

# Family law opening up to non-lawyers

BY JUDY VAN RHIJN  
For Law Times

Submissions are in and consultations have closed on the controversial issue of allowing paralegals, law clerks, and law students to accept carriage of family law matters. The need to assist self-represented litigants is driving the campaign to find ways that non-lawyers can assist without lowering standards of practice beyond an acceptable limit.

"Anyone working with the most vulnerable people, such as family mediators, knows that we are inundated, as are judges. We desperately need help," states Hillary Linton, the vice chairwoman of the Family Dispute Resolution Institute of Ontario and a mediation service provider.

"There is a limited role for licensed regulated trained paralegals in family law. The challenge is that it is such a legally complicated area. Those who work in the area see how people are disadvantaged by bad or incomplete advice. It is fraught with hazards."

Lawyer and educator Omar Ha-Redeye points out that when it comes to access to justice, family law has the most acute problems.

"The public is enormously upset at the legal system and particularly family law. Financial interests are geared improperly for family law bar. There is no financial incentive to change. That's why the push for change is coming from outside the family law bar — the attorney general and the law societies, whose emphasis is on public interest, not just lawyers' interests," he says.

Ha-Redeye is of the opinion that legal services as provided by the legal profession don't work and are not affordable for 90% of the population.

"The situation screams for a remedy. Protectionism is self-serving and not serving the public need," he says.

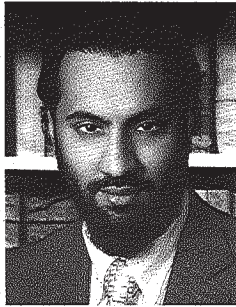
The opportunity to canvas possibilities has now been provided through the Family Legal Services Review chaired by Justice Annemarie E. Bonkalo.

According to the Ministry of the Attorney General, she is mandated to "identify the legal services which, if provided by persons in addition to lawyers, could improve the family justice system" and "recommend procedures, mechanisms and/or safeguards to ensure the quality of family legal services provided by alternate legal service providers."

Consultations closed on April 30.

The topic was also canvassed at the FDRIO Un-Conference on May 4 — an un-conference being an unstructured conference where everyone votes on what they want to speak about.

"One discussion was about the role of paralegals. It's a very live topic," reports Linton. "Everyone agrees it's timely to be re-examined no matter what stand



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they take."

Ha-Redeye included the topic in his talk on the use of early triage in family law cases.

"People were looking to explore the participation of paralegals, maybe under the direction or co-ordination of a lawyer at the outset. As expected, there was a varied response, including enormous pushback from family lawyers," he says.

That pushback echoes the stand taken by the Ontario Bar Association in its submission to the Legal Services Review.

It has maintained its traditional position that "flawed or inappropriate advice given to a client in the area of family law can have devastating consequences for clients and their families lasting for many years if not generations. Simply stated paralegals do not have the education, training or skills to properly represent vulnerable children, parents or spouses as they navigate the family justice system."

The OBA expressed a fear that creating an inferior level of information will create a two-tier system that will not serve access to justice. This fear was echoed in a joint submission by mediation organizations such as the FDRIO, ADR Institute of Ontario, Ontario Collaborative Law Federation, and Family Mediation Canada, which said: "It is unacceptable to lead families to believe that paralegals, particularly unsupervised, can provide a similar level of service as lawyers."

"One thing everyone agrees on is that they must be competent at what they're doing," says Ha-Redeye. "How do you ensure competence — through education, additional training, oversight, supervision, and direction of a family lawyer?"

The OBA also says "the significant training and oversight required would undermine the cost effectiveness believed to be associated with this model."

"There is no guarantee using paralegals will make services affordable," warns Linton. "They could charge \$100 an hour, or \$75 an hour. They may just end up competing with lawyers and then I'm not sure anything will be achieved."


Despite these views, the problem of self-representation is so unavoidable that the legal com-

munity is looking for ways to utilize non-lawyers in the family law field. "It will involve carving out a very narrow application, where the level of responsibility is minimized," says Ha-Redeye.

He suggests assisting with

education, with forms and financial statements, and also sees possibilities in an early triage system as well as opportunities on the "back end." "When people have an order and they think their legal issues are



resolved, there could be annual reviews and support. Rather than a lawyer re-litigating every year over minor adjustments to income or minor issues with a parenting schedule, a paralegal can assist with that," he says. LT



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