

TO: [FamilyLegalServicesReview@ontario.ca](mailto:FamilyLegalServicesReview@ontario.ca)

## EXPANDING LEGAL SERVICES OPTIONS FOR ONTARIO FAMILIES

### Joint Comments from Ontario's Family Information & Mediation Service Providers\*

#### *Background:*

Family Information and Mediation Service Providers operate under private contracts with the Ministry of the Attorney General (MAG) to provide:

- 1- Family information services in the Family Law Information Centres in designated Ontario family courts—services provided by qualified and insured Information & Referral Coordinators (IRCs).
- 2- Onsite family mediation services in designated Ontario court houses that are free to those on that day's list who wish to try to resolve narrow/ limited issues and are provided by accredited/certified and insured family mediators.
- 3- Off-site family mediation services for those with more complex issues, which are offered on a subsidized sliding fee scale basis to anyone whether they have a court proceeding or not, and which are provided by accredited/certified and insured family mediators, and
- 4- Mandatory Information Programmes in their respective jurisdictions.

#### **Demands on family information service providers**

Our IRCs are, along with court staff, on the very front lines of those meeting the diverse and extensive needs of separating families in Ontario. MAG data confirms that the numbers of IRC encounters with the public are growing extensively. Our IRCs meet daily with many hundreds of separating families who may be participants in a court process or not, and provide services including:

- Information about financial disclosure
- Help parties understand the role of Dispute Resolution officers (if they are available in that jurisdiction)
- Provide parties with information about the agencies, services, resources and supports available in their respective jurisdictions
- Conduct one on one triage meetings with clients in distress
- Work directly with clients who are victimized by violence, ensuring proper referrals to family court support workers and other supports

- Provide parties with information about various dispute resolution options, and assist them in accessing such services
- Provide support for parties needing translation services

Our IRCs, and court staff as well, are struggling to meet the demands placed on them by the public, particularly the vulnerable unrepresented public. As the front-line workers, the IRCs are particularly well qualified to identify the needs of the public. However, their role is constrained by their mandate. In particular, IRCs are not permitted to meet some of the highest demand needs such as assisting parties complete financial disclosure; helping parties have court orders drafted and taken out; working with court staff and judges to help parties effectively understand and navigate the court process; and assist parties with the completion of court forms.

### **Demands on court-connected mediators**

The family mediators who provide services under our contracts are also working on the front lines of family breakdown. As the burdens on courts and judges grown, more parties are referred to mediation as well as seeking it on their own accord due to the inherent benefits it provides. As these parties are increasingly seeking mediation without the benefit of legal advice or support, the legal support needs of our mediation clients are often not fully met. Although Legal Aid Ontario has introduced a 6 hour mediation advice certificate, the financial eligibility test for this certificate is still low and a great many of our mediation clients do not qualify. Uptake on these certificates is lower than expected and reasons for that have not been ascertained. Legal Aid Ontario also provides free advice counsel in many courts, and supervised law students for the completion of forms in some courts, but the need for legal support in mediation remains unmet in many instances., including because of income restrictions and restrictions on the kind of advice advice counsel are permitted to provide (eg/ no advice on spousal support or property division.)

Many of our mediators are family lawyers themselves; however a great many more are not. The growing legal complexity of the issues being brought to court-connected family mediators is challenging us all.

### **We therefore answer the consultation questions as follows:**

1. *What legal services are sought and provided in each type of family law case (e.g. divorce, custody and access), from beginning to end?*

**A:** Our clients need a diverse array of legal services, including advice on court process; advice on dispute resolution options and which is most appropriate for the client; advice on the legal merits of their case; advice on reasonable settlement options; drafting of agreements formalizing settlements reached in mediation; advice on and assistance with enforcement; assistance amending bail or restraining order terms to permit mediation; obtaining restraining

orders where appropriate; advice on protecting parties from unwitting violating of bail or restraining order terms; assistance with obtaining assistance from the Office of the Children's Lawyer where appropriate;

2. *What family legal services are currently provided by a person other than a lawyer (e.g. paralegals, law students, law clerks), whether independently or under the supervision of a lawyer?*

**A:** Some mediation clients receive assistance from students operating under the supervision of Legal Aid Ontario, primarily in the completion of court forms. Others are seeking assistance from self-represented litigant programs in some law schools.

3. *What family legal services are covered by legal aid? What family legal services are provided by duty counsel?*

**A:** Legal Aid Ontario provides Mediation Advice Certificates (6 hours) and Negotiation (10 hours) but clients are not able to access both, they must choose one or the other. As well, mediation clients are able to access limited legal advice—subject to financial eligibility tests—for limited amounts of time – generally about 20 minutes—on limited issues—custody, access and child support only.

4. *Which legal service offerings (e.g. conducting legal research, preparing correspondence, appearing in court, etc.) could improve the family justice system if they were more widely available?*

**A:** It would assist our clients if the following services were more widely available:

- Legal research to support mediation clients
- Assistance with completing intake forms for the mediation process
- Meeting with mediation clients to assist them with their preparation for mediation and the negotiation itself, particularly where clients speak a different language than the mediator or have other vulnerabilities including domestic violence, mental illness etc.
- Legal advice on the meaning and implication of child support guidelines
- Legal advice on the likely court outcomes of parenting disputes
- Assistance with completion of financial disclosure and financial statements
- Access to Divorcemate calculations for child and spousal support
- Advice on the elements of income determination under the Child Support Guidelines
- Advice on the application of the property division sections of the Family Law Act
- Assistance with completing draft Net Family Property statements
- Drafting orders, minutes of settlement and agreements arising out of the free or subsidized mediation processes

- Drafting Separation Agreements
- Attending mediation to support a client where appropriate and provide advice where appropriate

5. *If an appropriate framework is put in place, should persons other than lawyers, such as paralegals, be permitted to provide legal services in certain family law matters?*

**A:** Yes

6. *If yes:*

- *Which types of legal services (e.g. interviewing a client, preparing certain documents)?*

**A:** In theory properly trained and, where appropriate, supervised paralegals could provide many (but not all) of the above services.

- *In which types of family law matters (e.g. divorce, custody and access)?*  
*In theory, properly trained and supervised paralegals could provide services in any nature of family mediation case.*

**A:** Services could be provided in the mediation of any appropriate matter.

- *With what safeguards (e.g. education, training, insurance, regulation and/or oversight)?*

**A:** All of the above would be appropriate.

7. *Should other people as well as lawyers provide legal aid services? What role could these people play?*

**A:** We can see a role for paralegals to provide legal aid services that focus on some of the items set out in paragraph 4 above. In particular we would see a role for increased legal services for clients in the Family Law Information Centres who are unable to access the assistance they need from the current resources there: the IRCs, court staff and advice counsel.

8. *Do you think there are certain types of family law cases or issues that would not be suitable for persons other than lawyers to provide?*

**A:** Yes. We feel that family lawyers are needed to provide advice on the essential elements of parties' legal rights and obligations, including the likely outcomes of court proceedings on any given issue; on issues of income determination where income is not fully documented by a T4 slip; on issues of entitlement to spousal support; on issues of the application of the Advisory Spousal Support Guidelines; the application of the property division sections of the Family Law

Act; on Income Tax Act implications of proposed settlement terms, etc. In general, family lawyers need to provide the "advice" portion of the process in particular where special circumstances exist.

9. *Are there any promising models in other jurisdictions in Canada or abroad that Ontario should consider, with respect to the role of family law legal service providers, other than lawyers?*

**A:** We cannot comment on this question.

We thank you for this opportunity.

The following Family Information and Mediation Service Providers contributed to this joint submission:

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