



ALTERNATE DELIVERY OF LEGAL SERVICES FINAL REPORT



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Alternate Delivery of Legal Services Committee

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Alternate Delivery of Legal Services Final Report

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Executive Summary

The Law Society of Alberta is a self-governing association of all the practising lawyers in Alberta and has been regulating the legal profession since 1907. The Law Society derives its authority from the Legal Profession Act of Alberta, and is financed and maintained by Alberta lawyers at no cost to the public. Serving in the public interest, it promotes a high standard of legal services and professional conduct through the governance and regulation of an independent legal profession. In 2009, the Law Society was asked by the Minister of Justice, Alberta Government to explore alternative delivery of legal services to further the goal of enhancing access to justice for Albertans.

The mandate of the Alternate Delivery of Legal Services (ADLS) Committee was to explore the proposition that it would be good public policy if non-lawyers were more generally entitled to deliver legal services, thus increasing the supply of legal services and making them more generally available to Albertans. The propositions below were framed early in the life of the Project and through considerable research and consultation, the conclusions and recommendations were reached by the Committee. The conclusions and recommendations summarized below were adopted by the Benchers at the September 2011 Benchers meeting.

During the course of the project, there were many assumptions about the delivery of legal services that were confirmed; however there were several surprises that shaped the conclusions reached by the Committee and ultimately adopted by the Benchers. We encourage readers to review the full rationale for the formulation of the propositions, conclusions and recommendations contained in this Final Report that are summarized in this Executive Summary.

1. Access to Justice

Proposition:

Legal services provided by non-lawyers can have an impact on improving access to the justice system for citizens.

Conclusion:

In Alberta, there is already a robust and expanding independent non-lawyer legal services market that is unregulated and is projected to grow. There are areas where low income Albertans (those earning under \$50,000) are not able to pay for legal services delivered by lawyers or by independent non-lawyers. Research indicates that Alberta already enjoys wide availability of independent non-lawyer legal services that meets identified consumer need and demand.

2. Consumer or Citizen Protection

Proposition:

In many cases, users of alternative legal services are not sufficiently protected or aware of their risks.

Conclusion:

Consumer choice is a key principle of a market-driven economy and consumers should be free to choose service providers currently operating under the general consumer protection laws. The role of the Law Society is to protect and preserve the public inter-

est when engaging a lawyer, not to protect consumers from freely made consumer choices. Further, the objective of the ADLS Project is to make recommendations and offer practical solutions to enhance access to affordable and competent legal services in areas of high legal need. Consumer protection was not the issue the ADLS Project was mandated to address. The Law Society is open to continuing the discussion with government as to how consumers of legal services by independent non-lawyers might be better protected from the risk of harm.

3. Definition and Understanding of Legal Services

Proposition:

The definition of legal services is complex and the boundaries and the scope of the practice of law are not clear or fully defined.

Conclusion:

Stakeholder input was unanimous including from Alberta Justice that it would serve the public interest to have a clearer definition of the practice of law in the *Legal Profession Act*. A clearer definition of the practice of law will assist consumers in making an informed decision about when they need the services of a lawyer.

4. Public and Legal Profession Impacts

Proposition:

The impact on and response of the legal profession and the public to the increased delivery of legal services by non-lawyers and the role that non-lawyer should play is unclear.

Conclusion:

The provision of legal services by a non-lawyer (paralegal) under the supervision of a lawyer in the not-for-profit and government environment can expand the scope of legal service delivery to low income Albertans unable to pay for legal services. Enabling rules are already in place to expand this legal service delivery model.

In reaching these conclusions, the following recommendations were adopted by the Benchers:

Recommendation - Definition of the Practice of Law:

That a definition of the practice of law be pursued with Alberta Justice based on the key principles enumerated in this Report for amendment to the *Legal Profession Act*.

Recommendation - Access to Justice/Legal Services focus:

That the Law Society continue to support and facilitate the expansion of legal services by non-lawyers under the supervision of a lawyer in areas of high need for low income Albertans particularly in the government and not-for-profit sector (such as the Student Legal Services Family Law Queen's Bench Chambers project).

I. Introduction

A properly functioning justice system is a core value in our democratic society. The ability of the individual to enforce or defend legal rights in an effective and meaningful way, regardless of economic status, is critical in such a system yet remains a theoretical ideal. That is why promoting access to high quality legal services is a stated objective of the Law Society of Alberta in its Strategic Plan for 2010-2013.

The objective is shared by Alberta Justice. Based on this common intent, in 2009 Alberta Justice proposed through its then Minister, the Honourable Alison Redford, that the Law Society develop public policy recommendations that outline the ways and means by which the expanded use of non-lawyers, or paralegals, might enhance access to legal services for Albertans. The greater deployment of non-lawyers, or paralegals, to deliver legal services to the public is referred to as the Alternate Delivery of Legal Services or ADLS. The report that follows is the culmination of the Law Society's inquiry into the issue.

Much of the Project involved data and information collection that was carried out by independent consultants and researchers. Sierra Systems was retained to conduct interviews with justice system stakeholders in order to identify issues and develop the framework for inquiry. Ipsos Reid was hired to conduct opinion surveys of the general Alberta population and the Alberta legal profession on attitudes and experiences in both receiving and providing legal services. Independent social policy researcher Patricia Leake, MPP, compiled an industry profile of the independent paralegal industry in Alberta. Bottom Line Research completed a jurisdictional review of legal profession statutes in Canada to catalogue the scope of permissible non-lawyer or paralegal activity across the country. We are grateful to all those who contributed their work to the Project's body of evidence, enabling the ADLS Committee to have a solid foundation of fact and data upon which to hold its deliberations.

The ADLS Committee proceeded on the basis that its work needed to be principled, evidence-based and consensus-driven. In the latter regard, the Access to Legal Services Steering Committee, appointed by then Minister Redford, provided both oversight and direction for the Project and comprised a knowledgeable group of stakeholders who could be counted on to provide ongoing stakeholder feedback as the Committee progressed with its work. I extend the ADLS Committee's profound thanks to the Steering Committee members for their invaluable input.

I take this opportunity also to thank the members of the ADLS Committee itself, who over the course of three years contributed much time, expertise, and thoughtful reflection and

discussion to the Project. The Committee members were: Benchers Sarah King-D'Souza, QC; Frederica Schutz, QC; Fred Fenwick, QC; Miriam Carey, PhD; and Scott Watson, QC; and non-benchers Doug Lynass, QC; and Greg Francis. Many thanks also go to Law Society Policy and Program Counsel, Susan Billington QC, who acted as Project Director, kept the Project on course and did most of the writing and hard work.

The popularly held view that lawyer-provided legal services are beyond the means of Albertans of even middle income is not supported by the Ipsos Reid general population data. Sole practitioners and lawyers in small firms occupy the field of providing personal legal services to the middle income group with good satisfaction and little controversy. Rather, the data identifies the low income group in Alberta as experiencing difficulties with both the legal system and access to legal services.

In the result, the ADLS Committee concluded that it would be best to maintain its access to justice mandate by focusing on solutions for the underserved low income group in Alberta. These are people who lack the financial means, and in many circumstances, the necessary coping skills, to meaningfully interact with the justice system in all its facets. They tend to have more such interactions and their experiences are different than those of Albertans with means. As a consequence, the ADLS Committee honed its recommended strategy on addressing the needs of this particular group.

The problem of access to justice has complex origins. Part of the problem is rooted in the economic disparity that exists within our society. For economic reasons, the low income group which experiences inadequate access to legal services similarly faces more limited access to other things that Albertans of means generally have, such as good food, adequate housing and transportation, and higher learning.

Accordingly, there is no single or instant solution to the access to justice problem. The outcome is this report which is merely a modest step toward the solution. Advances are incremental. More steps need to be tested and implemented to add up to a greater overall solution. The ADLS Committee endorses government taking a more comprehensive approach to access to justice and in particular taking a look at addressing some of the origins of the problem.



*Douglas Mah, QC,
Chair, ADLS Committee*

II. Background of the ADLS Project

This Final Report chronicles the work of the ADLS Committee in coming to the conclusions and recommendations adopted by the Benchers in furtherance of the mandate and deliverables outlined in Terms of Reference of the Access to Legal Services Steering Committee.

The issue of non-lawyer legal service delivery came to the attention of the Executive of the Law Society as a result of the Alberta Justice Business Plan 2008-11 (and subsequently 2009-2012). The use of non-lawyer (paralegal) legal service delivery was framed in the Alberta Justice Business Plan as an access to legal services initiative.

In the fall of 2008, then President of the Law Society Perry Mack issued a background paper entitled: *Access to Legal Services: a Proposed Course of Action* which signaled the Law Society's interest in exploring the role non-lawyers might play in the delivery of legal services.

In furthering the goal of access to justice for Albertans and as a result of the Alberta Justice Business Plan, then Justice Minister, Honourable Alison Redford QC indicated her interest in establishing a steering committee and asked the Law Society of Alberta to partner with the Ministry of Justice and Attorney General in striking the Access to Legal Services Steering Committee¹. In April 2009, the Terms of Reference were endorsed by the Minister which provided a broadly-stated purpose and mandate but with narrowly-defined deliverables as follows:

Purpose/Mandate:

The Access Steering Committee is a policy development and advisory committee established jointly by the Law Society of Alberta and the Minister of Justice and Attorney General. The Committee has the following mandates:

- 1) To advance the goal of increased access to justice for Albertans, specifically with respect to Albertans' access to legal services; and
- 2) To assist key stakeholders involved in the justice system to enhance opportunities for Albertans to access legal services.

Deliverables:

The Access Steering Committee shall provide advice and recommendations to the Law Society and the Minister on the specific issues of:

- 1) The provision of legal services on an "unbundled" or limited retainer basis ("unbundling") and
- 2) The provision of legal services by persons other than lawyers ("alternative delivery of legal services").

¹ For the full terms of reference see the Access to Legal Services Steering Committee Terms of Reference – April 2009. Members of the Committee included representatives from: the Law Society of Alberta (President of LSA as Chair); the Court of Appeal; the Court of Queen's Bench; the Provincial Court of Alberta; Alberta Justice and Attorney General; the Canadian Bar Association; Legal Aid Alberta.

In outlining the goal of the Access Steering Committee at its first meeting on September 22, 2009, then President of the Law Society Peter Michalyshyn, QC outlined the purpose of the Committee:

At the end of the day the goal of the Access Steering Committee is to contribute to concrete policy development around alternate delivery and limited retainers. Its goal is not to consider the many other possible means by which access to justice might be addressed. By staying focused on the current initiatives it is hoped the Committee and working groups can help bring about practical solutions which address society's need for access to legal services.

Alberta Justice took the lead on a “limited scope retainers” working group; and the Law Society agreed to undertake the background research work and to provide recommendations on access to legal services by non-lawyers². This Final Report deals with the Law Society’s work on the ADLS Project arising from the Access to Legal Services Steering Committee Terms of Reference.

To advance the work of the ADLS Project, the Law Society’s Executive Committee proposed a six phase, three year high-level project proposal which described the Project as follows:

The purpose of this project is to explore the proposition that it would be good public policy if non-lawyers were more generally entitled to deliver legal services, thus increasing the supply of legal services and making them more generally available to ordinary Albertans.

In February 2009, the Law Society adopted the ADLS Project as a strategic priority of the Benchers and formed the Law Society ADLS Committee under the leadership of Bencher and subsequently President Douglas Mah, QC. The Benchers adopted the project plan for the ADLS Committee in April 2009.

The Project anticipated a 3 year project with a phased approach as follows:

- 1) Identify issues
- 2) Explore issues
- 3) Report on issues and conclusions
- 4) Consult justice system partners
- 5) Issue Final Report
- 6) Implementation

² The definitions adopted in the phase one project plan will continue: **Legal Services** includes the full spectrum of legal services including: legal information; procedural assistance; limited advice; representation as agent; full representation. **Alternate delivery** means delivery of legal services by non-lawyers

The Executive directed that Phase 1 of the Project was to entail a detailed framing of the issues to be explored by the Committee in the delivery of legal services by non-lawyers. An independent consultant, Sierra Systems, was hired to undertake this analysis and presented their draft report to the Benchers at the meeting in Jasper in June 2009. Sierra issued the Phase 1 report in July 2009 entitled: *Alternate Delivery of Legal Services Project: Phase 1 Issues Identification Final Report: July 6, 2009*³ which identified five key propositions for further inquiry in Phase 2 as follows:

Area of Inquiry	Proposition
1. Access to the Justice System	Legal services provided by non-lawyers can have an impact on improving access to the justice system for citizens.
2. Consumer or Citizen Protection	In many cases, users of alternative services are not sufficiently protected or aware of their risks.
3. Definition and Understanding of “Legal Services”	The definition of legal services is complex and the boundaries and the scope of the practice of law are not clear or fully defined.
4. Public and Legal Profession Impacts	The impact on and response of the legal profession and the public to the increased delivery of legal services by non-lawyers and the role that non-lawyers should play is unclear.
5. Lack of Information	There is not sufficient and commonly understood information upon which to make recommendations and decisions for change to the current state of the delivery of legal services.

3 Available on the Law Society's website at www.lawsociety.ab.ca

III. Foundations of Project

Given the potential importance the Project's recommendations could have on the fabric of legal service delivery in Alberta, the ADLS Committee adopted three foundations upon which the project would be based: 1) key principles of the Project; 2) an evidence based approach; and 3) that it be consensus driven.

1. Key Principles – The Committee adopted the following key principles to guide them through the Project:

- **Acting in the Public Interest** - The Law Society's main objective in all of its work is to act in the public interest in the regulation of an independent legal profession. Therefore the Committee adopted as a key principle that the Project is not about protecting the domain of lawyers. The goal of the Project is to make recommendations and offer practical solutions to enhance access to affordable and competent legal services in areas of high legal need. This is in accordance with the Law Society's Strategic Plan adopted in November 2010 particularly the strategic goal to promote access to high quality legal services.
- **Consumer Choice** – Consumers should be able to choose the form of legal service delivery.
- **Quality of Legal Service** - Consumers of legal services are entitled to expect that legal services are delivered by practitioners who are competent and qualified to deliver those services. Quality legal services are those services delivered by trained, licensed, insured, ethical, experienced legal professionals with duties of ongoing continuing professional training and development. Additionally, any recommendations stemming from the Project must avoid fostering or perpetuating a two tiered justice system whereby those who can afford a lawyer have a different experience to access to justice than those who cannot.
- **Access to Justice** – Access to legal services for low income individuals recurs as an issue. Access to legal services for low income individuals is a systemic problem that will have many solutions which may fall outside the influence or mandate of the Law Society. The Law Society is committed to fostering initiatives that fall within its mandate to regulate an independent legal profession in the public interest.

2. Evidence Based Approach

The Committee adopted a comprehensive evidence based approach so that the resulting recommendations are based on sound and current data about legal service delivery in Alberta. There are many assumptions and anecdotes regarding the delivery of legal services that needed to be tested through evidence based methodology to inform the work of the ADLS Committee, the Benchers and the stakeholders.

The primary purpose of Phase 2 of the Project was to fully explore and research the propositions to foster a better understanding amongst the Committee members, the Benchers and the Project stakeholders on the issues surrounding the delivery of legal services by non-lawyers. This was consistent with the proposition from the Sierra Systems Phase 1 Report that there was not sufficient and commonly understood information upon which to base recommendations regarding legal service delivery in Alberta.

The scope of inquiry during Phase 2 was expansive and took considerable time. Phase 2 incorporated a range of research methodologies to investigate and test the propositions identified in Phase 1. These research components included:

- 1) An Industry Profile of the delivery of legal services by non-lawyers including both an empirical study and quantitative analysis conducted by independent consultant Patricia Leake, MPP;
- 2) A general consumer survey on legal services usage and attitudes conducted by Ipsos Reid;
- 3) A survey of the legal profession on legal services conducted by Ipsos Reid;
- 4) Research and listing of regulated professions and occupations in Alberta;
- 5) A legal research brief detailing a jurisdictional review of the definition of the practice of law in provincial statutes across Canada and of the authorized scope of legal service delivery by non-lawyers by the independent legal research firm Bottom Line Research;
- 6) A thorough review and recommendations on the definition of the practice of law and the scope of services by the Scope of Legal Services subcommittee; and
- 7) A literature and environmental scan of the alternate delivery of legal services in other jurisdictions.

3. Consensus Driven

The third key principle of the Project is that the process engaged to formulate project outcomes be driven by consensus. First, the ADLS Committee is accountable to the Benchers and has kept the Benchers informed and sought their input and direction through regular reports at the Benchers meetings. Secondly, the Project has been accountable to its stakeholders. In Phase 1, 27 stakeholder groups were interviewed by the independent consultant, Sierra Systems, to frame the issues for inquiry. Additionally, the Law Society has reported and sought input on each stage and research component of the ADLS Project through meetings of the Access to Legal Services Steering Committee chaired by the Presidents of the Law Society of Alberta over the three year period. (Peter Michalyshyn, QC, Rod Jerke, QC and Doug Mah, QC).⁴

⁴ The Access to Legal Services Steering Committee has met on five occasions: September 22, 2009; April 19, 2010; January 18, 2011; July 27, 2011 and November 9, 2011

IV. Research Findings

The Executive Summaries of the research components listed above were attached as appendices to the *Alternate Delivery of Legal Services Phase 2 Interim Report to the Benchers and Research Analysis, April 7-8, 2011*.⁵ The research has been invaluable to inform the work of the ADLS Committee and has had the added benefit of providing a broader perspective on the nature of legal services delivery to the Law Society and other justice system stakeholders.

The ADLS Committee met on numerous occasions⁶ to develop and direct the research objectives and strategies; to analyze the data from each research component; and to develop the recommendations based on the research components and stakeholder feedback.

At its meeting in October 2010, the ADLS Committee undertook a comprehensive review of the research findings as framed by the four main propositions outlined in the *Sierra Report*:

- Access to the Justice System
- Consumer Protection
- Definition of the Practice of Law
- Impacts on the Legal Profession, the Public and the Law Society

Through this process the ADLS Committee was able to synthesize the research data to frame the following key themes. The ADLS Committee has learned a great deal about the market for the delivery of legal services by both lawyers and non-lawyers from the outcomes of the research components in Phase 2.

A. Key Themes

The following key themes emerged from the research findings:

1. Legal Service Delivery – Ipsos’ Surveys

The first component of the Project’s research inquiry was to obtain baseline data on legal service delivery by both lawyers and non-lawyers to Albertans. In this regard, Ipsos Reid was retained by the Law Society to conduct two surveys. The first was a general consumer survey on legal service delivery usage and attitudes and the second was a survey of the legal profession. The following key themes were reported to the Law Society and the Access Steering Committee by Ipsos:

- Generally, for most Albertans there is a high degree of satisfaction with lawyer service delivery (78%) and Albertans find good value in services delivered by lawyers (91%).
- Albertans report using the services of lawyers for a wide range of matters including: real estate transactions (84%), wills and estates (78%), family relationship problems (59%), small business issues (54%), personal injury (46%) and crime related matters (40%). The services of lawyers were also used by Albertans to address immigration problems (35%)

⁵ Available on the Law Society of Alberta’s website at www.lawsociety.ab.ca.

⁶ The Committee has met 21 times: March 17, April 20, May 11, September 8, October 8, November 10, 2009; January 21, February 18, March 22, April 28, May 14, June 21, September 7, October 7, November 8, 2010; January 11, February 9, March 10, April 18, May 12, September 12, 2011. The Definition of the Practice of Law Working group also met as a subcommittee of the ADLS Committee over the summer months in 2011.

of those who experienced such situations), property damage (27%) and discrimination issues (25%).

- Most legal services are delivered to individual Albertans by lawyers in sole practice or by firms of fewer than ten lawyers.
- Likewise, for those legal services delivered by non-lawyers, Albertans have found good value and are almost as happy (69%). Services delivered by non-lawyers are lower complexity and lower risk services.
- Consumers have indicated they would rather have services of a lawyer for those matters that are perceived to be more complex and higher risk to them and 90% indicated they would be likely to hire a lawyer when faced with a legal problem in the future.
- Low income Albertans (\$50,000 or under) experience the legal system differently than those who can afford the services of a lawyer; and low income Albertans are more likely to have experienced more than one legal difficulty (except for real estate and wills/estates issues).
- There are high needs areas where cost is a barrier to low income Albertans particularly in the area of family and poverty law.
- The cost of a having a lawyer is perceived to be too high; however, polling data indicates that the average mean cost differential on the final bill to the client from a lawyer and a non-lawyer providing legal services was not substantially different, at approximately \$350.
- Over ½ of the legal profession (54%) provide some pro bono legal service to individual Albertans; 74% of lawyers outside of Edmonton and Calgary have provided pro bono legal services.
- Most lawyers (86%) have provided legal services to clients on a reduced fee basis.
- Limited scope retainers were identified as a method of reducing legal costs by 62% of lawyers. Additionally, 56% of total lawyer respondents report that they have provided legal services to clients on a limited scope retainer; and those in small firms (under 10 lawyers) 66% have provided legal services on a limited scope retainer.
- Self-represented litigants – 71% of self-represented litigants indicated that they preferred to self-represent and would not have chosen to be represented by a lawyer.
- For Albertans involved in court proceedings or a hearing (regardless of the outcome), 69% were satisfied with their experience with only 14% saying they were dissatisfied.

2. Non-Lawyer Industry Profile

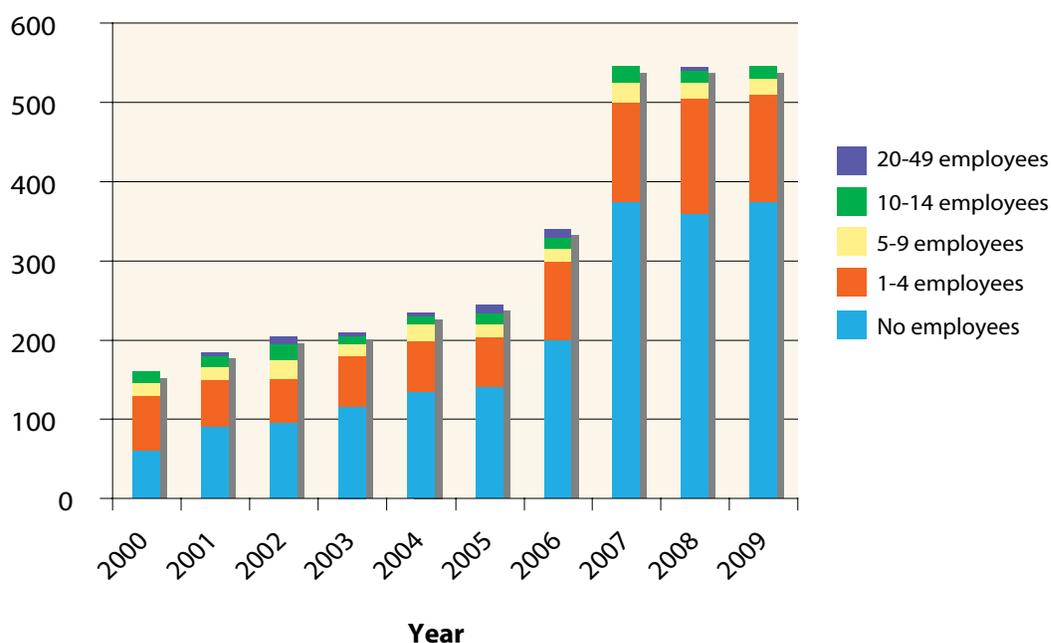
An important component of the research data was to better understand the nature and scope of the current independent non-lawyer legal service delivery industry. There is no organizational structure, regulatory body or educational institutions for the independent non-lawyer legal service industry in Alberta. Therefore, there are no industry stakeholder organizations or representatives who keep track of the non-lawyer legal service delivery marketplace. In order to construct the profile, it was necessary to retain an independent social science researcher to inform this part of research inquiry.⁷ Through empirical and quantitative research methodologies, the following profile was developed.

⁷ *Alberta's Independent Non-lawyer Legal Services Industry: An Investigation of Existing Quantitative Data: and Alberta's Independent Non-lawyer Legal Services Industry: An Original Empirical Investigation:* by Patricia Leake, MPP: September 30, 2010

a) Growth of the Non-Lawyer Legal Service Industry

- Alberta's independent non-lawyer legal services⁸ industry is expanding. Between 2000 and 2009 the independent non-lawyer legal service industry has increased by 230%. Through the analysis of high quality existing data bases, a realistic estimate is that there are currently 545 independent non-lawyer legal service delivery establishments with approximately 900 independent non-lawyers providing legal services to the public for a fee.
- The independent non-lawyer legal services industry is predominantly made up of small businesses. In 2009, 94% of Alberta's independent non-lawyer legal establishments had 4 or fewer employees. Almost 70% are a single self-employed owner-operator. The growth from 2000-2009 as indicated in the following chart is predominantly in establishments of 4 or fewer employees.

**Growth in the Number of
Independent Non-lawyer Legal Services Establishments
by Establishment Size, 2000-2009, Alberta**



- Alberta's overall non-lawyer legal services industry is comprised of both non-lawyers delivering services under the supervision of a lawyer; and independent non-lawyer agents (providing legal services for a fee). Together these two categories indicate that non-lawyer legal service delivery is an emerging and expanding industry. Together they indicate that the overall number of non-lawyers providing legal services in Alberta increased by 447% between 1990 and 2009 (from 1,700 to 9300).
- There are more independent non-lawyers who provide legal services in Alberta than in any other Canadian province except Ontario; and per capita, there are more independent non-lawyers providing legal services in Alberta than in any other province.

⁸ The *Independent non-lawyer legal service industry* means non-lawyers delivering legal services and NOT under the supervision of a lawyer

b) Lack of Education, Training and Licensing

- There are no standards of education or any licensing requirements for independent non-lawyers delivering legal services. There are no courses of study or training programs offered in Alberta designed to educate and train independent non-lawyers to sell unsupervised legal services directly to Alberta consumers. Six educational institutions in Alberta focus on the training for legal assistants under the supervision of a lawyer.
- Education levels vary and there is not a standardized level of education for independent non-lawyers delivering legal services. Approximately ½ have a college or non-university degree (53%), followed by those with a high school diploma (18%), university degree (16%), trade (5%), university certificate (5%) and no diploma or degree (3%).
- A significant proportion of Albertans erroneously believe that when dealing with an independent non-lawyer that the non-lawyer delivering legal services is subject to a code of ethics (30%), is overseen by a regulatory body (24%), has legal training (19%) and is insured to provide services (19%).

c) Legal Services Offered by Independent Non-Lawyers

- Non-lawyers sell various kinds of legal and law related services directly to Albertans: representation before courts; hearings and tribunals; filling out forms; document drafting; and provision of legal advice.
- Non-lawyers in Alberta provide independent legal services through firms in a variety of businesses and self-describe and advertise in various ways (and sometimes for several different services) including as legal agents, independent paralegals, divorce specialists, traffic law representatives, bankruptcy advocates, process servers, mediators, estate planners, debt collectors, and social benefits consultants, among other occupational titles.
- Independent non-lawyers advertise the direct sale of legal services to Alberta consumers in a large number of practice areas.

d) Client Protections

- There is no regulatory organization or organized industry association for independent non-lawyers selling legal services with established consumer protections such as a code of ethics, errors and omissions insurance or trust fund theft protection (assurance fund). General consumer protections laws such as the Fair Trading Act and the Criminal Code of Canada do provide a measure of protection to those consumers of non-lawyer legal service delivery.
- The Alberta Association of Professional Paralegals is the organization of traditional paralegals who work under the supervision of a lawyer and has established some standards such as a professional code of ethics. For this model, client protection derives from the lawyer who supervises the paralegal activities.
- Lawyers who deliver legal services are regulated and insured to do so ensuring client protection.
- Data is difficult to collect regarding the harm of independent non-lawyer legal service delivery. There is no organizational structure in place to keep track of the non-lawyer legal service delivery marketplace. Stakeholder feedback, particularly from the courts, has indicated a concern about the lack of standards for independent non-lawyer agent legal service delivery.

e) Factors Contributing to Anticipated Future Growth

- Alberta has a reputation as an attractive place for non-lawyers to do legal business. The non-lawyer sale of legal services to the public is more stringently controlled in some other Canadian provinces. Ontario began to regulate its independent paralegal industry in 2006 and between 2006 and 2007 the number of independent non-lawyer legal establishments in Alberta jumped from 350 to 535. In British Columbia, there is a more robust definition of the practice of law which clearly delineates legal service delivery between lawyers and non-lawyers.
- Unlike other provinces, Alberta does not have a clear definition of the practice of law in the *Legal Profession Act* which causes confusion and risk to the consumer regarding only those legal services that trained, licensed and insured lawyers should provide.
- There has been “snowballing growth” of Alberta’s *entire* non-lawyer legal services industry. The total number of non-lawyers providing legal services in Alberta (both traditionally and independently) increased by 447% between 1990 and 2009 (from 1700 to 9300); with the independent non-lawyer legal service delivery increasing by 230%.
- New technologies increase the opportunities for Alberta’s independent non-lawyer businesses to access legal information and to sell legal services directly to the public.
- Self-employment is increasingly popular relative to paid employment.
- There is substantial latent demand in Alberta for legal services in practice areas in which independent non-lawyers are willing to sell legal services. Where there is demand there will be supply, and under existing market conditions, Alberta’s independent non-lawyer legal services industry will continue to expand.

3. Public Legal Education

The Ipsos surveys also provided a key theme regarding the Albertans’ overall understanding and knowledge of legal issues and the legal system:

- Albertans’ knowledge about the legal resources available to them and knowledge about their personal legal rights and obligations could be improved. 30% indicated they were not knowledgeable and almost 59% indicated they were only somewhat knowledgeable about their personal legal rights, obligations and the legal resources available.
- Only 18% of Albertans indicated that they had received any education or training regarding their personal legal rights, obligations and legal resources available. Seventy-five percent (75%) indicated they had received no training and 7% did not know whether they had received any education or training.

B. What have we learned and what surprises were there?

Some of the research data confirmed the assumptions made when the ADLS Project began such as:

- There are no training programs offered in Alberta to educate and train independent non-lawyers in the legal services that are delivered in this sector.
- There are no client protections including standards of education, insurance, code of professional conduct or other client protections in place for independent non-lawyer legal service delivery.
- The independent non-lawyer legal services marketplace is mostly unregulated (subject to general consumer protection legislation (Fair Trading Act; Criminal Code of Canada).
- Stakeholders advise that there may be instances that the public is placed at risk by independent non-lawyer legal service delivery.
- Low income Albertans (those making \$50,000 or under) experience the availability of legal services differently than those with an ability to pay for legal services.
- There are high needs areas where cost is a barrier for low income Albertans particularly in the area of family law and poverty law.

Some of the data provided new insights that helped a great deal in informing the propositions in Phase 1 such as:

- Generally, Albertans are able to pay for legal services provided by a lawyer including middle income Albertans who are happy with those services.
- Most Albertans would retain a lawyer in the future for a serious or difficult to resolve legal problem and most would rather have the services of a lawyer for those matters that are more complex and higher risk to them (90%).
- Most legal services are delivered to individual Albertans by lawyers in sole practice or by firms of fewer than ten lawyers.
- There is a tremendously wide variety of legal services already provided to the public by independent non-lawyer agents for a fee.
- The marketplace has filled in the gaps in legal service provided by independent non-lawyers for low complexity low risk legal services.
- Consumers are willing to use an independent non-lawyer and are happy with the legal services provided by non-lawyers in certain areas of low risk and low complexity.
- The number of independent non-lawyer agents providing these services has seen tremendous growth in the past decade and are projected to grow.
- Alberta has the largest per capita independent non-lawyer legal service industry in Canada.

- Alberta is the only jurisdiction in Canada not to have a clear definition of the practice of law in the provincial statute⁹.
- The unregulated independent non-lawyer legal services industry has grown in Alberta due to more stringent regulatory environments in BC (unauthorized practice of law prosecutions) and Ontario (paralegal regulation).
- Data is difficult to collect regarding the harm of independent non-lawyer legal service delivery. There is no organizational structure in place to keep track of the non-lawyer legal service delivery marketplace.
- Many lawyers are providing access to low income Albertans through reduced fee arrangements, pro bono legal service and limited scope retainers.
- Most Albertans have not received any education or training on their personal legal rights or obligations; and have not received education or training on available legal resources.

The primary purpose of Phase 2 of the Project was to fully explore and research the propositions to foster a better understanding amongst the ADLS Committee members, the Benchers and the Project stakeholders on the issues surrounding the delivery of legal services by non-lawyers. The research methodologies in Phase 2 of the Project resulted in data that was highly informative for the ADLS Committee and the stakeholders. In particular, the key principles as articulated above and the key themes from the data were instrumental to the policy formulations for the conclusions and recommendations adopted by the Benchers.

⁹ All jurisdictions excepting Saskatchewan have a clear definition of the practice of law; Saskatchewan has clear direction on the unauthorized practice of law in their legislation.

V. Conclusions and Recommendations

To assist in clarifying the direction of the recommendations and to develop conclusions, the ADLS Committee embarked on a comprehensive consultative process for input and feedback from the both Benchers and the Access to Legal Services Steering Committee members. From those consultations, the Committee adopted the following conclusions and recommendations regarding the original propositions framed in the Phase 1 Sierra Report:

1. Access to Justice

Proposition:

Legal services provided by non-lawyers can have an impact on improving access to the justice system for citizens.

Conclusion:

In Alberta, there is already a robust and expanding independent non-lawyer legal services market that is unregulated and is projected to grow. There are areas where low income Albertans (those earning under \$50,000) are not able to pay for legal services delivered by lawyers or by independent non-lawyers.

The ADLS Project is an access to legal services initiative with the goal of improving the availability of quality and competent legal services. The originating proposition presumed that the legal services market place for the delivery of legal services by independent non-lawyers was not well developed and could be developed further to improve access to legal services. This proposition was refocused by the Industry Profile research as it indicates a huge increase in the delivery of legal services by independent non-lawyers in the past decade. There is already a robust independent non-lawyer legal service industry in Alberta which is unorganized, unregulated, and may in some circumstances be exposing Albertans to the risk of harm. The Industry Profile research indicated that through the market driven approach currently in place, where non-lawyers are able to make a living providing legal services to Albertans, they are doing so.

2. Consumer or Citizen Protection

Proposition:

In many cases, users of alternative legal services are not sufficiently protected or aware of their risks.

Conclusion:

Consumer choice is a key principle of a market-driven economy and consumers should be free to choose service providers currently operating under the general consumer protection laws. The role of the Law Society is to protect and preserve the public interest when engaging a lawyer, not to protect consumers from freely made consumer choices. Further, the objective of the ADLS Project is to make recommendations and offer practical solutions to enhance access to affordable and competent legal services in areas of high legal need. Consumer protection was not the issue the ADLS Project was mandated to address. The Law Society is open to continuing the discussion with government as to how consumers of legal services by independent non-lawyers might be better protected from the risk of harm.

In our consultations with stakeholders there are indications that consumer protection is an issue in the delivery of legal services by independent non-lawyers. As indicated above, there are no standards for education, licensing, insurance or other consumer protections for clients when engaging an independent non-lawyer to deliver legal services.

Further, data is difficult to collect regarding the risk of non-lawyer legal service delivery as there is no organizational structure in place to keep track of the non-lawyer legal service delivery marketplace. The Law Society is open to continuing the discussion with government as to how access to competent and affordable legal services might be improved and how consumers of legal services by non-lawyers might be better protected from the risk of harm. A key principle of the Project was that consumers of legal services are entitled to expect that legal services are delivered by practitioners who are competent and qualified to deliver those services. Quality legal services are those services delivered by trained, licensed, insured, ethical, experienced legal professionals with duties of ongoing continuing professional training and development.

There is an opportunity for the LSA to provide education to the public about the difference between lawyers and non-lawyer legal services in this regard. A clarification in the definition of the practice of law in the *Legal Profession Act* has been identified by all stakeholders as providing an opportunity to delineate between non-lawyer and lawyer delivered legal services so as to balance risk and improve consumer understanding of their choices.

The Committee discussed consumer protection at length. In addressing this focus question, the Committee came to the conclusion that consumer protection was not the issue that the Project was asked to address. The Project was initiated to develop solutions for increased access to legal services and ways that may be accomplished through the delivery of legal services by non-lawyers. Dr. Miriam Carey, Public Representative and Committee member, took the lead on this discussion and was passionate in reframing the issue for the Committee members which is summarized below:

- The Project started as an access to legal services initiative but throughout the research process, the level of consumer protection for those legal services delivered by independent non-lawyer agents arose as an issue.
- Discussion centered on whether a reframe of the original proposition was necessary. Instead the Committee reframed the consumer protection question to: What problem is the ADLS Project is trying to solve? The Committee affirmed that the goal is to develop practical solutions for increased access to competent and affordable legal services particularly for low-income Albertans.
- There is no evidence to indicate that increased consumer protection for consumers of independent non-lawyer legal service delivery (through the regulation of independent paralegals) would increase the availability of legal services. There may be an indication that the regulation of the paralegal industry in Ontario may have had the effect of curtailing non-lawyer legal service delivery. Additionally, there are no educational programs in Alberta to train those who deliver independent non-lawyer legal services for a fee so setting up a more formal regulatory structure without educational programs is problematic.
- It is the responsibility of the Law Society to protect clients who retain licensed lawyers to provide legal services. They do so by: 1) setting standards for entry and ongoing professional development for the legal profession in Alberta; 2) setting and enforcing standards of competence and professional behaviour; 3) prosecuting and rehabilitating lawyers who fall below those standards of competence and professionalism; 4) maintaining programs of insurance and assurance to protect clients from the

negligence or dishonesty of their lawyer. Other key considerations were discussed by the Committee including the issue of the independence of the legal profession, the rule of law and solicitor-client privilege. Concern was raised that changes in the regulation of independent non-lawyer legal service delivery may have an impact on these core principles. Would regulation by government or other body of the non-lawyer legal services industry pose a threat to the independent regulation of lawyers? What would be the impact on the rule of law and solicitor-client privilege? These are key questions to be explored and seriously considered if regulatory models of the independent non-lawyer legal services industry are pursued.

- It is not the responsibility of the Law Society to protect all consumers of legal services who choose to use services delivered by non-lawyers.
- A concise definition of the practice of law, combined with public education, would allow consumers to know what to expect from a lawyer and be aware of the risks if they choose to hire a non-lawyer agent.
- Consumers are free to make their own choices and may choose to hire unlicensed service providers.
- The Committee has done an analysis of the research from Phase 2 and although consumer protection for those legal services delivered by non-lawyers is a concern, reviewing the merits of consumer protection alternatives (the regulation of independent paralegals) is not what the Committee was asked to do. The Committee did not see that it was necessary to pursue a discussion on the range of consumer protection models and make recommendations in this regard.

Some principles were drawn from this discussion:

- The principle of *caveat emptor* applies to the independent non-lawyer service delivery marketplace in Alberta.
- The role of the Law Society is to protect and preserve the public interest when engaging a lawyer, not to protect all members of the public/consumers from freely made consumer choices.
- In clearly delineating those legal services delivered by lawyers as the practice of law, several aspects of the public interest would be served:
 - Individual members of the public would better understand what they can expect from their lawyer.
 - If independent non-lawyer providers of legal services are chosen, the individual members of the public will have a better understanding of the potential risks they are taking on.
- There is an opportunity for the Law Society to provide education to the public about the difference between lawyers and non-lawyer agents.
- A change in the definition of law would help to highlight these differences.

Throughout the inquiry, the evidence gathered through the various methodologies did not indicate a need for government or anyone else to engage in the regulation of the independent non-lawyer legal services industry as a means to increase access to legal services. If anything, the imposition of regulation, either in the Ontario form or the more frequent prosecution of unauthorized practice in British Columbia, seems to have had the opposite effect, that is, it has discouraged or reduced independent agent/non-lawyer legal services activity in those jurisdictions. Indeed, it can be inferred from the evidence that regulation in those

provinces likely led to a migration of independent non-lawyer agents into unregulated Alberta. Furthermore, the evidence indicates that Alberta already enjoys wide availability of independent non-lawyer legal services that meets identified consumer need and demand and it is unclear how regulation would increase availability.

In the event government perceives that it is in the public interest for there to be some form of regulation of the independent paralegal industry in future, or further prescription of permissible activities for that industry, that avenue remains open. If called upon, the Law Society would be available to assist in a consultative capacity.

3. Definition and Understanding of “Legal Services”

Proposition:

The definition of legal services is complex and the boundaries and the scope of the practice of law are not clear or fully defined.

Conclusion:

Stakeholder input was unanimous including from Alberta Justice that it would serve the public interest to have a clearer definition of the practice of law in the *Legal Profession Act*.

As reported to the Benchers in the *Interim Report*, justice system stakeholder input was requested by a letter sent from ADLS Chair Doug Mah, QC in January 2011 to the Access to Legal Services Steering Committee members on the definition of the practice of law (and other key questions). Replies were received from all stakeholders represented on the Steering Committee including¹⁰:

- The Court of Appeal – The Honourable Justice Jack Watson
- The Court of Queen’s Bench – The Honourable Justice Neil C. Wittman, Chief Justice
- The Provincial Court of Alberta – The Honourable Judge John T. Henderson
- Government of Alberta, Justice and Attorney General Ray Bodnarek, QC, Deputy Minister of Justice and Deputy Attorney General
- The Canadian Bar Association – Analea Wayne QC, President
- Legal Aid Alberta, Jacqueline Schaffter, QC, President and CEO

Stakeholder input was unanimous including from Alberta Justice that it would serve the public interest to have a clearer definition of the practice of law in the *Legal Profession Act*.

Key Principles upon which to base the Definition of the Practice of Law

The Committee spent considerable time discussing the principles upon which a definition of the practice of law should be based. The Committee recommends that the principles are key benchmarks for the development of a definition of the practice of law. It is recognized that the process for legislative review will be conducted on the timetable of the Government of Alberta depending on their policy and legislative priorities. The following key principles were developed and adopted by the Benchers:

¹⁰ Stakeholder feedback letters are available upon request

- A definition of the practice of law must encompass more than just a list of activities that lawyers perform. It should try to capture the essence of what a lawyer does: provide trusted advice, legal expertise, and legal analysis. A definition should try to import that the core of what lawyers do as the practice of law is not simply providing legal services but providing legal analysis, advice and action from an area of highly trained legal expertise. Lawyer services protect the confidences of the client in obtaining candid legal advice. The principle is that privilege is not merely one facet of what a lawyer does, but it is the cornerstone of the independence of the legal profession. Independence of the legal profession and the citizen's right to candid and confidential legal advice from a lawyer with ethical and legal duties not to disclose those confidences is the greatest consumer (citizen) protection.
- It is accepted as a general principle of consumer protection that there are services only trained, licensed, insured, regulated professions/occupations can provide to members of the public. As well, it is accepted that there are certain functions only a lawyer can undertake on behalf of a client. In particular, a client is entitled to candid and confidential legal advice without fear of disclosure (solicitor-client privilege) and this relationship must be sedulously fostered¹¹.
- There are some legal services that are of low complexity and of low risk that non-lawyers can provide to consumers; and there are those legal services of higher risk and higher complexity that only a lawyer can provide.
- A balance is needed between protection of the public in the delivery of competent legal services and access to legal services. To accomplish this balance, it is necessary to assess the spectrum of legal service activities based on risk to the public.
- Given that the majority of other Canadian provinces have developed a definition of the practice of law, there are good definitions available upon which to base a definition of the practice of law in Alberta. The research also indicates that a better definition of the practice of law allows for enhanced consumer protection by clarifying for consumers those legal services that require the consumer protection provided by a trained licensed insured lawyer.
- Any definition must respect non-lawyer agent activity that is currently allowed by enabling federal and provincial legislation (such as the *Criminal Code of Canada*, *WCB Act*, *Insurance Act*, *Provincial Offences Procedure Act* etc.). At the same time, a definition should highlight the significant differences between the limited services provided by a non-lawyer agent and the more comprehensive independent analysis and advice received from a lawyer who is a trained and regulated professional. Key differences in the provision of services by a lawyer include: education and training; ethical and professional standards including confidentiality and privilege; assurance; and insurance. These attributes provide a significant element of consumer protection for members of the public. Moreover, lawyers are bound by a broader and higher ethical duty to the entire justice system and to the administration of justice including duties to the Courts, regulatory and statutory tribunals and other justice system participants.
- A concise definition of the practice of law, combined with public education, would allow consumers to know what to expect from a lawyer and be aware of the risks if they choose to hire an independent non-lawyer agent.

Recommendation: That a definition of the practice of law be pursued with Alberta Justice based on the key principles enumerated in this Report for amendment to the *Legal Profession Act*.

4. Public and Legal Profession Impacts

Proposition:

The impact on and response of the legal profession and the public to the increased delivery of legal services by non-lawyers and the role that non-lawyer should play is unclear.

Conclusion:

The provision of legal services by a non-lawyer (paralegal) under the supervision of a lawyer in the not-for-profit and government environment can expand the scope of legal service delivery to low income Albertans unable to pay for legal services. Enabling rules are already in place to expand this legal service delivery model.

A rather surprising but reassuring finding from the Ipsos general consumer survey is that middle-income Albertans currently are generally happy with and well served for their legal needs both by the lawyer and non-lawyer legal service delivery marketplace in Alberta.

There is evidence however, that low-income Albertans (those making under \$50,000 annually) experience the legal system differently than those making over \$50,000; and they are more likely to have more than one legal difficulty. There are high needs areas such as family law where the cost of legal services (by both lawyers and non-lawyers) is a barrier for low income Albertans. The expansion of the scope of practice by independent non-lawyer agents for a fee will not solve the access to legal services problem because the fields where independent non-lawyer agents offer their services are where they are able to make a living. Generally, independent non-lawyer agents are not offering legal services in the high needs areas of law where there is a lack of access to affordable competent legal services. Data collected indicates that low-income Albertans are unable to pay for many legal services whether delivered by lawyers or non-lawyers in areas generally classified as poverty law and family law. Given the enormity of this systemic problem, not all solutions are within the power or mandate of the Law Society as the independent regulator of the legal profession in Alberta.

Access to legal services is an important priority and the Law Society is pursuing and has implemented various projects and programs within its mandate to further access to legal services for low income Albertans. Starting in 1998, the Law Society motivated and actively participated in the development of the pro bono clinics now in place in Edmonton, Red Deer, Lethbridge and Grande Prairie. As well, the Law Society actively developed Pro Bono Law Alberta as its legacy project in celebration of its 100th anniversary in 2007 and continues to provide ongoing sustainable funding for PBLA. Two ongoing task forces and committees are actively pursuing access to justice initiatives including the Retention and Re-engagement Task Force and the Access to Justice Committee. Data collected through the ADLS Project also indicates that lawyers have responded in a significant way to providing access to legal services for low income Albertans through the provision of pro bono legal services, limited scope retainers and reduced fee arrangements.

Through the ADLS Project, there are additional immediate steps the Law Society is pursuing to assist in the further development of competent legal services to low-income Albertans.

As indicated in Recommendation #1 above, the Law Society is actively engaged in the development of projects for increasing the capacity of non-lawyers working under the supervision of a lawyer to deliver legal services through not-for-profit and government sponsored legal services. Law Society Rules to enable the supervised non-lawyer legal service delivery model are already in place.

One such program recently brokered by the Law Society and implemented on January 1, 2012 is with Student Legal Services of Edmonton, Legal Aid Alberta and Court of Queen's Bench. The new SLS Family Law Chambers Project will extend the services currently offered by SLS students in the Provincial Court of Alberta to QB Family Law Chambers. Legal Aid lawyers from the Family Law Office have agreed to provide the supervision of the SLS students. All of the participants are eager to undertake this endeavor to increase the assistance to family law clients seeking low complexity child support orders or variation orders; and substitutional service orders in the Court of Queen's Bench Family Law Chambers¹².

The Law Society also has encouraged and supports the current Legal Aid Alberta initiatives on the delivery of legal services through the Legal Services Officers (non-lawyers) under the supervision of Legal Aid lawyers. It may be beneficial for the Government of Alberta through Legal Aid Alberta to pilot the model of increased scope of non-lawyer agents/paralegals working under the supervision of lawyers to see whether it is effective in reducing cost or generally increasing access to competent legal services and programs delivered to low income Albertans particularly in high needs areas.

The Law Society is also willing to assist in the development of future projects such as the Community Advocates program as delivered in British Columbia for example¹³. The Law Society remains committed to continued liaison with the various stakeholders involved to encourage projects and programs that will enhance legal services for low-income Albertans who have an inability to pay for services in areas of high need.

Recommendation: *Access to Justice/Legal Services focus: that the Law Society continue to support and facilitate the expansion of legal services by non-lawyers under the supervision of a lawyer in areas of high need for low income Albertans particularly in the government and not-for-profit sector (such as the proposed Student Legal Services Family Law Chambers project).*

¹² See Appendix I for a program description

¹³ Community Advocates in BC: Presentation to the Law Society of BC by Wayne Robertson, QC, Executive Director, Law Foundation of BC; May 2010

APPENDIX I

Bench Note

Pilot Project

Student Legal Services of Edmonton – Family Law Chambers January 1, 2012

This Pilot Project has been approved by Justice Beverley Browne, co-chair of the Court of Queen's Bench Family Law Committee; and developed in consultation with the Student Legal Services of Edmonton, the Law Society of Alberta and Legal Aid Alberta (Family Law Office).

1. Project Description

Student Legal Services of Edmonton (SLS) Family Law Project currently provides limited services to clients appearing in the Provincial Court of Alberta (Family Law Division). Law students providing legal services are members of SLS and are under the supervision of a lawyer from Legal Aid Alberta Family Law Office.

The extension of the Project to the Court of Queen's Bench is of limited scope and only applies to assisting clients in Queen's Bench Family Law Chambers regarding the following two court applications:

- a) low complexity child support orders and variation orders; and**
- b) substitutional service orders.**

It is important for all parties involved including the client, the law student, the supervising lawyer and particularly the Court to understand the limited nature of the services provided by the law students in this pilot project. Law students should not be asked by the presiding Justice to undertake matters beyond the scope of the Project (unless the supervising lawyer is in attendance).

2. Standing

Pursuant to *Legal Profession Act* (LPA) and the Rules of the Law Society of Alberta, law students who are members of a student legal services society and acting **under the supervision of an active member of the Law Society** are permitted to provide legal services in any court of civil or criminal jurisdiction¹.

Justice Beverley Browne has provided her agreement to have the law students appear in Family Law Chambers in the Court of Queen's Bench for the limited services provided by the law students in this pilot project.

3. Supervisions of Students: Client Protection – Supervising Lawyers

Law Students must be supervised by a lawyer to ensure proper advice and for the protection of the client for errors and omissions. SLS has entered into an agreement with the Legal Aid Society of Alberta (Family Law Office) which provides SLS students with a supervising lawyer to be in compliance with the Rules of the Law Society. The supervising lawyer from the Family Law Office is involved with every file undertaken by the SLS student from the commencement of the file including assisting the student in preparing and reviewing any documents to

be filed with the Court such as statements of claim, requests for information and affidavits. The supervising lawyer also reviews the facts of each file to assist with specific defenses and arguments that can be made, the procedural progression of the file and the use of Child View software to determine the amount to be claimed in the support/variation order. Generally, the supervising lawyer will not be in attendance with the SLS student during the Court application.

The Family Law Office is also willing to accept phone calls or emails from students if an urgent matter arises. In the event that matters arise during the Court application for which the SLS student is not prepared or has not consulted a supervising lawyer, the SLS students are instructed to advise the Court and have the matter dealt with at a later time. Regular file audits are also conducted by the Family Law Coordinator to ensure that an acceptable level of quality and attention is being given to each file. It should be noted that the SLS law student and the supervising Legal Aid lawyer are not the solicitors of record for the service of documents and other matters on behalf of the client. In this regard, the services provided by the SLS students are more akin to a duty counsel role.

SLS is eager to undertake this endeavor to increase the assistance to family law clients seeking low complexity child support orders or variation orders; and substitutional service orders in the Court of Queen's Bench Family Law Chambers. SLS students can be identified by an SLS name tag.

The Pilot Project will start on January 1, 2012 and will be evaluated after a 6 month pilot project period. If you should have questions or comments regarding the Project please contact:

Legal Aid Alberta Family Law Office: Jeff Keller: 780-415-9871; jkeller@flo.legalaid

Student Legal Services Society of Edmonton: Benjamin Lotery: 780-492-7612

Law Society of Alberta: Susan V.R. Billington, QC: 403-229-4705; susan.billington@lawsociety.ab.ca

1 The relevant sections of the Legal Profession Act and the Rules of the Law Society are as follows:

- 106(1)** No person shall, unless the person is an active member of the Society,
- a) practise as a barrister or as a solicitor,
 - b) act as a barrister or as a solicitor in any court of civil or criminal jurisdiction,
 - c) commence, carry on or defend any action or proceeding before a court or judge on behalf of any other person, or
 - d) settle or negotiate in any way for the settlement of any claim for loss or damage founded in tort.

Section 106(2) of the LPA provides exemptions to 106(1). Of particular importance is section 106(2)(e) which states that:

- (2)** Subsection (1) does not apply to the following:...
- e) a university law student in respect of services permitted to be provided by that student by the rules that are provided in accordance with the conditions prescribed by the rules;

Under the Rules of the Law Society of Alberta, section 81 states the circumstances university law students are permitted to provide legal services:

University Law Students

- 81 (1) For the purposes of section 106(2)(e) of the Act,
- a) a student enrolled in the faculty of law of a university in Alberta is permitted to provide legal services
 - i. **in the student's capacity as a member of a student legal services society, if the services are provided under the auspices of that society and under the supervision of an active member,** (emphasis added) or
 - ii. in a course of practical instruction approved by the faculty, if the services are provided under the supervision of an active member;
 - b) a student enrolled in the faculty of law of a university in Canada is permitted to provide legal services if the services are provided by the student
 - i. as an employee of a society that provides legal services to indigent persons, and
 - ii. under the supervision of an active member.

(2) Notwithstanding subrule (1), the Benchers may direct in a particular case that any services referred to in subrule (1) (a)(i) or (ii) or (b) may be provided under the supervision of an inactive member instead of an active member, subject to any conditions prescribed by the Benchers.



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