directly with professionals who are familiar with the legal, financial, parenting and emotional issues triggered by separation. Some professionals already volunteer their time at libraries, community centres, etc. to provide information to separating spouses in a group setting. Separating couples should also be able to meet in person - preferably together or, if that is not possible, separately - with a neutral professional so they both hear the same information about the law and how to navigate the family justice system (this would be legal information as opposed to legal advice). Couples who learn about process options and professional resources that meet their particular family's needs are empowered and more confident to choose a non-court option. A two to three-hour meeting could be provided on a flat fee basis with a sliding scale.
- **Triage** – this could also be provided to individuals or couples in the community, well before they get to court. Triage should be focused on more specific process options and resources than the above information and education services. This could also be provided as a flat fee on a sliding scale.
- **Referrals** from the above information sessions or triage can be to qualified mediators and/or collaborative practitioners and/or arbitrators or to specific qualified neutral professionals who work with separating families. This will be cost-effective and focused on resolution and can also include fees geared to income levels and services geared to specific issues in dispute.

**B. At the Court House – Prior to Filing an Application:**

- **Information and education** - should be available whether or not an application is started and whether or not parties are represented by counsel (because most become unrepresented at some point). Include information about all processes - including mediation, collaborative practice, arbitration and court. Most parties could afford to pay a flat fee, on a sliding scale, for attendance at an information session prior to starting any court proceeding, with a possible exemption if grounds are established for an application based on urgency.
- **Triage** – should follow information sessions and be provided prior to starting a court application, including urgent applications. Triage should be provided on an expanded schedule and priority should be given to parties without lawyers and for urgent matters. Triage should include referrals to services outside court that are available in the community.

Referrals at the court from information/education services or triage could be provided on the same basis as in A. above prior to a court application and outside the court system

### **C. During or Following a Proceeding:**

- Dispute Resolution Officers have proven valuable in narrowing and settling issues in court, particularly for unrepresented parties. With the appropriate rule changes, these services could be expanded.
- With the appropriate rule changes, case managers (established similarly to the DRO's) could assist in triaging court cases with unrepresented parties to educate and encourage them to use appropriate professionals to help them resolve issues before a motion or trial becomes necessary.

## **2. Persons other than lawyers who may be capable of providing these family legal services with appropriate safeguards put in place (e.g. education, training):**

### **A. Prior to a Court Application – Outside the Court System:**

- **Information and Education** - not only lawyers, but other professionals are already being trained in “early neutral consultation” by Dr. Brett Degoldi, a lawyer and psychologist in Barrie. Once trained, professionals with a variety of backgrounds, including paralegals, could provide basic information (not advice) about what to expect on separation re property, parenting, and finances. These professionals would then refer the couple or individuals on to professionals and/or resources in the community to provide advice.
- **Triage** - professionals providing this do not need to be lawyers but they would need to meet certain standards, as set out in number 3 below.
- **Referrals from information sessions or triage** - These referrals do not necessarily have to be made to lawyers. They could be provided by

professionals other than lawyers who have taken approved training and are members in good standing of recognized professional organizations.

- Referrals from information sessions or triage, following appropriate screening, could be made to neutral financial professionals – to assist in collecting and sharing financial information, counselling re debt, providing projections re longer term implications of possible property and support scenarios, and advising on tax issues. These services should be provided by professionals who have taken approved training and are members in good standing of recognized professional organizations.
- Referrals from information sessions or triage, following appropriate screening, could be made to mental health professionals – to provide assessments, parenting information, coaching and assistance with communication, mental health or addiction issues. These services should be provided by professionals who have taken approved training and are members in good standing of recognized professional organizations.

#### **B. At the Court House – Prior to Filing an Application:**

- **Information and education** can continue to be provided by FLIC staff, and Information and Referral Coordinators, but could also be provided by paralegals and law students adequately qualified and trained.
- **Triage** could be available from trained professionals at the court - these professionals do not have to be lawyers; they could be paralegals, or family or financial professionals so long as they have been adequately qualified and trained.
- **Referrals** at the court from information/education services or triage could be provided on the same basis as in A. above

#### **C. During or Following a Proceeding:**

- Trained Dispute Resolution Officers and case managers do not necessarily have to be lawyers. With the appropriate rule changes DRO's and case managers could include:
  - Mediators/Arbitrators/Parenting Coordinators on specific issues, with mental health backgrounds to address parenting issues as outlined in A. above
  - Financial Professionals – to assist in preparing financial statements, valuing assets, advising on income and support calculations, counselling on debt and tax issues, as outlined in A. above

- Mental Health Professionals – to provide assessments, parenting plans, coaching and assistance with communication, mental health or addiction issues especially re parenting, as outlined in A. above.

### **3. Procedures, mechanisms and/or safeguards to ensure the quality of family legal services provided by alternate legal service providers:**

Screening and professional standards are crucial for all professionals assisting families through separation and divorce. There should be screening for safety and appropriateness at every stage, as set out below:

- **Screening for Domestic Violence and Power Imbalance Prior to a Court Application, Outside the Court System** –web-based questionnaires in a variety of languages can be made available to inform separating spouses about concerns about Domestic Violence and Power Imbalance issues as they may impact safety and choice of DR options. Separating spouses can be directed to a professional who has completed a Domestic Violence Screening program as required by the Ministry or family dispute resolution organizations. The Screener would meet separately with each spouse in a private or community setting to determine any safety concerns as well as competence and willingness to participate in an out of court DR option, or whether an immediate referral to court is preferable. The screening could be offered on a flat or sliding scale fee.
- **Screening for Domestic Violence and Power Imbalance at the Court House Prior to Filing an Application** – should be carried out by a trained screener who has an individual meeting with each spouse to determine safety, competence and DR preferences, prior to referrals to DR options or court. This may be provided by FLIC staff, and Information and Referral Coordinators, but could also be provided by paralegals and law students adequately qualified and trained to meet the Screening requirements as set out by the Ministry or various family dispute resolution organizations.
- Persons providing triage need to meet appropriate standards to be able to screen parties for safety, conflict, capacity to participate, and mental health or substance abuse issues before referring to other professionals or services in the community. Ideally screening would be of both parties by the same trained professionals. The training of mental health professionals provides them with stronger skills in screening than lawyers. Paralegals providing triage and/or working in the court system must also have appropriate training in screening
- Mediators must be trained and a member in good standing of a recognized professional organization, with liability insurance of at least \$1,000,000 per claim and \$2,000,000 aggregate liability per policy period.
- Collaborative professionals must be trained and a member in good standing of their collaborative group as well as their recognized professional organization,

with liability insurance of at least \$1,000,000 per claim and \$2,000,000 aggregate liability per policy period.

- Arbitrators must be trained and a member in good standing of a recognized professional organization, with liability insurance of at least \$1,000,000 per claim and \$2,000,000 aggregate liability per policy period.
- Mental Health Professionals must hold a licence or professional accreditation and be a member in good standing of their professional organization and/or meet the qualification requirements of the various family dispute resolution organizations or with liability insurance of at least \$1,000,000 per claim and \$2,000,000 aggregate liability per policy period.
- Financial Professionals must hold a licence or professional accreditation and be a member in good standing of their professional organization and/or meet the qualification requirements of the various family dispute resolution organizations with liability insurance of at least \$1,000,000 per claim and \$2,000,000 aggregate liability per policy period.
- Paralegals and law Students working in the courts must be supervised by a lawyer

We would be happy to meet with you to discuss our above response and/or to assist in any way we can to providing more efficient, economical and supportive outcomes for separating families in Ontario.

Yours sincerely,

FDRIO – Dr. Barbara Landau, Past President

ADRIO – Dr. Barbara Benoliel, Board of Directors

OCLF – Nicola Savin, President; Judith Huddart, Past President

FMC – Tom Dart, President



