



April 25, 2012

Law Commission of Ontario  
Osgoode Hall Law School  
2032 Ignat Kaneff Building  
York university  
4700 Keele St.  
Toronto Ontario  
M3J 1P3

Dear: Sir/Madam,

On behalf our membership of more than 3000 practising lawyers in Toronto, the Toronto Lawyers Association (“TLA”) is pleased to comment on some of the recommendations in the Commission’s Interim Report – Towards a More Responsive and Efficient Family Law System. Please take particular note of our comments regarding paralegals and the practice of family law.

TLA supports recommendations # 1- 4, which address the dissemination of plain language, and multiple language information about family breakdown, and the family law system in community centres and organizations which are places frequented by community members. TLA notes that this task is a more significant one for Toronto than for other areas of the province, because of the size and diversity of its population. Funding to create the on line and pamphlet format of information must be adequate to address the diverse language and cultures in Toronto in order to provide fair access to justice for all its citizens. In order to be effective, there must also be a formal system of monitoring and updating the information, which is also a funding issue. The funding issue is also relevant to access to the court filing office in Toronto. It is understaffed and cumbersome, and is a barrier for any litigant or lawyer to obtaining information and getting documents filed.

TLA supports the earliest possible, and then ongoing evaluation of any systemic changes, as addressed in recommendations #5, 21 and 22.

TLA suggests greater study and education is appropriate before considering the implementation of recommendations 7, 8, 10, which address limited scope retainers with lawyers. For example, rather than a requirement of two years in practice before a lawyer may provide limited scope services, the completion of focussed CPD in this area may be a better means of preparing lawyers for the professional risks and limitations of limited scope retainers. Further study is necessary.

With the exception of the involvement of paralegals, the TLA supports, in principal, the recommendation in # 27, and some of the following recommendations, regarding the establishment of a comprehensive system of “*multi disciplinary multifunction centres*” to be the initial source of information and guidance for family law and related matters. The TLA specifically endorses and supports the comments of Justice Winkler. The TLA notes that effective transformational change must begin with a province wide unified court system, and a new funding model.

The TLA is opposed to recommendation # 12, which suggests legal aid funding be expanded to Pro Bono Law Ontario to facilitate pro bono services in family law. Adequate Legal Aid funding is an ongoing challenge, and adding a new dimension of legal aid funding responsibility before adequate funding of its existing programs is ill advised.

The TLA is strongly opposed to recommendations 14, and part of 27, which suggest the Law Society of Upper Canada explore ways in which paralegals can contribute in the family law system, including limited scope retainers and in multidisciplinary and multi function centres. The TLA first voiced its concern, with other professional associations, about paralegals being involved in the practice of family law, before the 2010 Annual General Meeting of the Law Society of Upper Canada, when a group of paralegals brought a motion regarding expanding their scope of practice to family law matters. The motion was withdrawn after strong response from the profession. Our position included the following comments, which we continue to stress in opposition to paralegals entering the practice of family law:

*“Family law lawyers alone are qualified to steer families and children through the constantly evolving interplay between complex legislation, case law, a unique set of court rules and precedent to arrive at comprehensive family law solutions. Family law has lifelong consequences for families and children. Family lawyers strive to protect the vulnerable members of society especially children and to facilitate overarching solutions. **Family law is not the practice of filling out forms....***

*Family law resolves separation, divorce, adoption, custody, paternity, child support, spousal support and property rights of ordinary people. Family law affects individuals who are often ignorant of its profound consequences on their own lives. Misinformation surrounding family law has grown with the internet. Even sophisticated clients often fundamentally misunderstand the enormous complexities of family law, which is without doubt an increasingly specialized area of legal practice.*

*No divorce is simple. Before a divorce application can be issued, a lawyer is obligated to meet his or her duty to skillfully elicit relevant facts and make legal recommendations regarding the court’s jurisdiction, if any, to grant the divorce or corollary relief. The following are mere examples of a myriad of legal issues that may arise in any divorce and require a lawyer’s education and experience:*

- *children’s rights and the rights of people connected to that child;*
- *mobility issues;*
- *the complex and discretionary arenas of child and spousal support;*
- *equalization or unequal division of net family property;*

- *the separation of other property interests, including: corporate interests between the parties;*
- *equitable claims including trust claims and tort remedies, oppression remedies;*
- *rights to partition and sale;*
- *limitation periods;*
- *validity of prior divorces;*
- *the rules of evidence;*
- *contractual obligations arising from cohabitation, prenuptial, marriage or separation agreements;*
- *entitlements in succession law;*
- *benefit and pension rights; and.*
- *protection of property and the person through restraining and non-harassment orders.”*

Child protection within the child welfare system is also a complex area which requires a lawyer with the requisite training and skill. The issues at stake go to fundamental elements of our social system, and paralegals do not have the training to address these issues.

The TLA welcomes the Law Commission of Ontario's interest in addressing issues of entry to the family law system, and hopes these comments on the Interim Report are of assistance. The TLA is pleased to continue its involvement as the Commission pursues these issues.

Yours truly,

A handwritten signature in black ink, appearing to read "Chris Matthews", written over a horizontal line.

Chris Matthews  
TLA President