February 14, 2022

VIA EMAIL: tdonnelly@lso.ca

Teresa Donnelly, Treasurer
Law Society of Ontario
130 Queen Street West
Toronto, ON
M5H 2N6

Dear Treasurer:

RE: Proposed Family Legal Services Provider Licence

We are writing to you on behalf of The Advocates' Society. The Advocates' Society is the leading association of litigation counsel in Canada dedicated to access to justice, excellence in advocacy, and a strong, independent and courageous bar. We are a not-for-profit association representing approximately 5,500 members across the country, the majority of whom practise law in Ontario. The Advocates' Society's mandate includes making submissions to governments on matters that affect access to justice, the administration of justice, and the practice of law by advocates.

Since 2016, The Advocates' Society has closely followed the issue of the role paralegals might play in the provision of family law services to Ontarians. We made submissions to former Chief Justice Annemarie Bonkalo during the drafting phase which eventually resulted in the publication of her Family Legal Services Review Report (the "Bonkalo Report"). We subsequently made submissions to the Law Society of Ontario (the "LSO") in the lead-up to the consideration by Convocation of the issues in the Bonkalo Report. On November 30, 2020, we provided extensive submissions to the LSO's Access to Justice Committee in response to the consultation paper authored by the Family Law Working Group proposing a Family Legal Services Provider licence (the "Consultation Paper").

The Advocates' Society has been committed to improving access to family justice in Ontario for many years. For example, alongside the LSO, we have advocated for a more accessible justice system through the implementation of the Unified Family Court across Ontario; we have consistently sought sustainable funding for legal aid, notably through the Alliance for Sustainable Legal Aid; and our members have spearheaded a number of initiatives whereby family lawyers provide *pro bono* and low-cost services to members of the public.

It is within this context that The Advocates' Society submits the attached Joint Communiqué, together with the Federation of Ontario Law Associations, the Toronto Lawyers Association and the Family Lawyers Association, in opposition to the motion to create a Family Legal Services Provider Licence with the contemplated scope.

The Advocates' Society commends the LSO for its commitment to access to justice, which is shared by The Advocates' Society. We recognize that there is a serious access to justice problem in our legal system, and the problem is most visible in family law. However, The Advocates' Society has concluded that the FLSP proposal, with its current scope, will not improve access to justice, is not in the public interest and will not benefit Ontarians.

In its November 30, 2020 response to the Consultation Paper (the "November 30 Submission"), which is also attached, The Advocates' Society put forward its recommendations for an alternative response to the access to justice problem. We reiterate that proposal here, modified slightly to reflect the current motion before Convocation:

1. The LSO take steps to improve access to justice and protect family law litigants as follows:

    a. The LSO focus its attention and resources on existing lawyer-led access to justice initiatives;

    b. The LSO lead a broad education campaign about options and resources for family law litigants;

    c. The LSO continue to advocate for the expansion of the Unified Family Court; and

    d. The LSO advocate for reform of family law court processes to advance access to justice.

2. Lawyers will continue to be responsible for providing the majority of family law services, including court attendances.

3. Paralegals and law clerks may provide some family law services under supervision by lawyers, as detailed in The November 30 Submission.

4. The **motion set out in the Report of the LSO's Access to Justice Committee should be rejected**.

5. If the LSO decides to proceed with an FLSP licence in some form — with which The Advocates' Society has serious concerns for the reasons detailed in the November 30 Submission —then the scope of work permitted for FLSPs should be significantly narrowed, as set out at page 21 of the November 30 Submission.

6. If the LSO decides to proceed with a scope of work for FLSPs broader than that which we set out at page 21 of the November 30 Submission — again, with which The Advocates' Society has serious concerns for the reasons detailed — then The Advocates' Society asks for a further opportunity to weigh in on the particulars of the scope and the related competencies, education and training.

We recognize that this position might be dismissed on the basis that it is protectionist. The Advocates' Society submits that it would be a mistake to discount on this basis the genuine and thoroughly considered concerns expressed by the four legal associations who have joined together to issue the Joint Communiqué, along with the concerns voiced by other legal associations and by the Ontario Court of Justice, Ontario's Superior Court of Justice, and the Court of Appeal for Ontario.

The position of The Advocates' Society is offered in the context of our focus on the integrity of our profession, our focus on client and community service and our commitment to promoting the public's confidence in the administration of justice. This submission is also informed by our membership's long tradition of *pro bono* work and volunteerism. In particular, there are significant ways in which many family lawyers work to solve access to justice problems on their own time and at their own cost, including through discounted and sliding scale fees, unpaid work on legal aid certificate files, *pro bono* work, volunteerism on the LSO's COVID-19 Emergency Family Law Referral Line and other hotlines, volunteerism as Dispute Resolution Officers, and the development of lawyer-led access to justice initiatives.

We thank you for giving thoughtful consideration to The Advocates' Society's position on this important issue. I would be pleased to speak with you at your convenience to discuss our position.

Yours truly,

Deborah E. Palter
President

C: The Benchers of the Law Society of Ontario
Vicki White, Chief Executive Officer

Attachments:

- **i.** Feb 14 2022 Joint Communiqué of The Advocates' Society, The Federation of Ontario Law Associations, the Toronto Lawyers Association and the Family Lawyers Association
- **ii.** Letter from Guy Pratte, President, The Advocates' Society, to Cathy Corsetti and Doug Wellman, Co-Chairs, Access to Justice Committee of the Law Society of Ontario dated November 30, 2020 with attached Response to the Consultation Paper proposing a Family Legal Services Provider Licence.

Monday, February 14, 2022

JOINT COMMUNIQUÉ

Of The Advocates' Society, the Federation of Ontario Law Associations, the Toronto Lawyers Association and the Family Lawyers Association

Opposing the Proposed Family Legal Services Provider Licence

The current proposal to create a Family Legal Services Provider Licence is not in the public interest and will not serve the critical legal needs of vulnerable members of the community who are involved in family law proceedings. The motion set out in the Report of the LSO's Access to Justice Committee should be rejected.

Our associations, which collectively represent approximately 18,000 Ontario members, oppose the proposal for the following critical reasons, among others:

- Family law matters are unpredictable and complex, and the consequences for the individuals and families involved can be grave. The Report's assertion that there is a "hierarchy" of issues that paralegals could be instructed to address in a consistent sequence is false and demonstrates a fundamental misunderstanding of family law.

- The suggestion that "lower income" cases are more likely to be "simple" is false. There are significant and complicated factual matrices that frequently intersect with family law matters, including domestic violence, coercive control, power imbalance, substance abuse, mental health problems and immigration sponsorship problems. Creating a two-tier system to allow those with less training and expertise to advocate on behalf of families with lower incomes is a fundamentally flawed and troubling approach.

- The proposed motion puts the LSO at risk of failing to meet its statutory obligation to regulate the professions in the public interest and to ensure legal service providers meet the appropriate standards of professional competence. Twenty-eight weeks of training and a brief placement cannot provide the legal expertise necessary to competently protect the interests of clients on the vast range of issues that arise in family law disputes and are contemplated within the scope of the FLSP licence.

- The Report rests on flawed data and flawed conclusions drawn from the data. Our associations, the Ontario Court of Justice, the Superior Court of Justice and the Court of Appeal for Ontario all made submissions to the Committee that opposed the proposed scope of the FLSP licence, for very similar reasons. The Report largely ignores these submissions and the very real concerns raised therein.

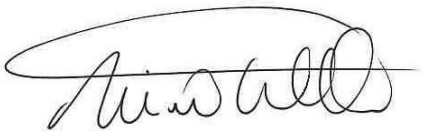
- The proposal will not enhance access to justice for Ontario families. Many family lawyers offer services at hourly rates comparable to, or lower than, the rates paralegals currently charge. The majority of family lawyers also offer the same type of "outside-the-box" billing options that the Report suggests paralegals offer, including limited scope, unbundled, legal coaching, flat fee and sliding scale services.

Deborah E. Palter

President, The Advocates' Society

Nathan Baker

Chair, Federation of Ontario Law Associations



Michael J. L. White

President, Toronto Lawyers Association

Katherine MacDonald

Chair, Family Lawyers Association

Background

The key features of the proposed FLSP licence have been opposed in the submissions made to the LSO by our organizations, as well as in the submissions made by the Ontario Court of Justice, the Superior Court of Justice of Ontario, the Court of Appeal for Ontario and the Family Law Rules Committee (which determines Right of Audience).

The FLSP proposal does not demonstrate an appropriate appreciation of the complexity of family law and the gravity of its consequences. Without this crucial understanding, the proposed FLSP licence will fail to meet the three guiding principles of (1) access to justice, (2) public protection and (3) viability, while costing an immense amount in the process— money which would be better spent on effective access to justice initiatives.

Family law is not simple or mechanical.

Family law is a complex area of law that intersects with many other areas, from trusts to tax to bankruptcy to pensions to wills and estates, to name only a few. Family lawyers must understand some 39 federal and provincial statutes and regulations and how many of them intersect. Family lawyers need expertise in common law principles including property law, contract law and equitable claims such as unjust enrichment and constructive and resulting trusts. Issues regularly intertwine, and are often not apparent at the outset. Cases that present as “simple” can be the ones that end up at the Court of Appeal. A lack of knowledge or a failure to issue-spot can have catastrophic impacts on a client, including losing their home, child or financial stability.

It is wrong to assume that only particularly complicated family law cases fall within the complex web of statutes and common law described above, or that most family law cases are “simple”. It is impossible to determine at the outset with any degree of certainty which cases will be more complex. It is also fallacy to suggest that “lower income” cases are more likely to be “simple”. There are significant and complicated factual matrices that frequently intersect with family law matters, including domestic violence, coercive control, power imbalance, substance abuse, mental health problems and immigration sponsorship problems. The Report's assertion that there is a "hierarchy" of issues that paralegals could be instructed to address in a consistent sequence is false and demonstrates a fundamental misunderstanding of family law.

The proposal risks breaching the LSO's statutory duty to protect the public.

The proposal has utterly unrealistic expectations that paralegals could learn broad substantive areas of law and how to draft contracts and conduct trials in a 28-week education program followed by an 8-10 week field placement. It is not possible to learn what is needed to competently practise family law with such limited training. If approved, this proposal puts the LSO at risk of failing to meet its statutory obligation to ensure legal service providers meet the appropriate standards of professional competence.

Moreover, this model creates an impossible situation for members of the family law bar who would be expected to provide field placements to train paralegals: it is simply not possible to train someone to practise family law during such a brief field placement.

This proposal will not enhance access to justice for Ontario families.

Many family lawyers offer services at hourly rates comparable to or lower than the rates paralegals currently charge. According to a survey of 448 family lawyers across Ontario in December 2020 by The Advocates' Society, the Federation of Ontario Law Associations and the Toronto Lawyers' Association (the "Survey")[1] (a survey the Report mentions in a footnote but does not discuss), 45% of family lawyers reported that they charge below $200 per hour as their lowest hourly rate. In addition, the majority of family lawyers offers the same type of "outside-the-box" billing options that the Report suggests paralegals offer, including limited scope, unbundled, legal coaching, flat fee and sliding scale services.

The proposal compares the billing rates of family lawyers to those of paralegals practising in areas *other* than family law, ignoring the increased overhead costs for the delivery of family law services (e.g. specialized software) and assuming that specific paralegal fee structures – such as block fees – will remain in place if providing family law services.

The proposal inadequately addresses the potential high cost of insurance for paralegals and the impact that may have on their fees. Paralegals are not insured through LawPRO and so must obtain private insurance. We understand that current paralegal insurance premiums are priced based on expected payouts in or about the $25,000 range. The potential payouts if paralegals are handling potentially multi-million dollar cases concerning matrimonial homes, financial assets, and ongoing or lump-sum support claims are much higher. There is no evidence that the private insurance market will insure paralegals to practise family law nor is there a plan to achieve that in this proposal.

The Report is conclusory and ignores key data and submissions.

All of our Associations and all of the Courts made submissions to the Committee that opposed the proposed scope of the FLSP licence — and for very similar reasons. The Report largely ignores these submissions and the very real concerns raised therein.

The Report relies on flawed data and flawed conclusions drawn from that data. For example, the survey sent to family lawyers on billing matters did not allow the selection of multiple answers, thereby failing to gather accurate information on the wide range of family lawyer rates and billing practices. The Report then concludes, wrongly, that paralegals offer more flexible billing models, ignoring the myriad ways family lawyers offer services, including limited service retainers, unbundled services, legal coaching, flat fee services and sliding scale rates. The Report relies extensively on a survey of only 21 self-represented litigants (SRLs) and then draws inaccurate conclusions from the already scant data. For example, the Report concludes that there are three categories of work for which SRLs would choose a paralegal over a lawyer, but the data shows the SRLs would choose a paralegal over a lawyer only 14%, 23%, and 62% of the time, respectively — meaning most of the time the SRL would choose a lawyer to represent their interests.

[1] For the full survey results, please see Schedule A: "Providing Family Legal Services Across Ontario".

The proposal is a misplaced use of resources.

The proposal will cost $550,000 to $800,000, at a minimum, and likely over a $1 million to initiate. The proposal acknowledges that ongoing full-time LSO staff may have to be added, and that it may be necessary for all licensees to subsidize family law paralegals on an ongoing basis. These funds are better applied to initiatives that will actually provide effective access to justice for Ontario families.

Paralegals do not have right of audience before Ontario courts on family matters.

The Report largely ignores that paralegals do not have right of audience before Ontario courts on family matters — and it is not within the LSO's purview to change this. The *Family Law Rules* provide that a party may act in person, be represented by a lawyer, or be represented by a person who is not a lawyer, but only if the court gives permission in advance. Justice Benotto, Chair of the Family Law Rules Committee, wrote a submission opposing the proposed expansion of the FLSP licence and supporting a more limited role and scope for paralegals, and she did this with the full support of the Chief Justice of Ontario, Chief Justice Strathy.

The proposal is not "something" that is better than "nothing".

There is an access to justice problem in our entire system — not just family law. But it is wrong to suggest there is nothing available to address the need in family law. Family lawyers are working hard to provide access to justice, including through relatively new initiatives like the Family Justice Centre, Advice and Settlement Counsel (ASC) Toronto, and the Family Law Limited Scope Services Project. All of these initiatives offer any combination of pro bono, "low bono" and navigational services. The public is largely unaware of these options and initiatives. They are underfunded, under-promoted and under-utilized. The LSO can and should help with this.

Further, the public is largely unaware that many family lawyers offer various low cost options, including services at Legal Aid rates (under $150), per hour unbundled or flat fee retainers, and delegating to junior lawyers and/or supervised students. Again, the LSO can and should support an information campaign.

The non-legal family law services model has been considered and rejected, or has been tried and failed, in multiple North American jurisdictions (e.g., British Columbia and Washington). To date, no other jurisdiction has licensed paralegals to practise such a broad scope of family law — for good reason. Ontarians will be better served by the LSO devoting time, attention and resources to developing and expanding existing access to justice initiatives and connecting clients to the right counsel, than spending enormous amounts of time, resources and money on a proposal that does not actually meet Ontarians' access to justice needs.

SCHEDULE A

Title: Providing Family Legal Services Across Ontario

NOTE: This document has been edited to remove responses to open-ended survey questions which could potentially identify survey respondents.

Opening Language:

This survey has been jointly developed by The Advocates' Society, the Federation of Ontario Law Associations and the Toronto Lawyers' Association. The survey aims to gather information from lawyers across Ontario regarding the provision of family legal services, including the accessibility of those services and different models used to deliver them. The results of this survey will help to inform the responses of TAS, FOLA and the TLA to a consultation paper recently released by the Access to Justice Committee of the Law Society of Ontario on a proposed family legal services provider licence.

The survey is completely anonymous and is intended to identify general trends. The questions do not ask for identifying information, such as your name, and responses will not be tracked back to any individual respondent. To ensure privacy and confidentiality, the information collected will only be analyzed on an aggregate level and reference to the survey results in submissions by TAS, FOLA and the TLA will also be on an aggregate basis.

This survey will take you approximately 15-20 minutes to complete. We appreciate your time.

Questions

1. In which region do you practice?
   a) Central East Region
   b) Central South Region
   c) Central West Region
   d) East Region
   e) Northeast Region
   f) Northwest Region
   g) Southwest Region
   h) Toronto Region
   i) Prefer not to answer

2. In what city/town do you practice? (Optional)

(Blank space provided)

3. How long have you been practising law?
   a) 1 to 5 years
   b) 6 to 10 years
   c) 10-20 years
   d) 20 years or more
   e) Prefer not to answer

4. What is the population of the city/town where you practise?
   a) Fewer than 10,000 people

b) 10,000 – 99,000 people
c) 100,000 – 499,000 people
d) 500,000 – 1 million people
e) More than 1 million people
f) Prefer not to answer

5. What percentage of your practice is family law?
   a) Less than 25%
   b) 25 – 49%
   c) 50 – 74%
   d) 75 – 99%
   e) 100% - I only practise family law
   f) Prefer not to answer

6. What other areas of law do you practise?
   a) Real Estate law
   b) Immigration law
   c) Tax law
   d) Bankruptcy law
   e) Corporate law
   f) Estates law
   g) Employment law
   h) Other civil law
   i) Criminal law
   j) Other
   k) None
   l) Prefer not to answer

7. What type of legal services do you provide to family clients? (Please select all that apply)
   a) Legal representation
   b) Legal advice
   c) Legal information
   d) Legal coaching
   e) Unbundled services
   f) Limited scope retainers
   g) Collaborative family law
   h) Court conferences/first appearances
   i) Motions
   j) Trials
   k) Appeals
   l) Child protection
   m) Mediation (as the mediator)
   n) Arbitration (as the arbitrator)
   o) Mediation (as counsel)
   p) Arbitration (as counsel)

q) Other – please specify
(Blank space to answer)
r) Prefer not to answer

8. How do you bill for your work? (Please select all that apply)
a) Hourly
b) Flat fee
c) Sliding scale
d) Legal aid
e) Employment Assistance Program (EAP), if applicable
f) Prefer not to answer

9. What is your standard hourly rate in your family law practice? (Note: there will be questions about sliding scale rates further below)
a) Under $100
b) $100 – $199
c) $200 – $299
d) $300 – $399
e) $400 – $499
f) $500 or higher
g) N/A
h) Prefer not to answer

10. Do you provide services at a rate below your standard rate?
a) Yes
b) No
c) N/A
d) Prefer not to answer

11. Do you provide family law services on a sliding scale?
a) Yes
b) No
c) N/A
d) Prefer not to answer

12. What is the lowest hourly rate you charge family law clients (other than pro bono services)?
a) Under $100
b) $100 – $199
c) $200 – $299
d) $300 – $399
e) $400 – $499
f) $500 or higher
g) N/A
h) Prefer not to answer

13. What is the highest hourly rate you charge family law clients?
    a) Under $100
    b) $100 – $199
    c) $200 – $299
    d) $300 – $399
    e) $400 – $499
    f) $500 or higher
    g) N/A
    h) Prefer not to answer

14. Do you offer lower rates to family law clients than clients requiring services in other areas of law?
    a) Yes
    b) No
    c) I only work in family law
    d) Prefer not to answer

15. Do you work with junior lawyers?
    a) Yes
    b) No
    c) Prefer not to answer

16. Do you offer the services of your junior lawyer(s) to family law clients who cannot afford your hourly rate?
    a) Yes
    b) No
    c) N/A
    d) Prefer not to answer

17. What hourly rate does/do your junior(s) charge to family law clients? (Please select all that apply)
    a) Under $100
    b) $100 – $199
    c) $200 – $299
    d) $300 – $399
    e) $400 – $499
    f) $500 or higher
    g) N/A
    h) Prefer not to answer

18. Do you accept Legal Aid Certificates for family law clients?
    a) Yes
    b) No
    c) Prefer not to answer

19. What percentage of your family law practice consists of Legal Aid work?
    a) Less than 25%
    b) 25 – 49%
    c) 50 – 74%
    d) 75 – 100%
    e) N/A
    f) Prefer not to answer

20. Do you accept pro bono family law files?
    a) Yes
    b) No
    c) Prefer not to answer

21. Approximately how many hours per year do you contribute to pro bono family law files?
    a) None
    b) 1-19 hours
    c) 20-39 hours
    d) 40-59 hours
    e) 60 to 99 hours
    f) 100 hours or more
    g) Prefer not to answer

22. Do you provide unbundled services in your family law practice?
    a) Yes
    b) No
    c) Prefer not to answer

23. What percentage of your practice consists of unbundled services?
    a) Less than 25%
    b) 25 – 49%
    c) 50 – 74%
    d) 75 – 100%
    e) N/A
    f) Prefer not to answer

24. Do you use limited scope retainers for your family law practice?
    d) Yes
    e) No
    f) Prefer not to answer

25. What percentage of your practice consists of limited scope retainers?
    a) Less than 25%
    b) 25 – 49%
    c) 50 – 74%
    d) 75 – 100%

e) N/A
f) Prefer not to answer

26. Do you provide legal coaching in your family law practice?
    a) Yes
    b) No
    c) Prefer not to answer

27. What percentage of your practice consists of legal coaching?
    a) Less than 25%
    b) 25 – 49%
    c) 50 – 74%
    d) 75 – 100%
    e) N/A
    f) Prefer not to answer

28. What, if any, alternative billing options do you offer your family law clients?
    (Blank space to answer)

29. Do you provide family law legal services to clients at legal clinics or other organizations?
    a) Yes
    b) No
    c) Prefer not to answer

30. Do you provide family law legal services to clients as duty counsel?
    a) Yes
    b) No
    c) Prefer not to answer

31. Do you provide any form of public legal education about family law issues?
    a) Yes
    b) No
    c) Prefer not to answer

32. What type of public legal education does your organization provide? (Select all that apply)
    a) Information about the law
    b) Information to help people identify legal issues
    c) Information that explains how the family court system works
    d) Information on Alternative Dispute Resolution
    e) Information on policy reform
    f) Other
    g) None
    h) Prefer not to answer

33. Do you volunteer for an organization that does legal policy work and/or work relating to access to justice (e.g. The Advocates' Society, the OBA, FOLA, local organizations)?
    a) No
    b) Yes – please specify
       (Blank space to answer)
    c) Prefer not to answer

34. Are you a participant in any other form of alternative legal information/advice? (e.g. legal hotline, etc.)?
    a) No
    b) Yes – please specify
       (Blank space to answer)
    c) Prefer not to answer

35. Do you do any other family law volunteerism? If so, please specify.
    (Blank space to answer)

36. Are there any programs that provide family law access to justice that could benefit from the assistance of the Law Society of Ontario?
    a) No
    b) Yes (if yes what?)
       (Blank space to answer)
    c) Prefer not to answer

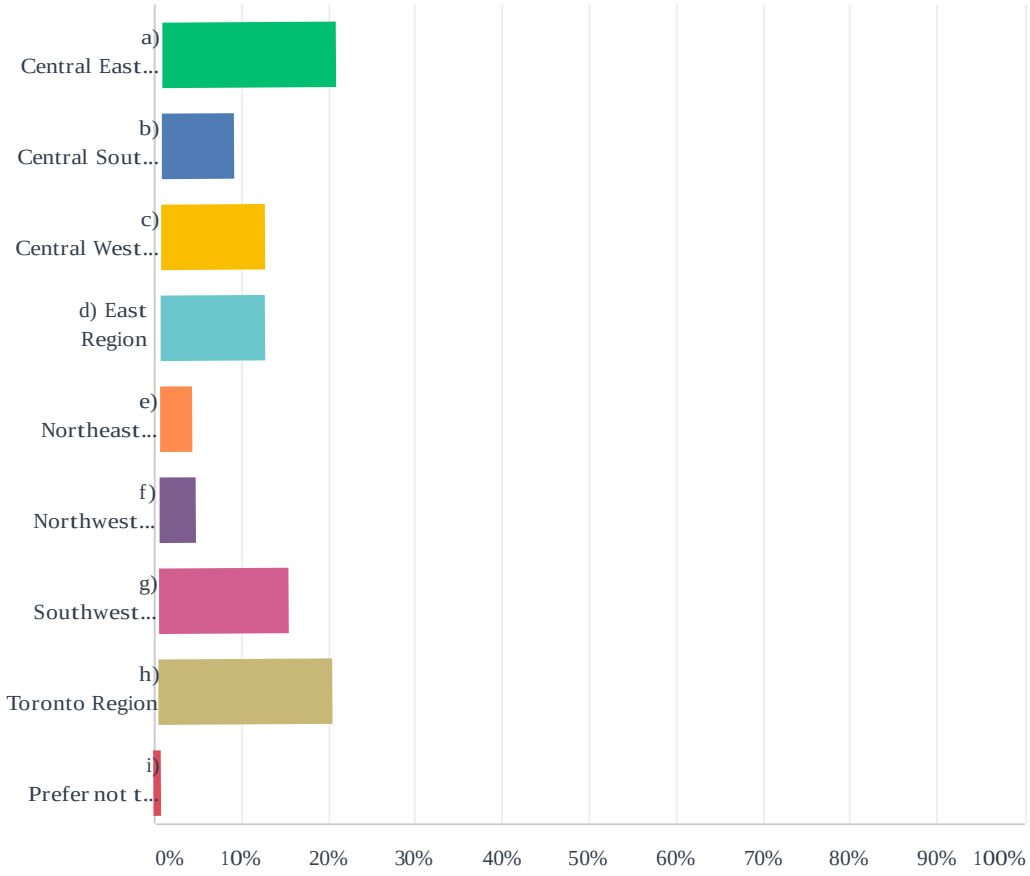
37. What other areas of law do your family law files tend to deal with? (Please select all that apply)
    a) Real Estate law
    b) Tax law
    c) Bankruptcy law
    d) Corporate law
    e) Estates law
    f) Civil law
    g) Criminal law
    h) Employment law
    i) Other
    j) None
    k) Prefer not to answer

38. General Comments
    (Blank space to answer)

Thank you again for taking the time to complete this survey.

Q1 In which region do you practice?

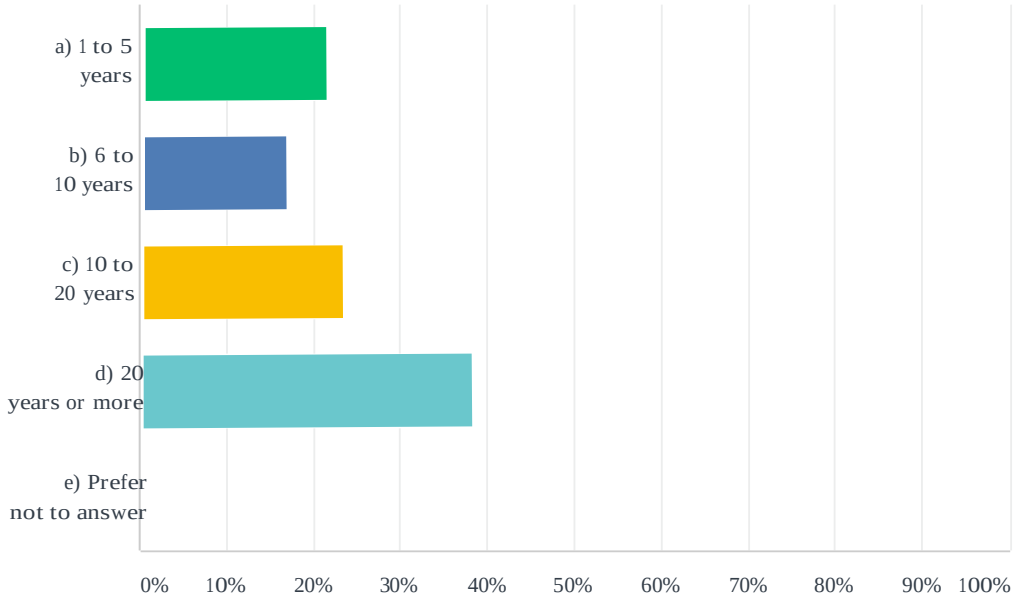
Answered: 448 Skipped: 1



ANSWER CHOICES		RESPONSES	
a)	Central East Region	20.76%	93
b)	Central South Region	8.93%	40
c)	Central West Region	12.50%	56
d)	East Region	12.50%	56
e)	Northeast Region	4.24%	19
f)	Northwest Region	4.69%	21
g)	Southwest Region	15.18%	68
h)	Toronto Region	20.31%	91
i)	Prefer not to answer	0.89%	4
TOTAL			448

Q3 How long have you been practising law?

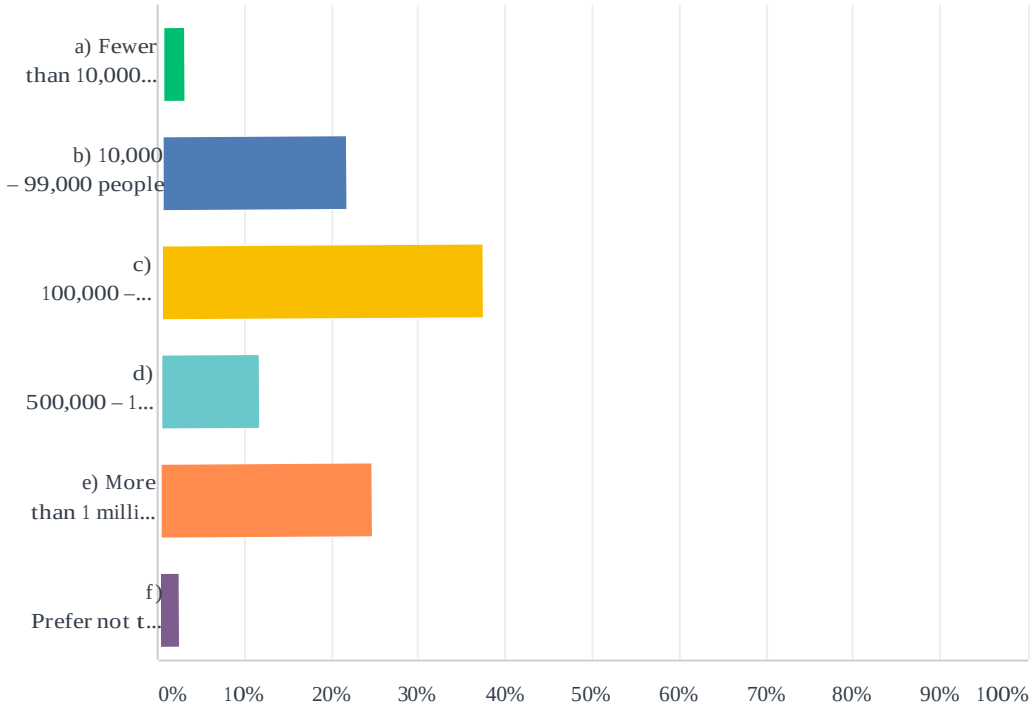
Answered: 448 Skipped: 1



ANSWER CHOICES	RESPONSES	
a) 1 to 5 years	21.43%	96
b) 6 to 10 years	16.74%	75
c) 10 to 20 years	23.21%	104
d) 20 years or more	38.17%	171
e) Prefer not to answer	0.45%	2
TOTAL		448

Q4 What is the population of the city/town where you practise?

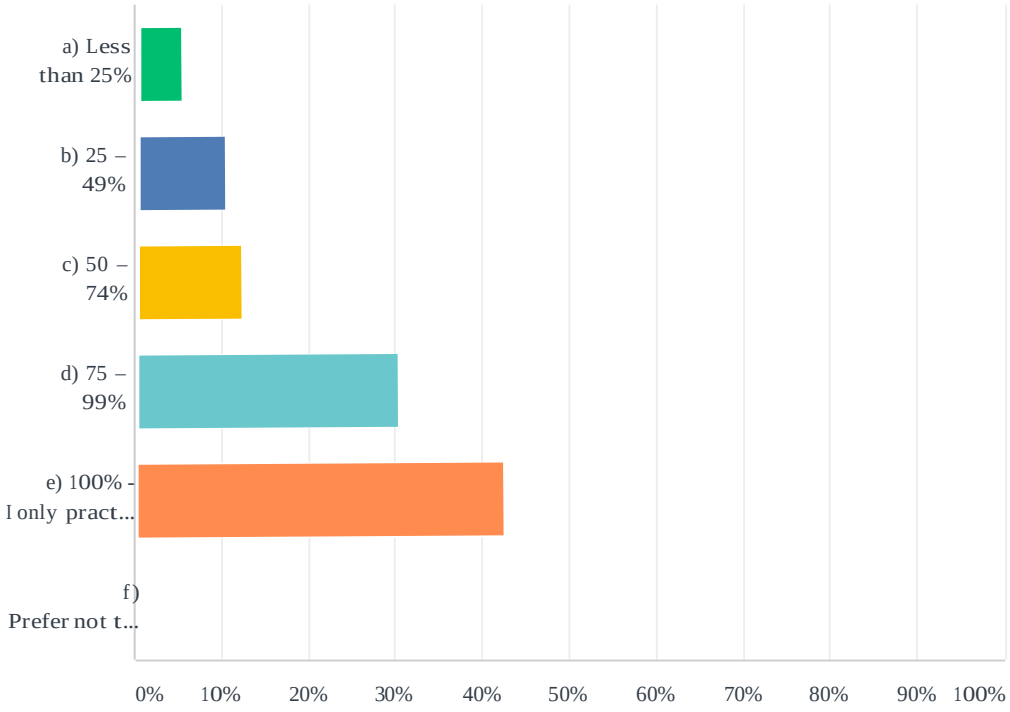
Answered: 445 Skipped: 4



ANSWER CHOICES		RESPONSES	
a)	Fewer than 10,000 people	2.92%	13
b)	10,000 – 99,000 people	21.57%	96
c)	100,000 – 499,000 people	37.30%	166
d)	500,000 – 1 million people	11.46%	51
e)	More than 1 million people	24.49%	109
f)	Prefer not to answer	2.25%	10
TOTAL			445

Q5 What percentage of your practice is family law?

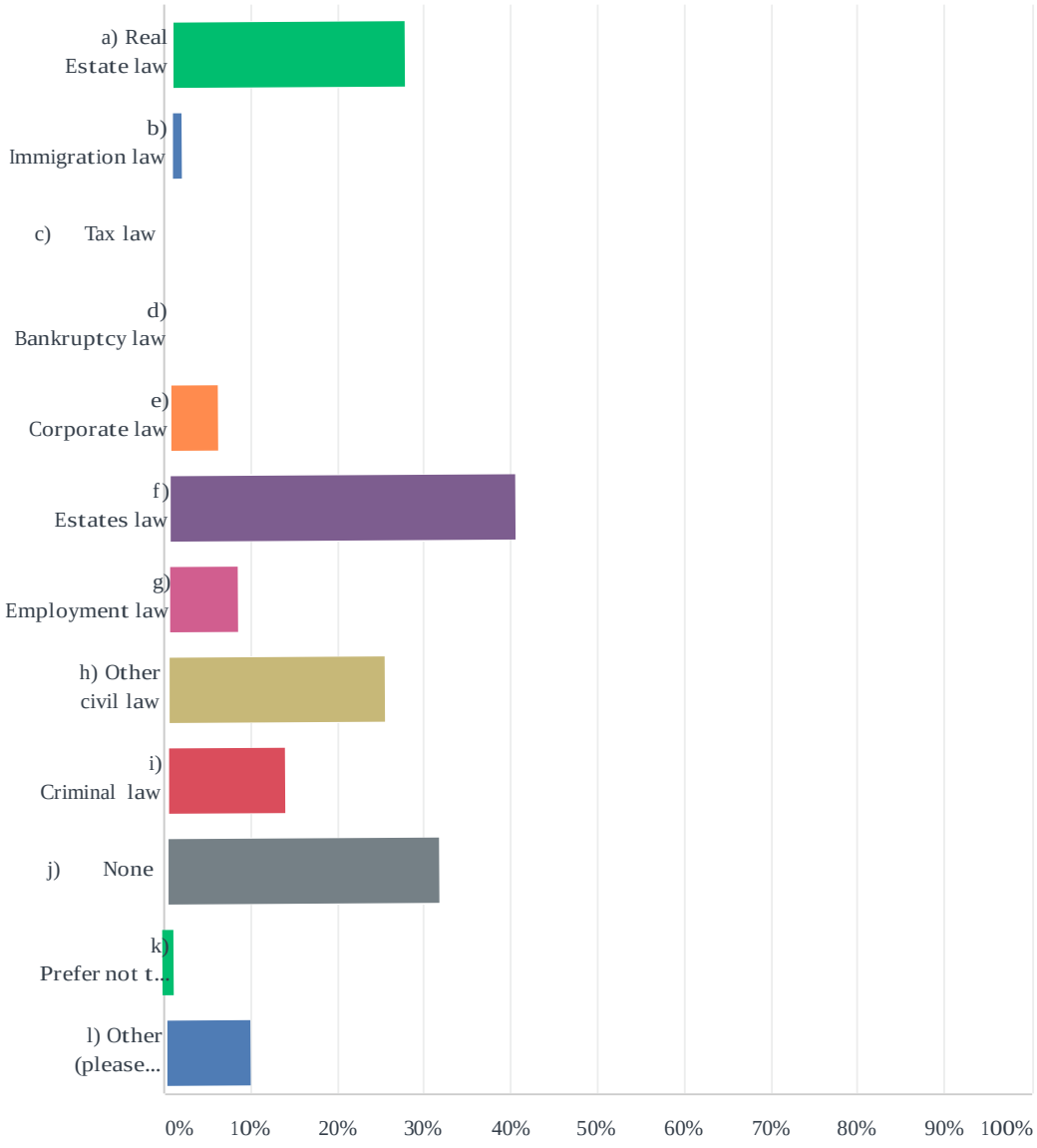
Answered: 447 Skipped: 2



ANSWER CHOICES		RESPONSES	
a)	Less than 25%	5.15%	23
b)	25 – 49%	10.29%	46
c)	50 – 74%	12.08%	54
d)	75 – 99%	30.20%	135
e)	100% - I only practise family law	42.28%	189
f)	Prefer not to answer	0.00%	0
TOTAL			447

Q6 What other areas of law do you practise?

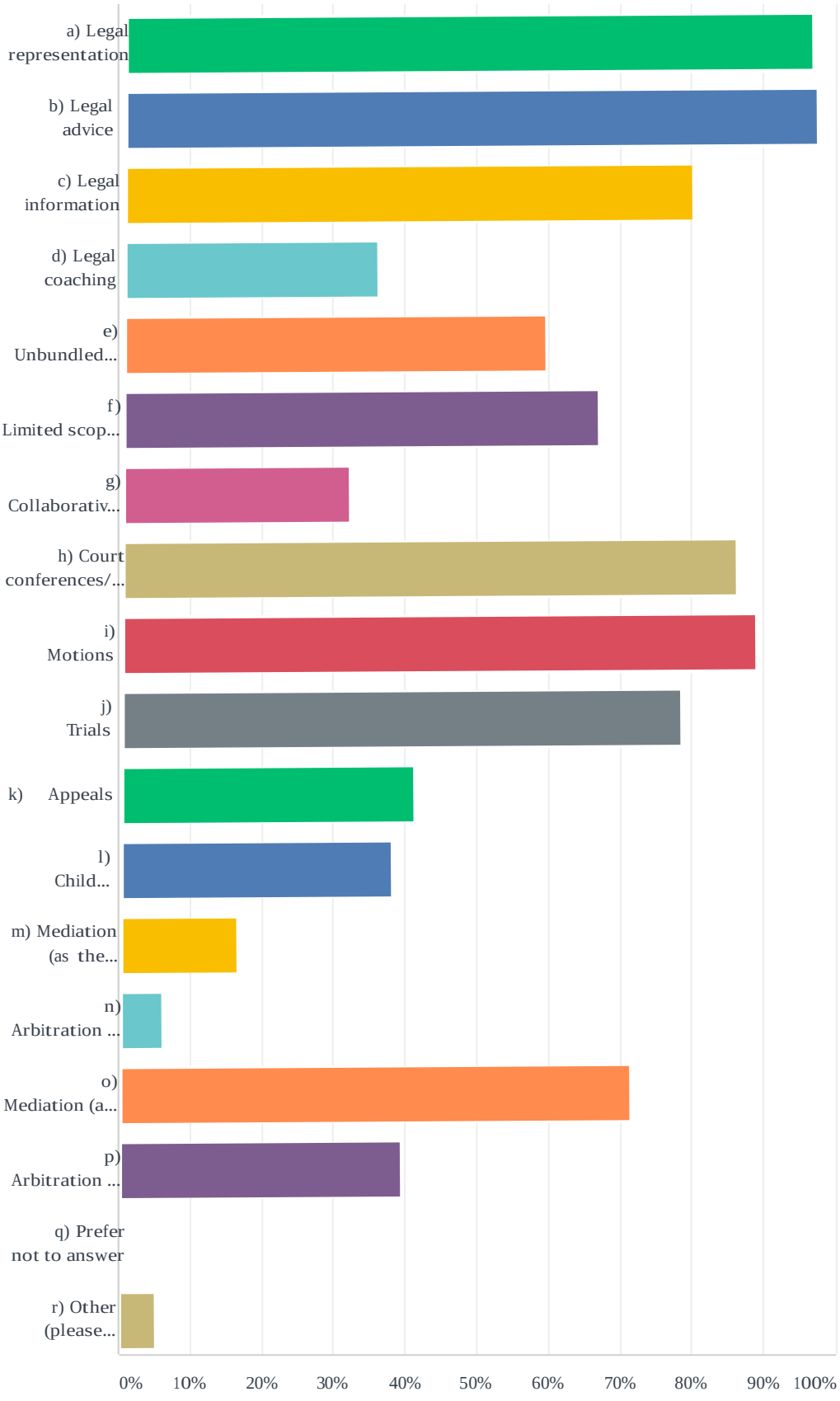
Answered: 384 Skipped: 65



ANSWER CHOICES	RESPONSES	
a) Real Estate law	27.60%	106
b) Immigration law	1.82%	7
c) Tax law	0.26%	1
d) Bankruptcy law	0.26%	1
e) Corporate law	5.99%	23
f) Estates law	40.36%	155
g) Employment law	8.33%	32
h) Other civil law	25.26%	97
i) Criminal law	13.80%	53
j) None	31.51%	121
k) Prefer not to answer	1.30%	5
l) Other (please specify)	9.90%	38
Total Respondents: 384		

Q7 What type of legal services do you provide to family clients? (Please select all that apply)

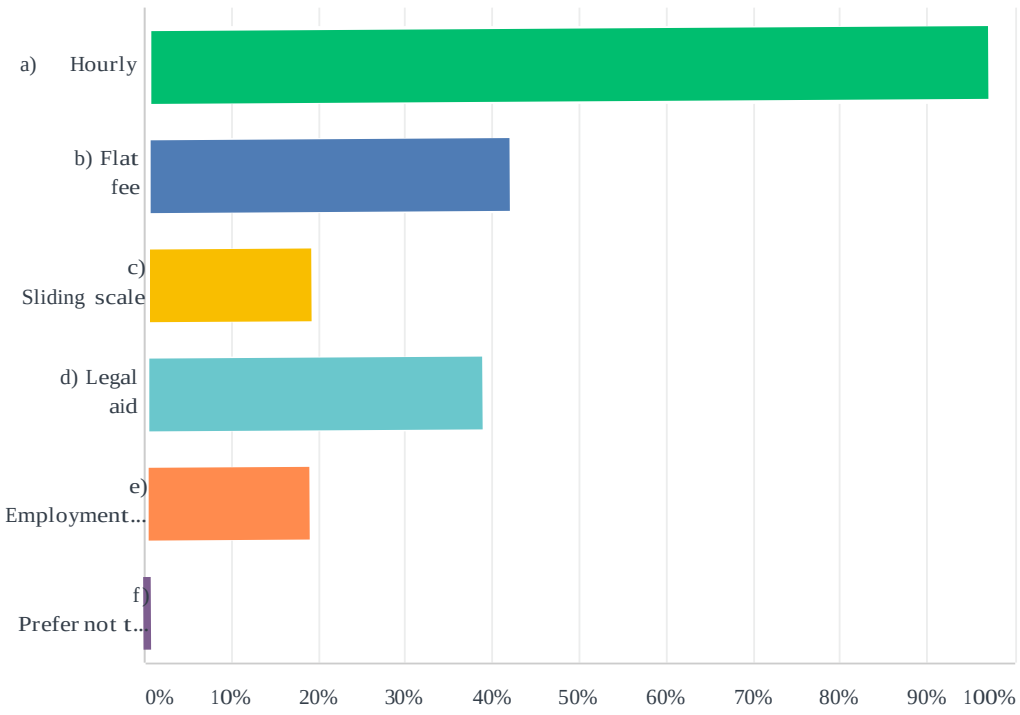
Answered: 449 Skipped: 0


a) Legal representation
b) Legal advice
c) Legal information
d) Legal coaching
e) Unbundled...
f) Limited scop...
g) Collaborativ...
h) Court conferences/...
i) Motions
j) Trials
k) Appeals
l) Child...
m) Mediation (as the...
n) Arbitration ...
o) Mediation (a...
p) Arbitration ...
q) Prefer not to answer
r) Other (please...
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%

ANSWER CHOICES	RESPONSES	
a) Legal representation	96.66%	434
b) Legal advice	97.33%	437
c) Legal information	79.96%	359
d) Legal coaching	36.08%	162
e) Unbundled services	59.47%	267
f) Limited scope retainers	66.82%	300
g) Collaborative family law	32.07%	144
h) Court conferences/first appearances	85.97%	386
i) Motions	88.64%	398
j) Trials	78.17%	351
k) Appeals	40.98%	184
l) Child protection	37.86%	170
m) Mediation (as the mediator)	16.26%	73
n) Arbitration (as the arbitrator)	5.79%	26
o) Mediation (as counsel)	71.05%	319
p) Arbitration (as counsel)	39.20%	176
q) Prefer not to answer	0.22%	1
r) Other (please specify)	4.90%	22
Total Respondents: 449		

Q8 How do you bill for your work? (Please select all that apply)

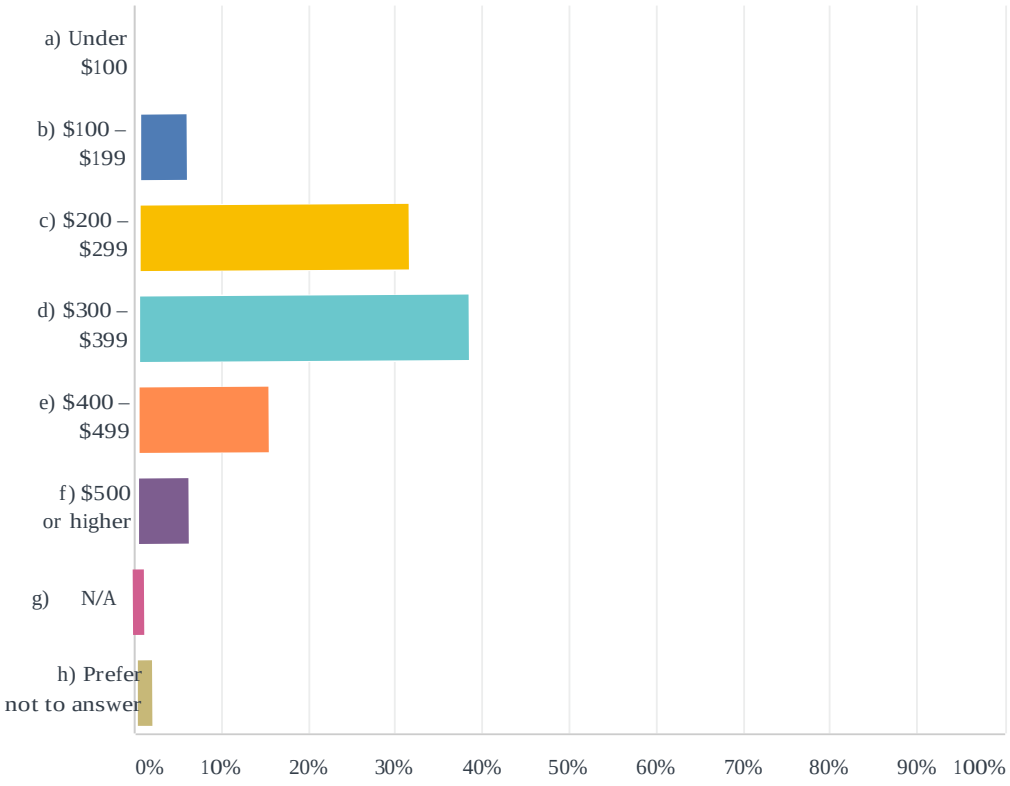
Answered: 447 Skipped: 2



ANSWER CHOICES		RESPONSES	
a)	Hourly	96.87%	433
b)	Flat fee	41.83%	187
c)	Sliding scale	19.02%	85
d)	Legal aid	38.70%	173
e)	Employment Assistance Program (EAP), if applicable	18.79%	84
f)	Prefer not to answer	0.89%	4
Total Respondents: 447			

Q9 What is your standard hourly rate in your family law practice? (Note: there will be questions about sliding scale rates further below)

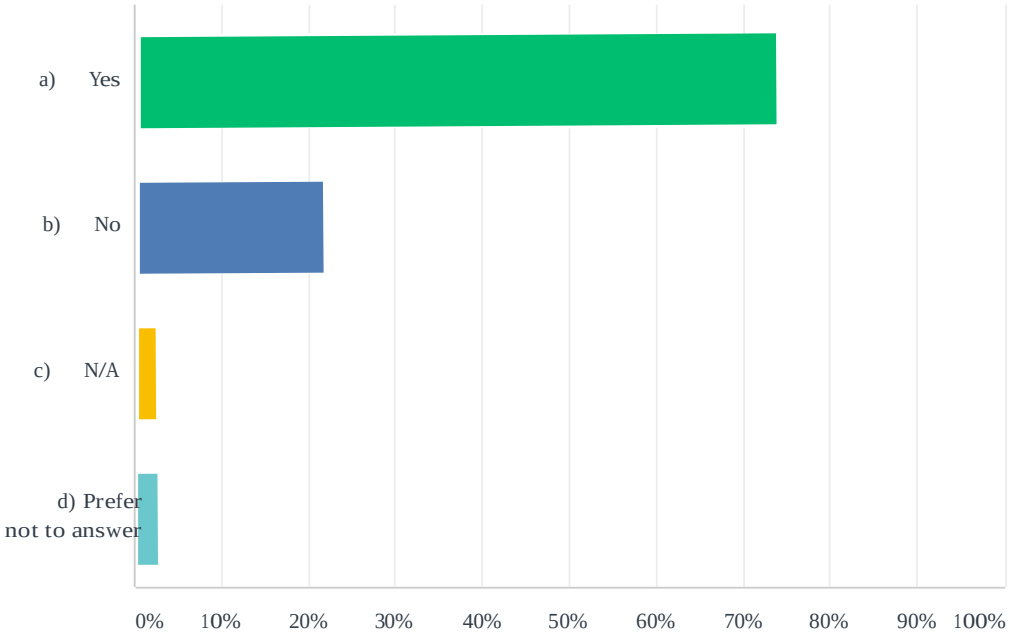
Answered: 449 Skipped: 0



ANSWER CHOICES	RESPONSES	
a) Under $100	0.00%	0
b) $100 – $199	5.79%	26
c) $200 – $299	31.40%	141
d) $300 – $399	38.31%	172
e) $400 – $499	15.37%	69
f) $500 or higher	6.01%	27
g) N/A	1.34%	6
h) Prefer not to answer	1.78%	8
TOTAL		449

Q10 Do you provide services at a rate below your standard rate?

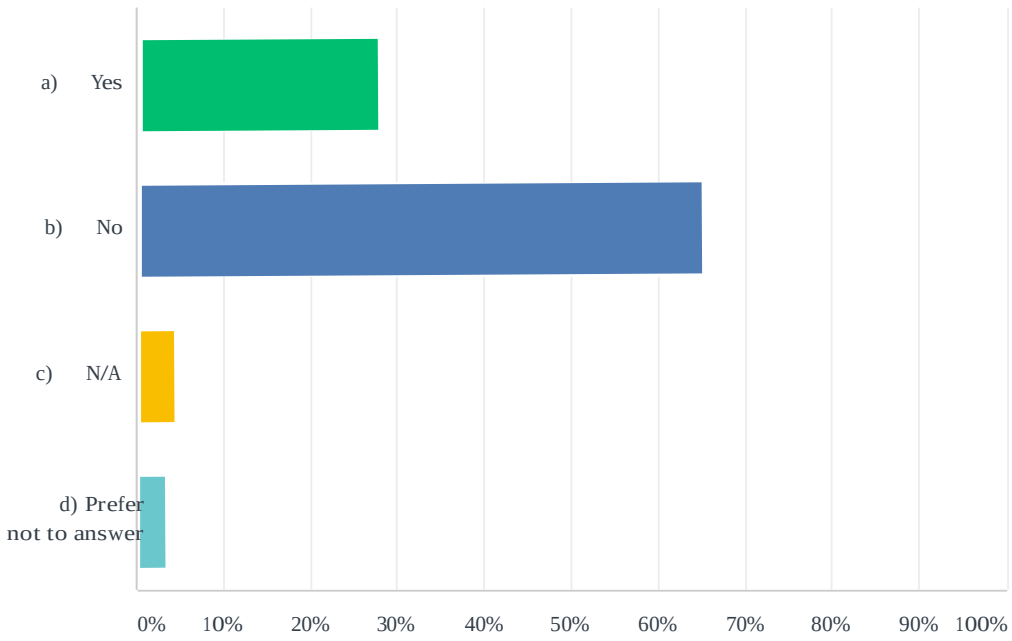
Answered: 445 Skipped: 4



ANSWER CHOICES	RESPONSES	
a) Yes	73.71%	328
b) No	21.57%	96
c) N/A	2.25%	10
d) Prefer not to answer	2.47%	11
TOTAL		445

Q11 Do you provide family law services on a sliding scale?

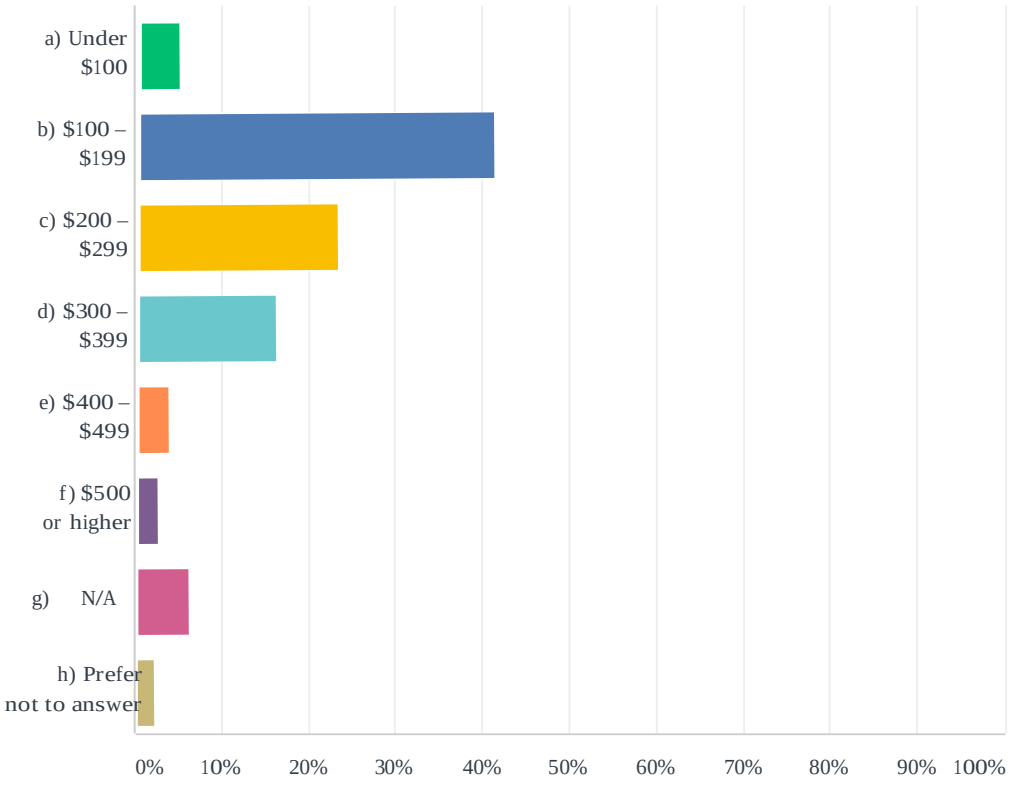
Answered: 444 Skipped: 5



ANSWER CHOICES	RESPONSES	
a) Yes	27.70%	123
b) No	64.86%	288
c) N/A	4.28%	19
d) Prefer not to answer	3.15%	14
TOTAL		444

Q12 What is the lowest hourly rate you charge family law clients (other than pro bono services)?

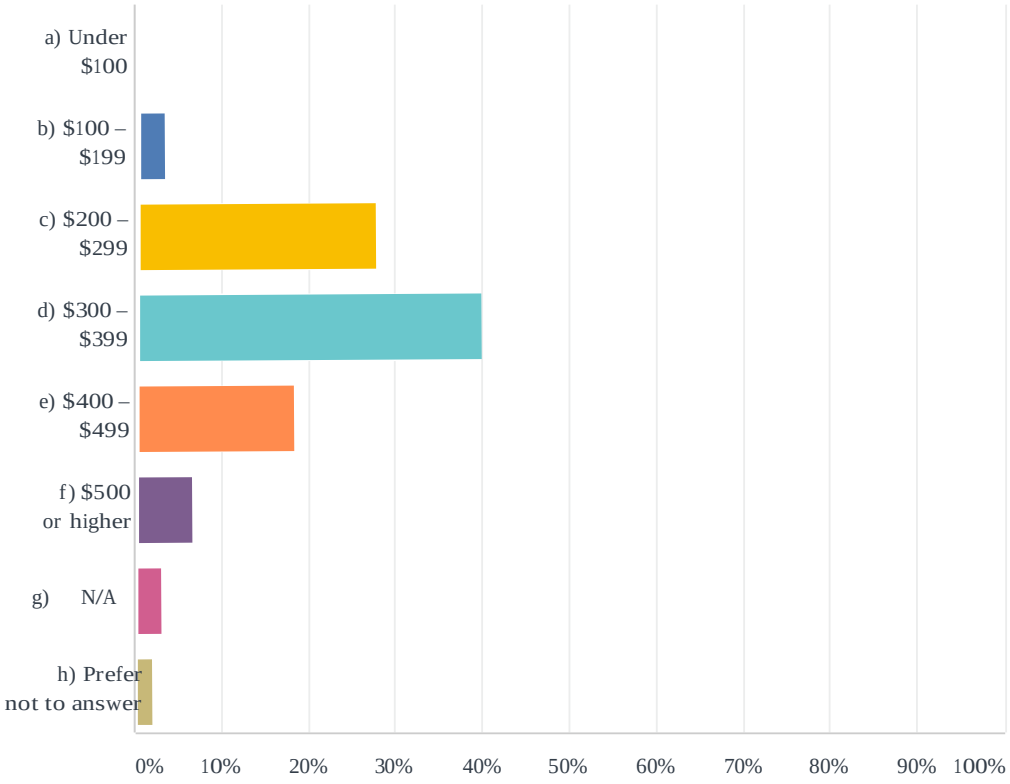
Answered: 442 Skipped: 7



ANSWER CHOICES	RESPONSES	
a) Under $100	4.98%	22
b) $100 – $199	41.18%	182
c) $200 – $299	23.30%	103
d) $300 – $399	16.06%	71
e) $400 – $499	3.85%	17
f) $500 or higher	2.49%	11
g) N/A	6.11%	27
h) Prefer not to answer	2.04%	9
TOTAL		442

Q13 What is the highest hourly rate you charge family law clients?

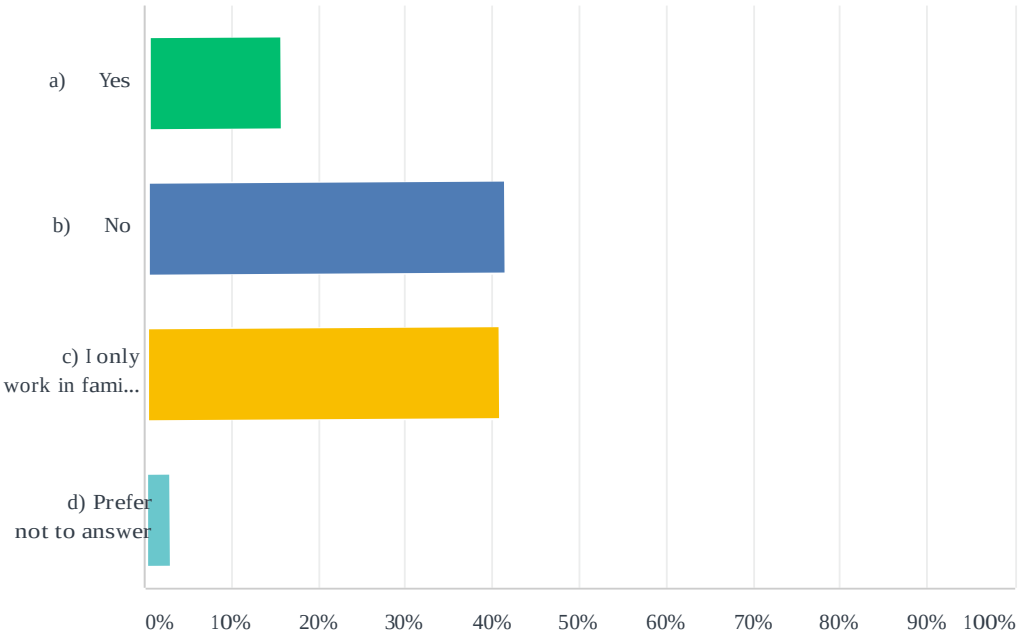
Answered: 446 Skipped: 3



ANSWER CHOICES	RESPONSES	
a) Under $100	0.00%	0
b) $100 – $199	3.36%	15
c) $200 – $299	27.58%	123
d) $300 – $399	39.69%	177
e) $400 – $499	18.16%	81
f) $500 or higher	6.50%	29
g) N/A	2.91%	13
h) Prefer not to answer	1.79%	8
TOTAL		446

Q14 Do you offer lower rates to family law clients than clients requiring services in other areas of law?

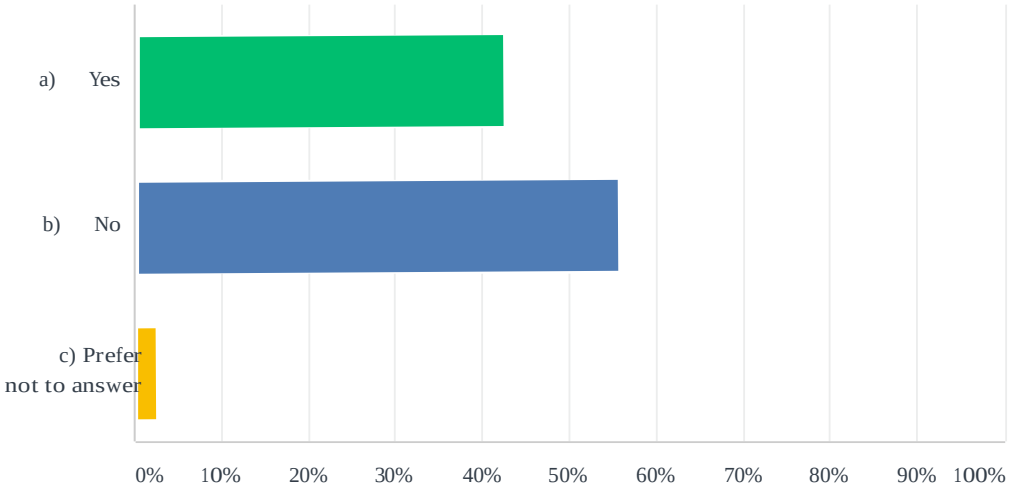
Answered: 446 Skipped: 3



ANSWER CHOICES	RESPONSES	
a) Yes	15.47%	69
b) No	41.26%	184
c) I only work in family law	40.58%	181
d) Prefer not to answer	2.69%	12
TOTAL		446

Q15 Do you work with junior lawyers?

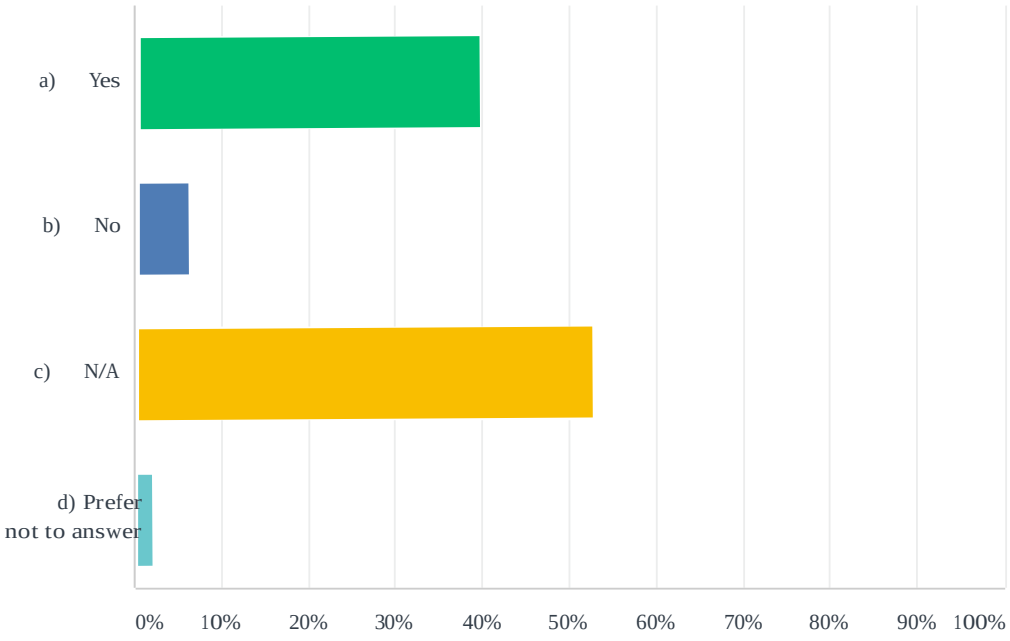
Answered: 444 Skipped: 5



ANSWER CHOICES	RESPONSES	
a) Yes	42.34%	188
b) No	55.41%	246
c) Prefer not to answer	2.25%	10
TOTAL		444

Q16 Do you offer the services of your junior lawyer(s) to family law clients who cannot afford your hourly rate?

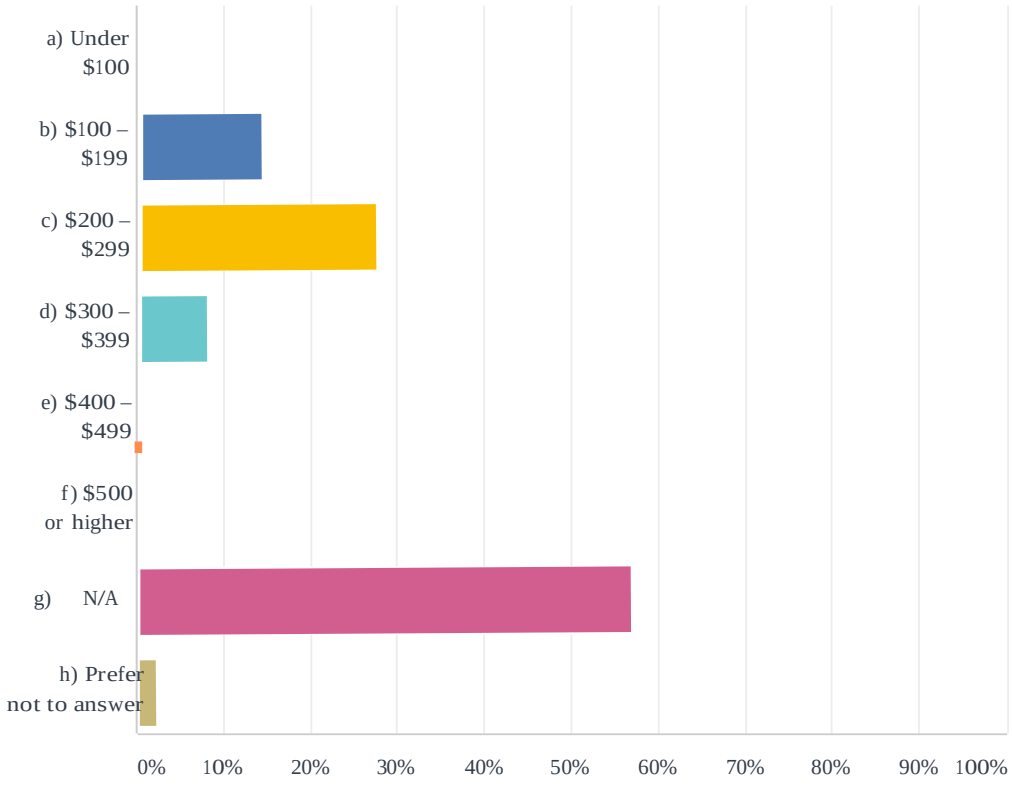
Answered: 441 Skipped: 8



ANSWER CHOICES	RESPONSES	
a) Yes	39.46%	174
b) No	6.12%	27
c) N/A	52.61%	232
d) Prefer not to answer	1.81%	8
TOTAL		441

Q17 What hourly rate does/do your junior(s) charge to family law clients? (Please select all that apply)

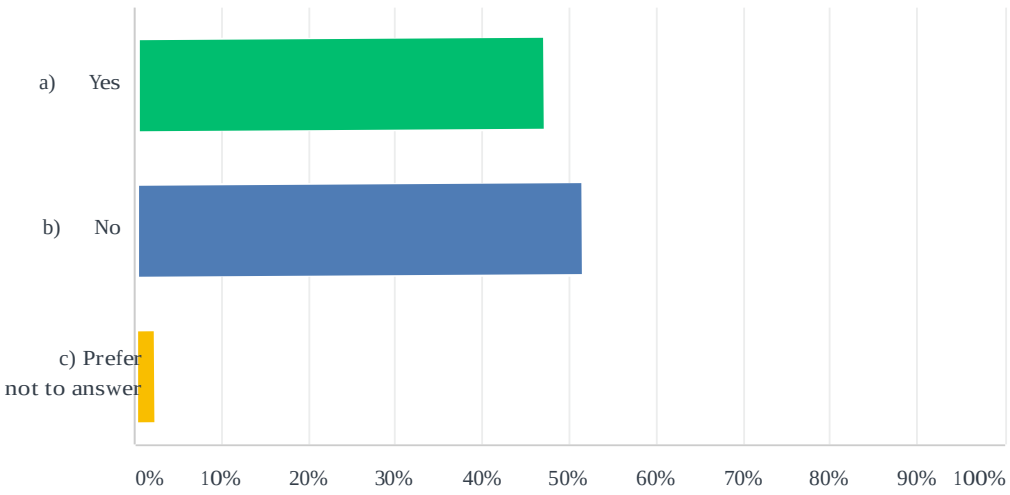
Answered: 443 Skipped: 6



ANSWER CHOICES	RESPONSES	
a) Under $100	0.68%	3
b) $100 – $199	14.22%	63
c) $200 – $299	27.31%	121
d) $300 – $399	7.90%	35
e) $400 – $499	0.90%	4
f) $500 or higher	0.00%	0
g) N/A	56.66%	251
h) Prefer not to answer	2.03%	9
Total Respondents: 443		

Q18 Do you accept Legal Aid Certificates for family law clients?

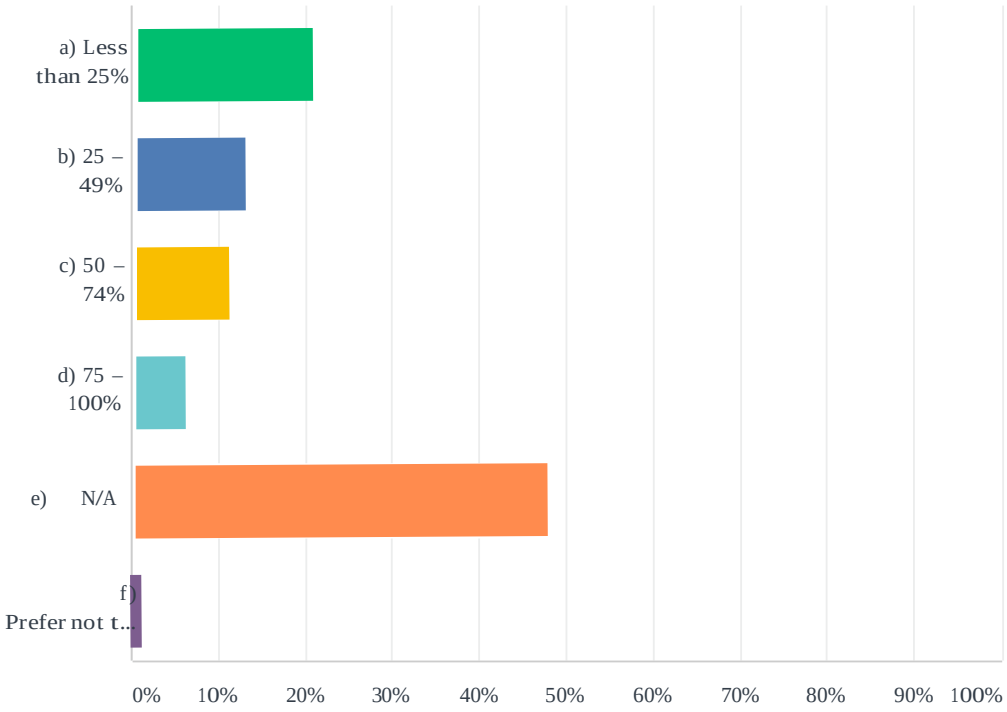
Answered: 449 Skipped: 0



ANSWER CHOICES	RESPONSES	
a) Yes	46.77%	210
b) No	51.22%	230
c) Prefer not to answer	2.00%	9
TOTAL		449

Q19 What percentage of your family law practice consists of Legal Aid work?

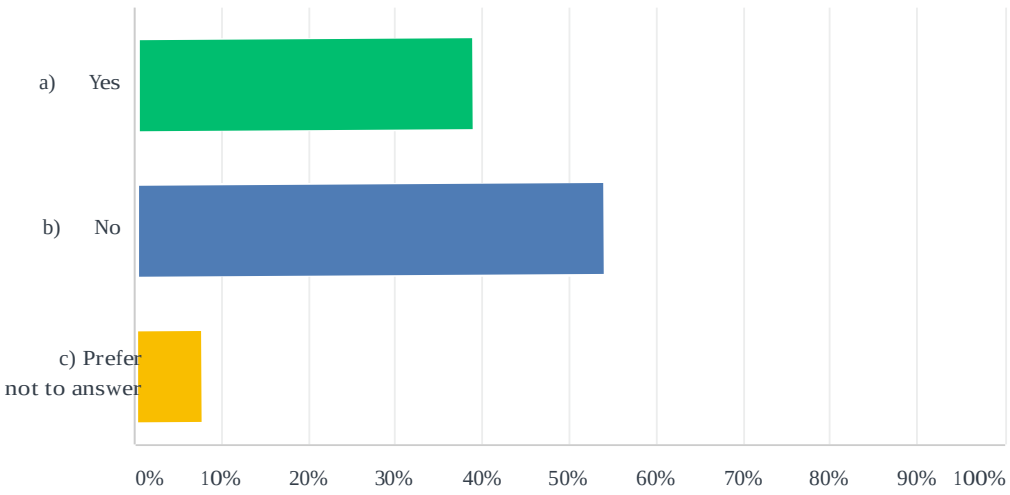
Answered: 448 Skipped: 1



ANSWER CHOICES	RESPONSES	
a) Less than 25%	20.76%	93
b) 25 – 49%	12.95%	58
c) 50 – 74%	11.16%	50
d) 75 – 100%	6.03%	27
e) N/A	47.77%	214
f) Prefer not to answer	1.34%	6
TOTAL		448

Q20 Do you accept pro bono family law files?

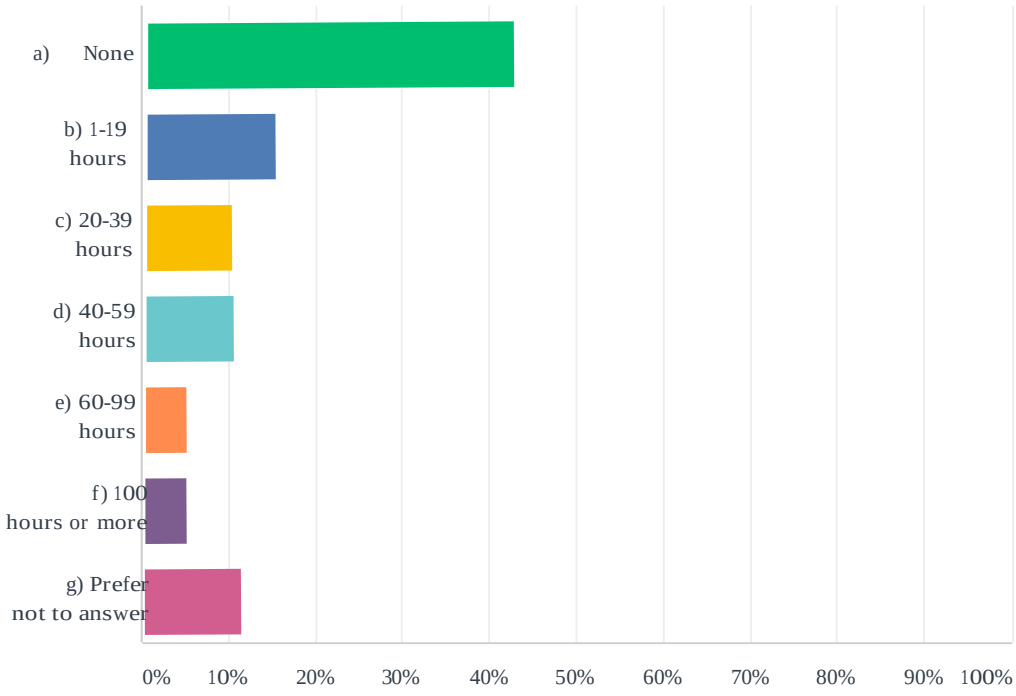
Answered: 448 Skipped: 1



ANSWER CHOICES	RESPONSES	
a) Yes	38.62%	173
b) No	53.79%	241
c) Prefer not to answer	7.59%	34
TOTAL		448

Q21 Approximately how many hours per year do you contribute to pro bono family law files?

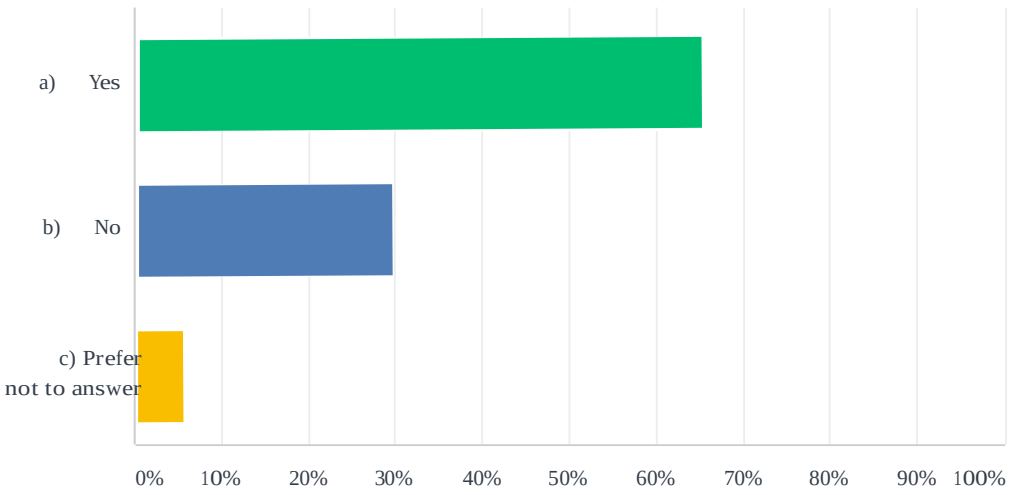
Answered: 445 Skipped: 4



ANSWER CHOICES	RESPONSES	
a) None	42.70%	190
b) 1-19 hours	15.28%	68
c) 20-39 hours	10.34%	46
d) 40-59 hours	10.56%	47
e) 60-99 hours	4.94%	22
f) 100 hours or more	4.94%	22
g) Prefer not to answer	11.24%	50
TOTAL		445

Q22 Do you provide unbundled services in your family law practice?

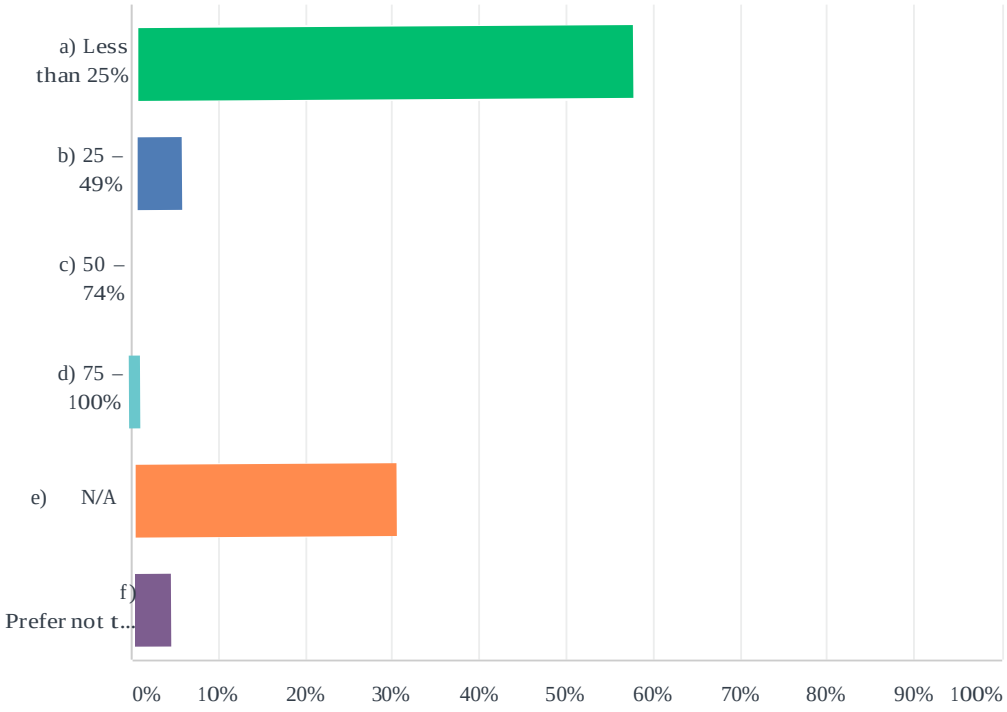
Answered: 446 Skipped: 3



ANSWER CHOICES	RESPONSES	
a) Yes	65.02%	290
b) No	29.60%	132
c) Prefer not to answer	5.38%	24
TOTAL		446

Q23 What percentage of your practice consists of unbundled services?

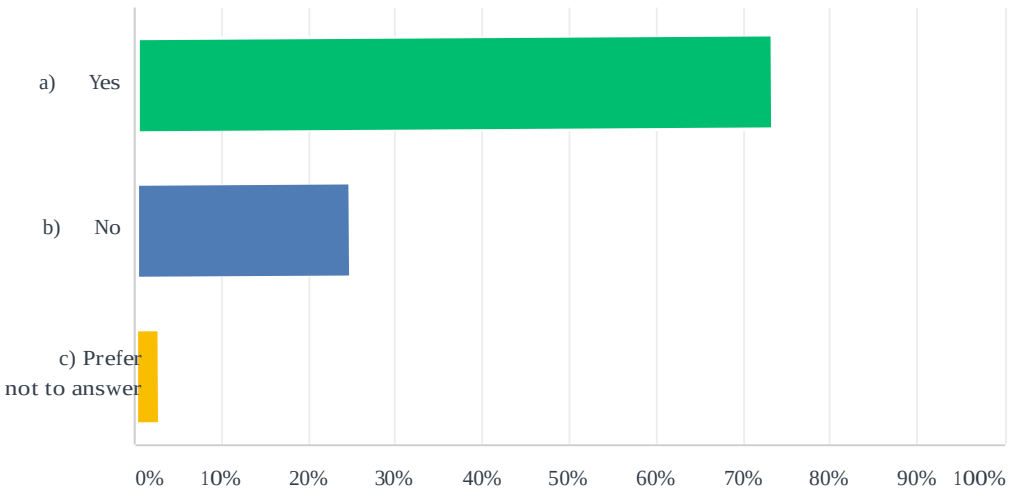
Answered: 446 Skipped: 3



ANSWER CHOICES		RESPONSES	
a)	Less than 25%	57.62%	257
b)	25 – 49%	5.61%	25
c)	50 – 74%	0.67%	3
d)	75 – 100%	1.35%	6
e)	N/A	30.27%	135
f)	Prefer not to answer	4.48%	20
TOTAL			446

Q24 Do you use limited scope retainers for your family law practice?

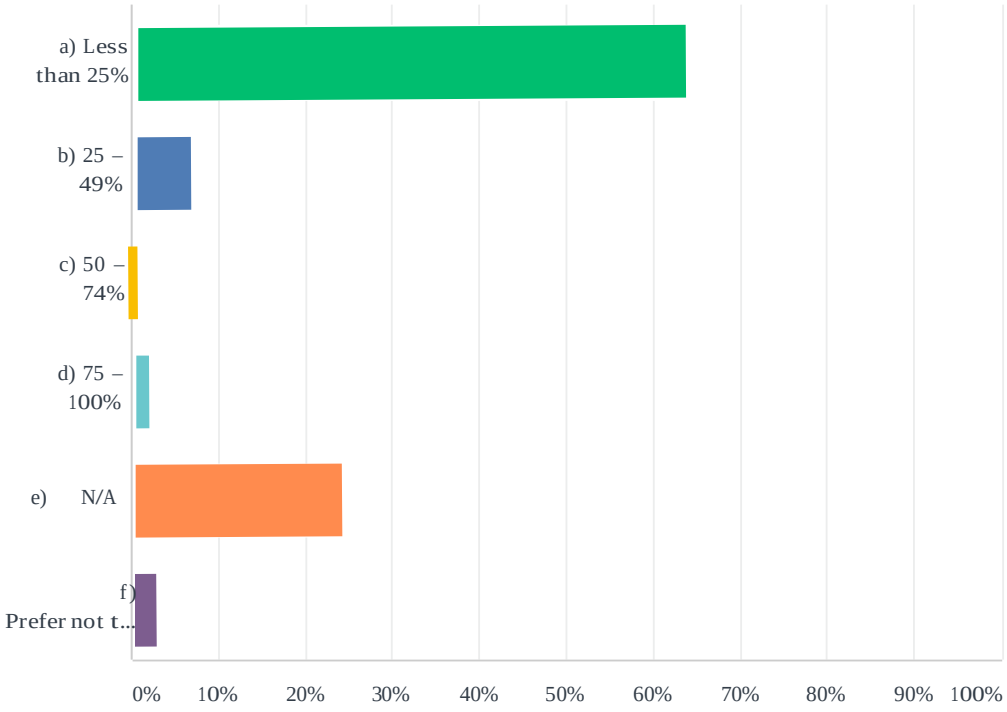
Answered: 446 Skipped: 3



ANSWER CHOICES	RESPONSES	
a) Yes	73.09%	326
b) No	24.44%	109
c) Prefer not to answer	2.47%	11
TOTAL		446

Q25 What percentage of your practice consists of limited scope retainers?

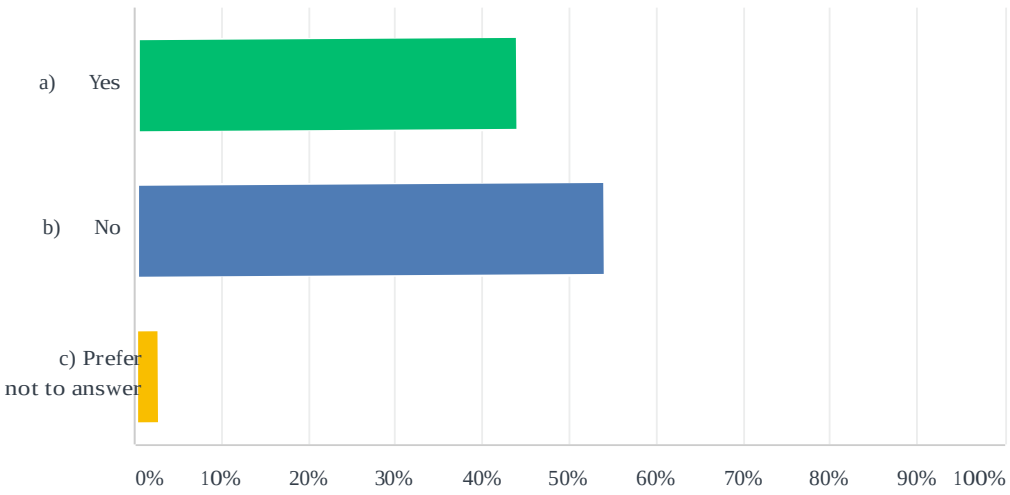
Answered: 446 Skipped: 3



ANSWER CHOICES	RESPONSES	
a) Less than 25%	63.68%	284
b) 25 – 49%	6.73%	30
c) 50 – 74%	1.12%	5
d) 75 – 100%	1.79%	8
e) N/A	23.99%	107
f) Prefer not to answer	2.69%	12
TOTAL		446

Q26 Do you provide legal coaching in your family law practice?

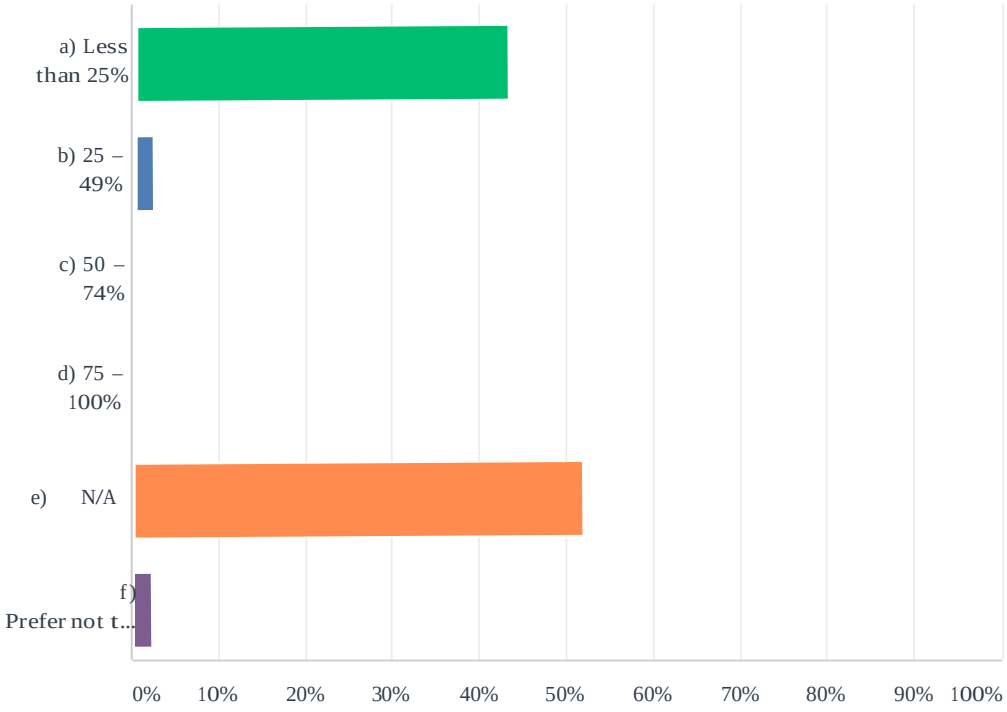
Answered: 444 Skipped: 5



ANSWER CHOICES	RESPONSES	
a) Yes	43.69%	194
b) No	53.83%	239
c) Prefer not to answer	2.48%	11
TOTAL		444

Q27 What percentage of your practice consists of legal coaching?

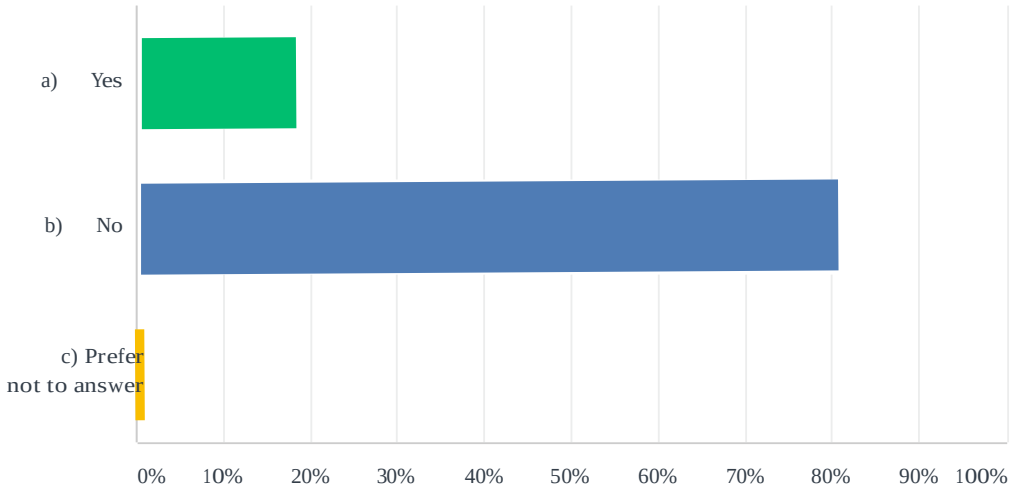
Answered: 441 Skipped: 8



ANSWER CHOICES	RESPONSES	
a) Less than 25%	43.08%	190
b) 25 – 49%	2.27%	10
c) 50 – 74%	0.23%	1
d) 75 – 100%	0.68%	3
e) N/A	51.70%	228
f) Prefer not to answer	2.04%	9
TOTAL		441

Q29 Do you provide family law legal services to clients at legal clinics or other organizations?

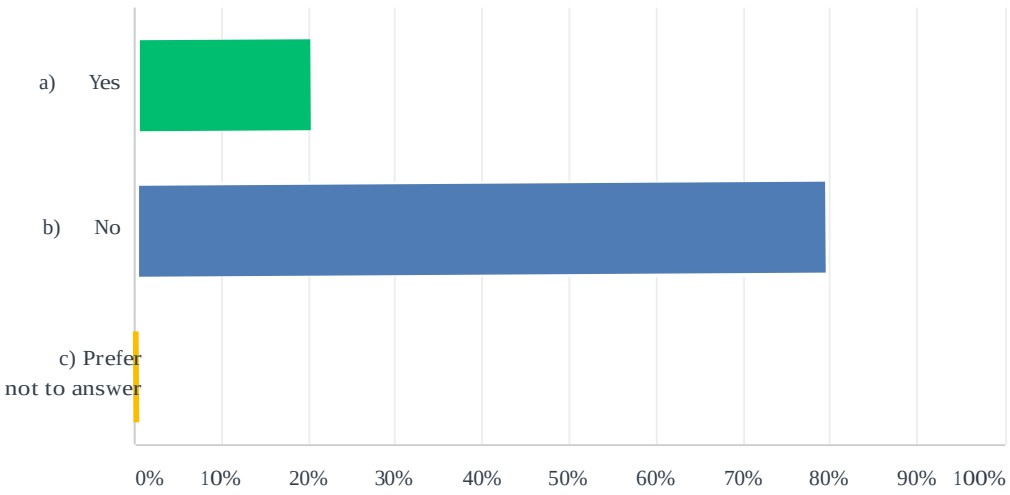
Answered: 449 Skipped: 0



ANSWER CHOICES	RESPONSES	
a) Yes	18.26%	82
b) No	80.62%	362
c) Prefer not to answer	1.11%	5
TOTAL		449

Q30 Do you provide family law legal services to clients as duty counsel?

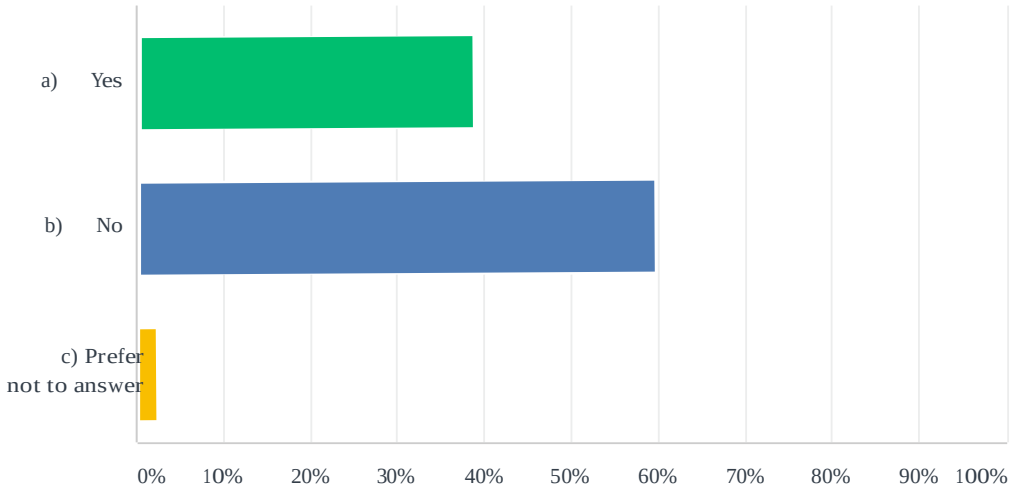
Answered: 445 Skipped: 4



ANSWER CHOICES	RESPONSES	
a) Yes	20.00%	89
b) No	79.33%	353
c) Prefer not to answer	0.67%	3
TOTAL		445

Q31 Do you provide any form of public legal education about family law issues?

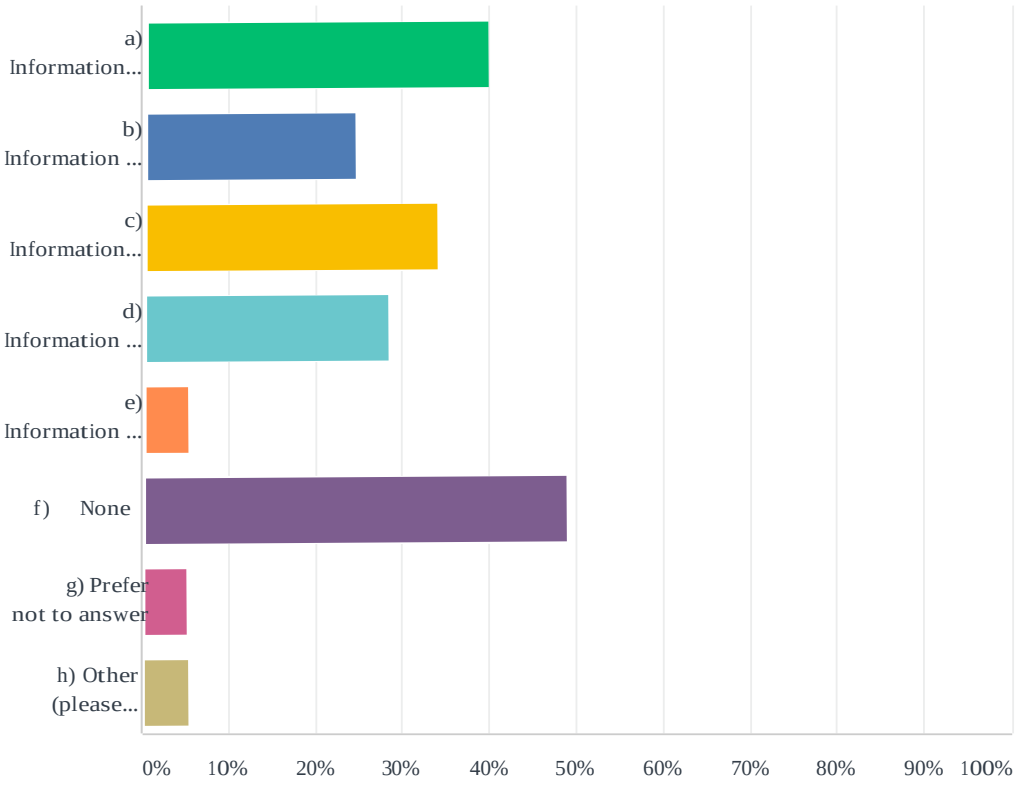
Answered: 447 Skipped: 2



ANSWER CHOICES	RESPONSES	
a) Yes	38.48%	172
b) No	59.51%	266
c) Prefer not to answer	2.01%	9
TOTAL		447

Q32 What type of public legal education does your organization provide? (Select all that apply)

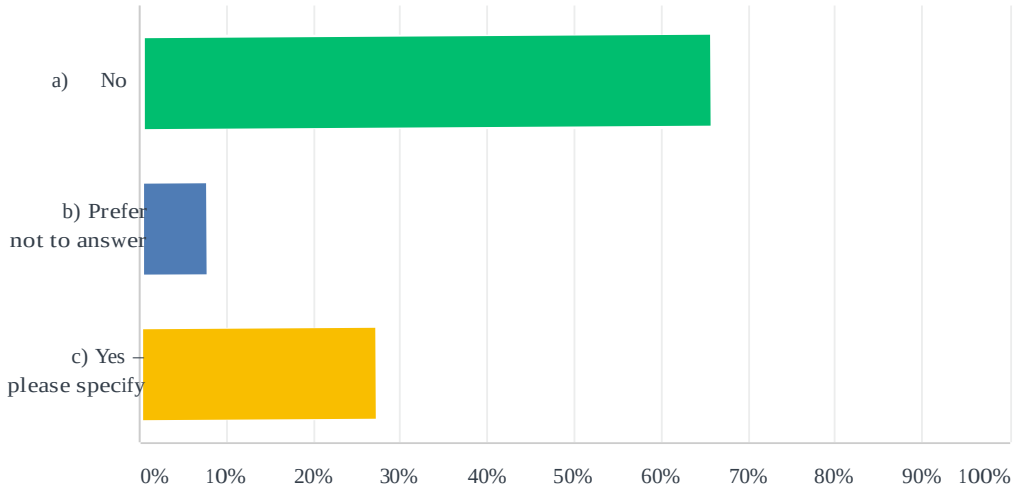
Answered: 406 Skipped: 43



ANSWER CHOICES	RESPONSES	
a) Information about the law	39.66%	161
b) Information to help people identify legal issues	24.38%	99
c) Information that explains how the family court system works	33.99%	138
d) Information on Alternative Dispute Resolution	28.33%	115
e) Information on policy reform	5.17%	21
f) None	48.77%	198
g) Prefer not to answer	4.93%	20
h) Other (please specify)	5.17%	21
Total Respondents: 406		

Q33 Do you volunteer for an organization that does legal policy work and/or work relating to access to justice (e.g. The Advocates' Society, the OBA, FOLA, local organizations)?

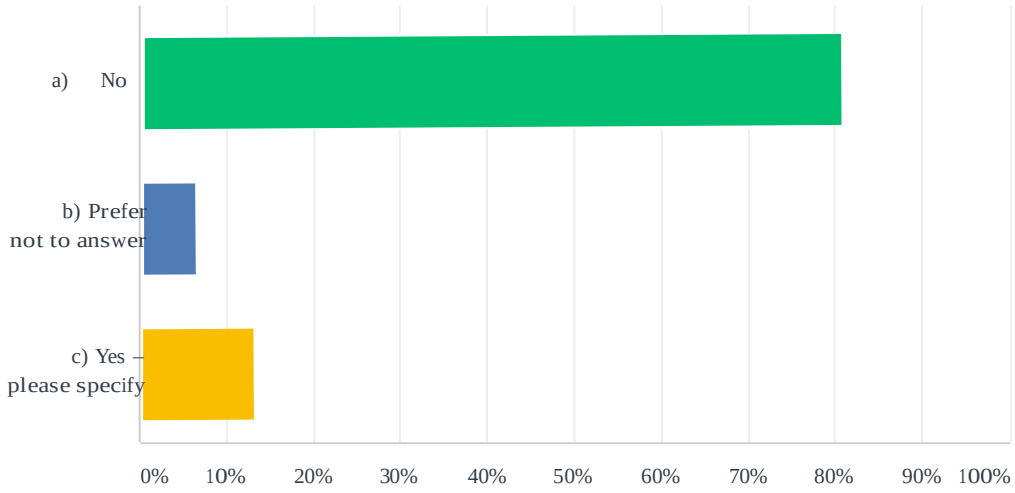
Answered: 444 Skipped: 5



ANSWER CHOICES	RESPONSES	
a) No	65.54%	291
b) Prefer not to answer	7.43%	33
c) Yes – please specify	27.03%	120
TOTAL		444

Q34 Are you a participant in any other form of alternative legal information/advice? (e.g. legal hotline, etc.)?

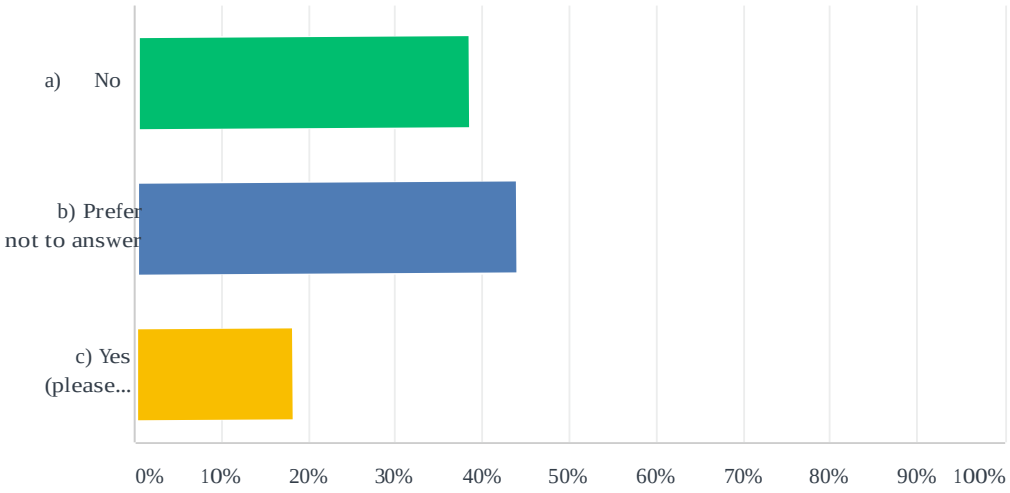
Answered: 444 Skipped: 5



ANSWER CHOICES	RESPONSES	
a) No	80.63%	358
b) Prefer not to answer	6.31%	28
c) Yes – please specify	13.06%	58
TOTAL		444

Q36 Are there any programs that provide family law access to justice that could benefit from the assistance of the Law Society of Ontario?

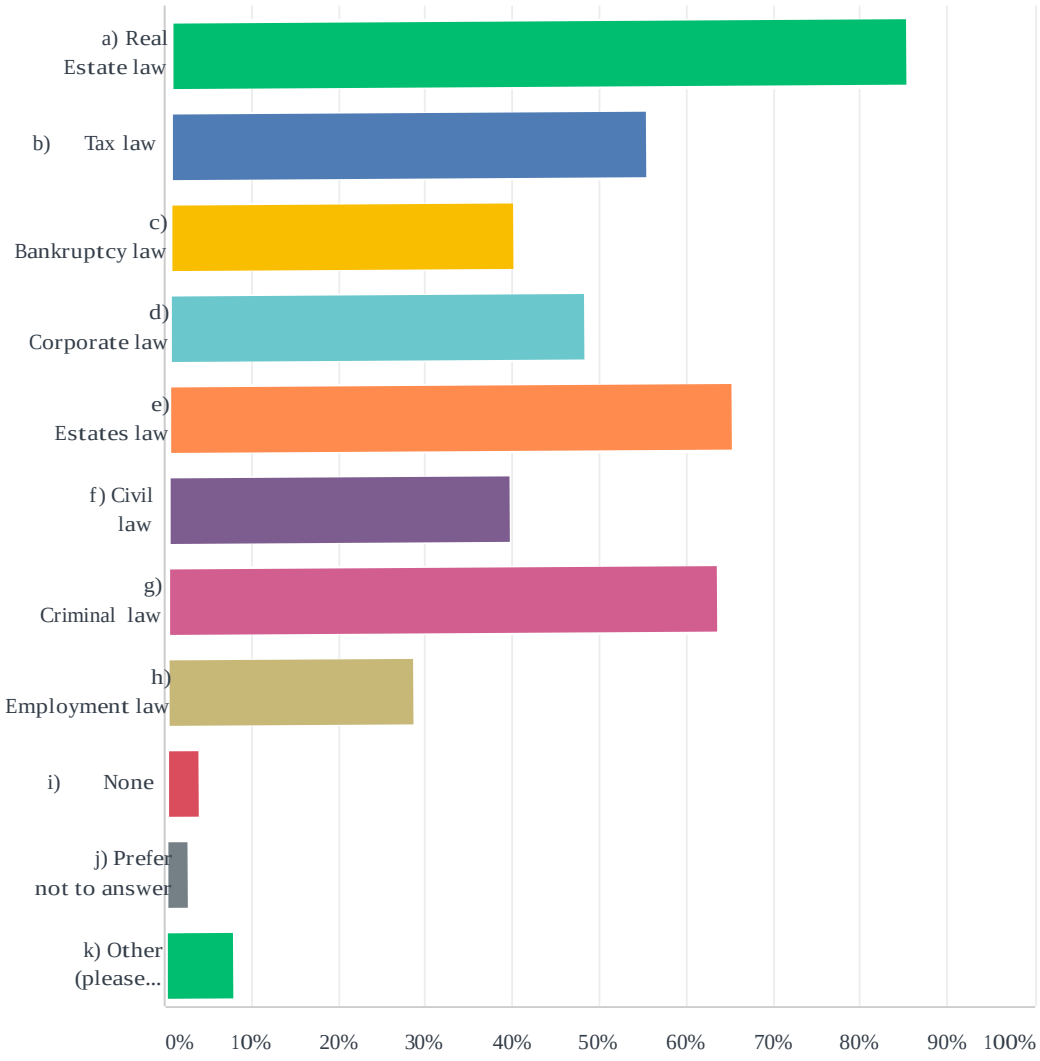
Answered: 400 Skipped: 49



ANSWER CHOICES	RESPONSES	
a) No	38.25%	153
b) Prefer not to answer	43.75%	175
c) Yes (please specify)	18.00%	72
TOTAL		400

Q37 What other areas of law do your family law files tend to deal with? (Please select all that apply)

Answered: 442 Skipped: 7



ANSWER CHOICES	RESPONSES	
a) Real Estate law	85.07%	376
b) Tax law	55.20%	244
c) Bankruptcy law	40.05%	177
d) Corporate law	48.19%	213
e) Estates law	65.16%	288
f) Civil law	39.59%	175
g) Criminal law	63.35%	280
h) Employment law	28.51%	126
i) None	3.85%	17
j) Prefer not to answer	2.49%	11
k) Other (please specify)	7.69%	34
Total Respondents: 442		

November 30, 2020

VIA EMAIL: submissions@lso.ca

Cathy Corsetti, Co-Chair
Doug Wellman, Co-Chair
Access to Justice Committee
Law Society of Ontario
130 Queen Street West
Toronto, ON M5H 2N6

Dear Ms. Corsetti and Mr. Wellman:

RE: Response to Consultation Paper: Family Legal Services Provider Licence

As you know, The Advocates' Society, established in 1963, is a not-for-profit association of approximately 6,000 members throughout Canada, the majority of whom practise law in Ontario. The mandate of The Advocates' Society includes, among other things, making submissions to governments and other entities on matters that affect access to justice, the administration of justice and the practice of law by advocates.

Since 2016, The Advocates' Society has closely followed the issue of the role paralegals might play in the provision of family law services to Ontarians. We made submissions to former Chief Justice Annemarie Bonkalo during the drafting phase which eventually resulted in the publication of her Family Legal Services Review Report (the "Bonkalo Report"). We subsequently made submissions to the Law Society of Ontario in the lead-up to the consideration by Convocation of the issues in the Bonkalo Report.

The Advocates' Society has been committed to improving access to family justice in Ontario for many years. For example, alongside the Law Society of Ontario, we have advocated for a more accessible justice system through the implementation of the Unified Family Court across Ontario; we have consistently sought sustainable funding for legal aid, notably through the Alliance for Sustainable Legal Aid; and our members have spearheaded a number of initiatives whereby family lawyers provide *pro bono* and low-cost services to members of the public.

Within this context, The Advocates' Society has carefully considered the recommendations contained in the Family Legal Services Provider Licence Consultation Paper released in June 2020 (the "Consultation Paper"), authored by the Family Law Working Group ("FLWG") of the Law Society of Ontario (the "LSO").

The Advocates' Society commends the LSO for its commitment to access to justice. The issue of how to enhance access to family justice is complex and multi-faceted. The LSO has clearly committed resources to investigating options to address this important issue, which The Advocates' Society acknowledges.

The Advocates' Society shares the LSO's commitment to access to justice. We have therefore put a considerable amount of time and thought into the proposals and issues presented in the Consultation

Paper. To ensure we were obtaining a broad set of perspectives on these issues, we struck a Task Force made up of 15 diverse family lawyers who represent different regions, populations and types of family law practice across Ontario.

The Advocates' Society recognizes that there is a serious access to justice problem in our legal system, and the problem is most visible in family law. This leads to the following core questions:

- How do we best address the access to justice problem in family law?
- Will a new class of licensed Family Legal Services Providers (FLSPs) address this problem?
- Put another way, will a new class of FLSPs benefit Ontarians?

In considering these questions, alongside the questions set out in the Consultation Paper, The Advocates' Society has concluded that the FLSP proposal will not improve access to justice and will not benefit Ontarians. By way of high-level summary:

1. It is not clear that the introduction of a new class of paralegal licensees will help to provide better access to family justice for litigants who are currently unrepresented by legal counsel. To the contrary, we submit that the FLSP proposal would create a new class of service providers whose cost would remain out of reach for the target group of Ontarians.

2. There is significant disparity between the formal and experiential training that paralegals and lawyers receive. We submit that even a significant enhancement in training programs for paralegals would not adequately address this problem, and we are concerned that Ontarians would bear the risk of opening up a complex area of law to non-lawyers.

3. The Advocates' Society submits that the LSO's attention and resources would be better focused on promoting and expanding some new and exciting access to justice initiatives – initiatives which are already underway and already helping Ontario families get the legal assistance they need. In our view, these lawyer-led *pro bono* and low-cost services and programs can and should be scaled across the province with the benefit of promotion, resources and public education, to continue to advance access to justice in a meaningful way for Ontarians in need.

As an alternative response to the access to justice problem, The Advocates' Society recommends the following:

1. The LSO take steps to improve access to justice and protect family law litigants as follows:

    a. The LSO focus its attention and resources on existing lawyer-led access to justice initiatives — many of which have started only in the past 1 to 2 years and have significant promise;

    b. The LSO lead a broad education campaign about options and resources for family law litigants. This should include the development of a centralized internet-based resource for the public, as well as outreach and connection with the family law bar;

    c. The LSO continue to advocate for the expansion of the Unified Family Court; and

d. The LSO advocate for reform of family law court processes to advance access to justice.

2. Lawyers will continue to be responsible for providing the majority of family law services, including court attendances.

3. Paralegals and law clerks may provide some family law services under supervision by lawyers as set out in our submission.

4. If the LSO decides to proceed with the FLSP proposal in any capacity — with which The Advocates' Society has serious concerns for the reasons detailed in this submission — then the scope of work permitted for FLSPs should be significantly narrowed, as set out at pages 21-22 of our submission.

5. If the LSO decides to proceed with a scope of work for FLSPs broader than that which we set out at pages 21-22 of our submission — again, with which The Advocates' Society has serious concerns for the reasons detailed in this submission — then The Advocates' Society asks for a further opportunity to weigh in on the particulars of the scope and the related competencies, education and training.

We recognize that the positions taken in this submission might be dismissed on the basis that they may come across as protectionist. The Advocates' Society submits that it would be a mistake to discount on this basis the genuine and thoroughly considered concerns expressed across the Bar in response to the FLSP proposal. This submission is made in the context of our focus on the integrity of our profession, our focus on client and community service and our commitment to promoting the public's confidence in the administration of justice. This submission is also informed by our membership's long tradition of *pro bono* work and volunteerism. In particular, there are significant ways in which many family lawyers work to solve access to justice problems on their own time and at their own cost, including through discounted and sliding scale fees, unpaid work on legal aid certificate files, *pro bono* work, volunteerism on the LSO's COVID-19 Emergency Family Law Referral Line and other hotlines, volunteerism as Dispute Resolution Officers, and the development of lawyer-led access to justice initiatives.

The Advocates' Society also stresses that criteria for the possible development of the role of non-lawyers in the area of family law should not be any different than for the expansion of the role of non-lawyers in any other area of law. In some quarters, family law may have an unearned reputation as being facile or rote, but this has more to do with the familiarity with which people regard "domestic" disputes and the general minimization of work in the context of the family, rather than reflecting the realities of family law work.

In fact, the opposite is more likely true. Family law is an area fraught with complexities that may not be readily apparent to those who do not practise in the area. The Advocates' Society urges the LSO to consider that the complexity of family law matters and the critical impact their outcomes have on families merit finding a truly effective solution to advance access to justice in family law.

We thank you for providing The Advocates' Society with the opportunity to make submissions on these important issues. I would be pleased to speak with you at your convenience to discuss our position.

Yours truly,

Guy J. Pratte, Ad. E., LSM
President

C: Vicki White, Chief Executive Officer

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Submission in Response to the Family Legal Services Provider Licence Consultation Paper

November 30, 2020

The Advocates' Society

Response to the Family Legal Services Provider Licence Consultation Paper

Contents

1. Our Task Force

In preparing this submission, it was fundamentally important to The Advocates' Society to consult with a diverse group of family lawyers from across Ontario, in order to obtain a broad set of perspectives on these issues.

The Advocates' Society struck a Task Force made up of 15 diverse family lawyers from across Ontario. These family lawyers represent different regions of Ontario, different populations and different types of family law practice. We include lawyers from London, Ottawa, Ohsweken, Kingston, Thunder Bay, Toronto and more.

In addition, our Task Force had the benefit of ongoing consultations with The Advocates' Society's Standing Committee on Advocacy & Practice, which is comprised of advocates from across Canada who practice in a broad range of areas.

The unanimous view of the Task Force, supported by The Advocates' Society, is that the recommendations in the Family Legal Services Provider Licence Consultation Paper released in June 2020 (the "Consultation Paper"), authored by the Family Law Working Group ("FLWG") of the Law Society of Ontario (the "LSO") do not address the access to justice issues in family law. It is our strongly-held view that there are other, more effective, ways of advancing access to justice that should be prioritized.

2. Access to Justice in Family Law Matters

The Advocates' Society agrees that there are access to justice issues in family law. We have reviewed the statistics set out in Justice Annemarie E. Bonkalo's Family Legal Services Review Report (the "Bonkalo Report")[1], including that 57% of Ontarians did not have legal representation in family court in 2016.

Some of the statistics relied upon by the FLWG in the Consultation Paper date even further back — from 2012 and 2013. For example, the Consultation Paper cites statistics of 74% self-represented litigants at a downtown Toronto courthouse based on data gathered in 2012 by the National Self-Represented Litigants Project (the "NSRLP").

The NSRLP has continued to track data about self-represented litigants for many years. Interestingly, in its most recent report, the NSRLP noted that the proportion of survey respondents involved in family law matters has been reducing from approximately 66% overall in 2013, to 53% in 2017, to 48% in 2018/2019.[2]

The Advocates' Society believes that updated information and statistics would be helpful, given the development of various programs and initiatives designed to mitigate access to justice issues (which we

[1] Justice Annemarie E. Bonkalo, "Family Legal Services Review. Report Submitted to Attorney General Yasir Naqvi and Treasurer Paul Schabas" (December 31, 2016), online: https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/family_legal_services_review/ ("Bonkalo Report").

[2] See *Tracking the Trends of the Self-Represented Litigant Phenomenon: Data from the National Self-Represented Litigants Project, 2018/2019* by B. Fragomeni, K. Scarrow and J. Macfarlane (January 2020) at page 8. (https://representingyourselfcanada.com/wp-content/uploads/2020/01/Intake-Report-2019-Final.pdf) (the "NSRLP 2020 Report").

will discuss further below) since the Bonkalo Report. It is possible that these programs and initiatives are having an impact and will continue to have a growing impact as they expand and are publicized.

The Society agrees with the comments in the Consultation Paper that there are various factors that lead to the high number of self-represented litigants, including dissatisfaction with legal representation and/or a preference for handling one's own matters (especially in this era of internet-based self-help).

Still, The Advocates' Society accepts that for a majority of self-represented litigants, the cost of legal services is the threshold barrier. The question is: how best to address this?

3. How to Best Advance Access to Justice in Family Law Matters

The Advocates' Society submits that adding a new tier of costly non-lawyer service providers would not advance access to justice in family law. There are other solutions available that are more responsive to the problem.

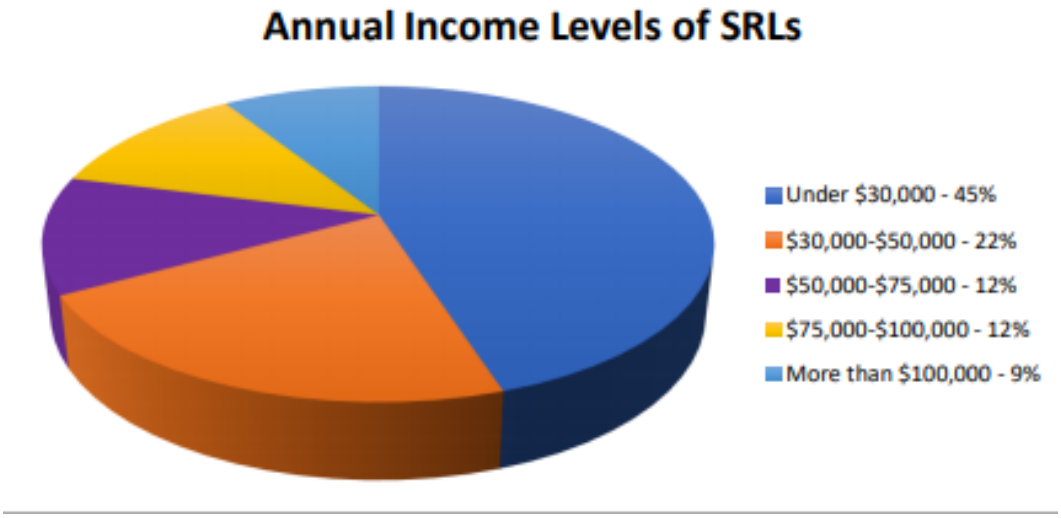
a. Most Self-Represented Litigants Cannot Afford to Pay for Legal Services

To begin, it is instructive to consider available data about self-represented litigants.

The National Self-Represented Litigants Project (the "NSRLP") has gathered income data for self-represented litigants over the past several years. Historically, the NSRLP surveys have found that the majority of those representing themselves report low income levels (below $50,000), with most of those below $30,000.[3] In the most recent period for which data is available (2018/2019) this is consistent: 45% of respondents reported that their annual income was under $30,000, and 22% reported an annual income of $30,000-$50,000 — for a total of 67% reporting annual income under $50,000.[4]

According to the NSRLP 2020 Report, 12% reported annual income between $50,000 and $75,000, and 12% reported annual income between $75,000 and $100,000. Figure 2 in the NSRLP 2020 Report depicts the breakdown of annual incomes of self-represented litigants as follows:[5]

[3] *Ibid.* at page 6.
[4] *Ibid.* at page 7.
[5] *Ibid.* at page 7.



In the Consultation Paper, the FLWG considered the circumstances of "an average family of modest means involved in divorce proceedings in Ontario", with an annual household income of $74,287.

Respectfully, The Advocates' Society notes that, based on data available, the vast majority (79%) of self-represented litigants earn less than this average annual income. These litigants comprise the majority of self-represented litigants populating Ontario courts.

As noted in the Consultation Paper, most of these lower-income Ontarians do not meet the financial eligibility threshold for Legal Aid funding. To qualify for legal aid in Ontario, a family of four must earn a combined income of less than $45,440. Further, even many eligible families are denied Legal Aid. For example, Legal Aid is not available for motions to change[6] (unless there is domestic violence), independent legal advice, separation agreements or uncontested divorces.

All of this raises very real questions about whether and how the vast majority of self-represented litigants — who earn well below the annual household income of $74,287 considered by the FLWG — would be assisted by the FLSP proposal, even leaving aside other concerns.

The Advocates' Society submits that the majority of self-represented litigants will not be able to afford legal services under the FLSP proposal and as such, even leaving aside other non-financial concerns, the FLSP proposal has limited ability to advance access to justice for the majority of those in need.

b. There is No Evidence that FLSPs are Materially Less Expensive

Compounding this problem is the fact that we believe that paralegals practising under the FLSP proposal would not be less expensive than many family law counsel.

On this topic, The Advocates' Society is deeply concerned that the FLSP proposal does not appear to be based upon actual data as to the relative costs and working models of paralegals versus lawyers. In the

[6] Notably, motions to change support are comprising increasing numbers of litigations due to the employment and income fallout of the COVID-19 pandemic.

Consultation Paper, the FLWG acknowledges that "there is no relevant data to support a comparison between what paralegals would charge for family law services and the amount lawyers currently charge".[7] The Consultation Paper goes on as follows:

> … a preliminary environmental scan of paralegal billing practices suggests that paralegals may be able to offer family law services in varied and alternative formats. First, it appears that paralegals bill clients smaller amounts, more frequently. Second, it appears that paralegals charge lower hourly rates than lawyers. Third, while paralegals occasionally accept flat fees for matters, they are more likely to charge block fees for various steps within a matter. These differences provide clients with greater certainty than hourly billing. Paralegals do charge an hourly rate when matters exceed estimated blocks or become complex, but many do not bill for routine tasks such as emails, phone calls, or travel time.[8]

The Advocates' Society appreciates the LSO's acknowledgment that it "will conduct surveys and focus groups to collect additional information regarding hourly rates and billing models employed by paralegals and lawyers" as part of its further analysis of the FLSP proposal.[9] In our view, obtaining such data is absolutely critical as any major policy shift must be founded on solid and reliable data, not appearances or assumptions. For this reason, The Advocates' Society asks that the LSO share this data, once gathered, with full transparency, so that the data can be analyzed and considered by all stakeholders.

Further, we submit that many of the assumptions set out in the Consultation Paper excerpt above are inaccurate. For example, large and increasing numbers of Ontario family lawyers are working with alternative practice and billing models, including unbundled services, legal coaching, flat fees and sliding scales. A number of these alternative access to justice initiatives were in their infancy at the time of the Bonkalo Report. We believe that, nearly four years since the release of the Bonkalo Report, we are in a strong position to emphasize and evaluate these lawyer-driven initiatives, which are discussed further below at page 12.

We submit that decisions on how best to advance access to justice cannot be made without additional data being gathered and analyzed, including data on the current hourly rates of paralegals, analysis about whether those rates would increase under the FLSP proposal, and analysis about whether the demographic in need can afford practitioners under the FLSP proposal. In this regard, we propose that the LSO's data collection and analysis should answer certain questions and consider certain additional factors related to the setting of legal fees, namely:

i. What rates are paralegals currently charging?

- Anecdotal evidence suggests that paralegals' current rates vary widely, and are not so different from many lawyers' rates for legal fees. In Ottawa, for example, paralegal rates seem to range from $150 to $185 per hour, while in Toronto, paralegal rates are higher, ranging from $150 to $295.

[7] Consultation Paper at p. 4 (emphasis added).
[8] *Ibid*.
[9] *Ibid*.

- Based upon our own preliminary review of paralegal fees across Ontario (by contacting paralegals in various regions of Ontario and canvassing our Task Force members and other family law practitioners who are members of The Advocates' Society), current paralegal rates are not sufficiently low to provide meaningful access to justice to the demographic in need.

Region	Sample Hourly Rates of Paralegals
Hamilton	$180 - $200
Kingston	$125
Kitchener-Waterloo	$100 - $125
London	$135 - $200
Ottawa	$150 - $185
Sudbury	$125
Toronto	$150 - $295
Windsor	$125 - $150

- Further, as the FLWG itself notes, even where paralegals charge flat fees, paralegals charge an hourly rate when matters exceed estimated blocks or become complex. Clients would not necessary know in advance when that could happen, significantly increasing budgeted fees. Many paralegal offices contacted as a result of our research noted that fees and even hourly rates "depended on complexity" and would not be fixed.

ii. What rates are family lawyers currently charging?

- Many family lawyers in our province offer services at rates that are not materially higher than paralegals, and our research suggests that many lawyers charge at an hourly rate that is on par with or even lower than that of some paralegals in their area. This is either because their hourly rates are in this range and/or because they offer services on a sliding scale.

- For example, lawyers who work on Legal Aid matters bill in accordance with the prescribed Legal Aid Ontario Tariff and Billing Handbook. There are three lawyer rate tiers as follows:[10]

Legal Aid Ontario Rate Tier	Certificates issued on or after April 1, 2015
Lawyer Rate Tier 1	$109.14

[10] *Tariff and Billing Handbook*, Legal Aid Ontario, online: http://www.legalaid.on.ca/wp-content/uploads/Tariff_Manual.pdf, at pp. 2-3 to 2-4. We acknowledge that the rates are slightly higher in Northern areas of Ontario.

Lawyer Rate Tier 2	$122.78
Lawyer Rate Tier 3	$136.43

- Many family lawyer rates are much lower than might be expected. Market rates for family lawyers vary by region and practice niche, and many lawyers charge below-market rates.

- The Advocates' Society developed a province-wide survey for family lawyers regarding their practice and billing models. Based on responses from over 400 family lawyers across Ontario, our findings include:

    - There is a wide range of lawyer rates in the province. Even in Toronto, there are lawyers charging less than $200 per hour.

        - 31% of lawyers reported a standard hourly rate between $200 and $300.

        - 38% of lawyers reported a standard hourly rate between $300 to $400.

        - 74% of lawyers reported that they provide services at a rate lower than their standard rate for some clients.

        - More than 45% of lawyers reported charging less than $200 as their lowest hourly rate.

    - Many family lawyers across Ontario accept Legal Aid certificates, provide *pro bono* services and discount their fees.

        - 47% of lawyers reported accepting legal aid certificates.

        - 40% of lawyers reported accepting *pro bono* family law files.

        - 40% of lawyers reported working with junior lawyers and offering their junior lawyer at a lower hourly rate to clients who could not afford their services. The survey indicated that most juniors charge between $100 and $300 per hour.

    - Many family lawyers across Ontario offer unbundled legal services, flat fee services and sliding scale billable rates.

        - 72% of lawyers reported providing limited scope services.

        - 65% of lawyers reported providing unbundled services.

        - 44% of lawyers reported providing legal coaching.

        - 41% of lawyers reported providing flat fee services.

- Many lawyers responded that they often discount their bills and set up payment plans with their clients to pay their fees over time.

- Caution must be exercised when comparing the hourly rates of paralegals and lawyers. A lower hourly rate charged by a paralegal does not necessarily entail a lower end cost to a litigant. A lawyer who charges a higher hourly rate may draw on their experience and education to resolve a legal issue more efficiently or effectively than a service provider who charges a lower hourly rate.

iii. How will the level of education, training and experience required under the FLSP proposal factor into fees?

- The rates that will be charged by licensed paralegals under the current FLSP proposal may well exceed current paralegal rates due to the additional education and training costs. We are concerned that this will make the FLSP proposal even less responsive to access to justice needs.

- Under the current FLSP proposal, services would be more complex than the services provided by the current licensed paralegal, and would require extensive additional initial and ongoing education and training. The cost of this education and training is not yet known, but it is reasonable to expect that this would be a factor in the legal fees charged by FLSPs.

iv. How will other factors – including operational expenses, technology expenses and insurance expenses – impact the fees charged under the proposed FLSP model?

- The rates charged under the current FLSP proposal may also exceed current paralegal rates based on the market and the cost of operations for a service provider (elements that are currently covered by lawyers who employ or have oversight over paralegals) — again potentially making the FLSP proposal even less responsive to access to justice needs.

- There are many costs associated with being a family law lawyer that would be necessary for a provider under the FLSP proposal. We submit that many are greater than those incurred by a paralegal.

- The practice of family law is becoming more driven by information and documents. The average family law matter is more complex now than 10 years ago, which is in turn is more complex than 20 years ago.

- The COVID-19 pandemic has compelled the courts to be electronic-document based. This will require service providers to also be electronic-document based. The computer software and hardware for a provider under the FLSP proposal will be similar to that required by a lawyer. At present, many lawyers will be required to upgrade their skill level and technology to meet the challenges created by COVID-19.

- Hardware will include computer, telephone, copier, scanner, and printer (or multi-function unit). Software will include accounting/billing/time management; DivorceMate; forms; document management; PDF software; and document assembly.

- A FLSP will require appropriate premises to facilitate meeting with clients and witnesses and information gathering. Confidentiality has to be maintained. This requires acceptable premises, including secure, sound-proof meeting rooms. The overhead cost for premises for a FLSP may be greater than for a paralegal. While there is variability in the overhead cost between lawyers, the premises costs for a provider under the FLSP proposal would be more similar to those of a lawyer than a paralegal.

- More information needs to be gathered on the insurance costs, which could be significantly higher for a paralegal under the FLSP proposal.

v. What is the potential client base for a FLSP and what is the ability of that client base to pay a FLSP's legal fees?

- As noted above, in the Consultation Paper, the FLWG considered the circumstances of "an average family of modest means involved in divorce proceedings in Ontario", with an annual household income of $74,287.

- According to the NSRLP 2020 Report, the vast majority (67%) of self-represented litigants earn less than $50,000. 12% earn between $50,000 and $75,000, and 12% earn between $75,000 and $100,000.[11]

- Bearing in mind that annual income is not the sole determinant of ability to hire private counsel and that the value of assets, ability to borrow and family support are some other significant factors, we have assumed that approximately 24% of self-represented respondents having an annual income within the $50,000-$100,000 range are the theoretical target group of the FLSP proposal.

- In reality, many of those within the income range of $50,000-$100,000 would not have matters within the scope the FLSP proposal — even as it is presently proposed. For example, questions of income determination are very common, especially with individuals who are self-employed. With the advent of the gig economy, many Ontarians within this income range are self-employed or "independent contractors" and will be subject to income determination issues. Any child or spousal claims for this demographic would fall outside the scope of an FLSP based on the FLSP proposal.

vi. What is the potential for market confusion as between legal service providers?

- If paralegals under the FLSP proposal and family lawyers are providing some of the same services — or are perceived by the buying public to be doing so — we submit that the public will pay similar fees for the two providers. We would expect that over time, paralegals under the FLSP proposal will charge fees based upon what the market will accept. As such, even if one assumes that initially the fees of paralegals were to be lower than a family lawyer, we expect that this would be a short-term situation and market forces would eventually permit, and encourage, paralegals to charge fees similar to those of family lawyers.

[11] NSRLP 2020 Report, *supra*, at page 7.

- In addition, Ontarians may need to shift from a paralegal provider to a family lawyer if complexity grows such that issues surface that are out of the scope of practice of a paralegal or the client lacks confidence in the paralegal.

    - As one example, custody and access matters are within the scope of the FLSP proposal. However, under the FLSP proposal this area is within the exclusive scope of a lawyer when, for example, a third party expert or relocation/mobility issue arises. Many of the issues that are within the exclusive scope of a lawyer will arise well after the initial interview and a paralegal may have been retained, resulting in increased costs by virtue of a change in representation.

    - Further, we submit that the more limited scope of the FLSP provider would likely be imperceptible to the average consumer of legal services, who may not understand his/her options or risks before proceeding to retain a paralegal provider.

    - Matters engaging other substantive areas under the scope in the FLSP proposal such as child support, spousal support, property matters, and the matrimonial home would also require a shift from a paralegal provider to a family lawyer.

c. Access to Justice Requires Access to Legal Counsel By Lawyers

The Advocates' Society submits that access to justice must be about more than cost or filling a market niche. Access to justice must have emphasis on *justice*.

The Advocates' Society submits that lawyers offer unique skills, expertise and judgment that are critical to the practice of law, including the practice of family law. Adding a tier of non-lawyer service providers to the family law system will not solve the main problems with the system. Rather, there is significant risk that it will exacerbate existing problems and inequities, particularly for those members of the public who are the most marginalized.

i. Lawyers are the Product of Extensive Education and Training

Lawyers have gained admission to university, completed an undergraduate degree, gained admission to law school, completed a law degree, passed the Licensing exams, and successfully completed an articling placement or the Law Practice Program (8 to 10 months). These steps are gate-keeping mechanisms that establish a series of criteria to provide assurance of educational and professional standards for lawyers. Essential skills including issue identification, legal analysis, problem-solving, effective written and oral advocacy, and ethical lawyering are extensively developed through this process. This education and training process involves a total commitment of a minimum of 8 years.

In contrast, paralegal programs are direct entry programs. While some paralegal students complete post-secondary education before entering a paralegal program, not all do. The Seneca College paralegal certificate program has "no specific entry requirements" according to its website.[12] Paralegals' field placements are much shorter than either an articling placement or the Law Practice Program.

[12] Seneca College website (https://www.senecacollege.ca/ce/business/legal/paralegal-certificate.html#EntryRequirements).

Non-lawyers are not trained to assess the merit of a claim in the same way as lawyers. Assessing claims requires not only the detailed knowledge of the statutes and extensive (and ever-changing) case law, but it also involves assessing — with the specific skill set acquired in legal training — the merits of a claim in applying the facts to the law. The main focus of law school, we submit, is to teach students to look at a problem in a particular way in order to assess the legal merits of a case.

It is complicated to determine the best approach to solve any given legal problem, to overlay myriad patterns of fact against diverse legal principles, to find the best angle and approach — and, conversely but just as importantly, to identify the inappropriate and unsupportable approaches.

This skill set comes from training, experience and judgment, and it is why most cases settle and avoid the court system (or at least a trial) in the first place.

No matter the training or requirements that might be put in place for paralegals, there is no substitute to the legal education and training a lawyer undergoes before being admitted to the Bar. To suggest otherwise undermines the entire legal profession and the legal system, and risks bringing the administration of justice into disrepute.

The Advocates' Society's position is not about protectionism. Rather, it is about protecting the public from unqualified practitioners. We recognize:

- the complexity and importance of the majority of legal matters outside of the Small Claims Court realm (and in particular within the family law realm);

- the education, expertise, and judgment that lawyers bring to bear on legal matters;

- the concern that non-lawyers empowered to appear in court may command a false sense of authority (and a false sense of security) when they may not in fact offer value to clients; and

- that the most marginalized Ontarians will disproportionately bear this risk when they can least afford it, as they will be most inclined to think legal services are out of reach and seek assistance from a non-lawyer.

This latter point bears repeating: The Advocates' Society is concerned that of the Ontarians who may fall within the targeted market under the FLSP proposal, a disproportionate amount will be from marginalized populations, including women suffering from domestic violence, victims of coercive controlling abuse, racialized persons, persons living in poverty and new Canadians.

The Advocates' Society understands that some new Canadians, who were practising lawyers in their country of origin, make the decision to qualify as a paralegal in Ontario, rather than as a lawyer, due to the enormous financial cost of getting qualified as a lawyer in Ontario. The Advocates' Society strongly encourages the LSO to consider an alternative and less expensive path to bar admission for established and qualified foreign lawyers to reduce this barrier. We support qualified lawyers practising law irrespective of country of origin.

ii. Family Law Files are Complex and Important at Any Income Level

A family law legal dispute will typically have issues that affect every aspect of a person's life: their financial life, their emotional health, their home, their property and most importantly their children. Family legal disputes affect all areas of our population, including members of vulnerable populations. It is important to protect people who require legal services in this area to ensure that they have the proper legal advice and help they need from qualified and experienced professionals. While different professionals may play a role in providing legal and support services, the role each group of professionals plays must be appropriately suited to their level of competence and training.

By way of analogy, in criminal law matters, Parliament has chosen to place a limit on the role of paralegals and restrict the representation of defendants facing serious consequences in the criminal courts to lawyers. This approach should be taken in the family law context, where the implications for the parties are also serious. Lawyers with enhanced judgment, experience and training should maintain carriage and oversight of family law files.

Family law is an area fraught with complexities that may not be readily apparent to those outside the family law bar. Aside from requiring an in-depth understanding of civil procedure rules and evidentiary principles, family law involves complicated and dynamic interactions with a diverse range of other areas of the law and sometimes in conflict with those areas. Family lawyers must be able to provide advice — or at a minimum identify critical issues — within a wide range of legal fields, including tax, corporate law, insurance, contracts, employment, property, immigration, trusts, estates, criminal law, real estate law, conflicts of law and private international law. Family lawyers must be familiar with and have a good working knowledge of a wide range of statutes and regulations, including federal and provincial legislation and international treaties and conventions. Family lawyers also deal extensively with common law principles and equitable claims, including complicated issues regarding unjust enrichment, resulting trust and constructive trust. A lack of knowledge or a failure to issue-spot in a related area can have catastrophic impacts on a client.

It would be wrong to assume that only particularly complicated family law cases fall within the complex web of statutes and common law described above, or that most family law cases are "simple" and able to be dealt with by non-lawyers. It is also fallacy to suggest that "lower income" cases are more likely to be "simple". There are significant and complicated factual matrixes that frequently intersect with family law matters, including domestic violence, coercive control, power imbalance, substance abuse, mental health problems and immigration sponsorship problems.

The issues at stake in family law matters are almost always significant:

- **Children.** This can include cases in which a parent seeks to terminate contact, or in which one parent is actively alienating a child from the other parent. These are critically important issues, which in our submission should be treated on a similar plane as criminal law issues, considering what is at stake.

- **Property.** This includes ownership and occupancy of a home, and ability to re-house.

- **Monthly Support.** These issues may have a lifelong impact on parties' ability to support themselves and their children.

- **Immigration status**. An individual's ability to remain resident in Canada may be at stake in a family law context, especially in the most marginalized of communities.

The Advocates' Society submits that the specific scope of services set out in the FLSP proposal goes well beyond matters that should ever be contemplated to fall within the competency of non-lawyers, as discussed further below.

iii. Non-Lawyer Representation Would Create a False Sense of Security for Clients

Another concerning aspect of expanding non-lawyer legal representation is the false sense of security that clients (and the court) would have in seeing that the client is "represented." The Advocates' Society submits that the concept of non-lawyer "family legal service providers" (as they are described Consultation Paper) is fundamentally problematic. The phrase is confusing to the public as it imparts the status of "legal service provider" on someone who is not in fact a lawyer. Further, it imparts an aura of authority and credibility. Clients will assume that they are getting full and proper legal advice when that will not be the case.

The Advocates' Society submits that the populations that this proposal seeks to protect — including the most marginalized Ontario populations — are the very people least likely to understand the difference between lawyers and "legal service providers".

d. Lawyer-led Initiatives Best Meet Ontarians' Access to Justice Needs

The Advocates' Society is concerned that an unintended consequence of expanding the role of non-lawyer service providers is that it may divert resources from meaningful alternatives that we submit would better advance access to justice. The Advocates' Society recognizes that the reality is that there is a finite amount of resources to address the access to justice problem. We submit that Ontarians are better served by devoting time, attention and resources to developing and expanding existing access to justice initiatives, rather than a new and unproven alternative. This is not a failure of creativity. Rather, it is a reasonable response to some key considerations:

- The non-legal family law services model has been considered and rejected, or has been tried and failed, in multiple North American jurisdictions (e.g., British Columbia and Washington)[13]. To date, no other jurisdiction has licensed paralegals to such a broad scope of family law practice — we submit this is for good reason.

- The FLSP proposal fails to meet the needs of those Ontarians targeted by the proposal, given the cost of paralegals and the risk to Ontarians of non-lawyers practising law, as discussed above.

- There are dozens of fantastic lawyer-led initiatives to advance access to justice in family law across Ontario, across Canada and in other common law jurisdictions. The bulk of these are outside the scope of these submissions, but we discuss three key Ontario initiatives below and summarize many others in Schedule "A". Many of these initiatives have started only in the past 1 to 2 years,

[13] See: Law Society of British Columbia's discontinued paralegal family law pilot project: https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/law-office-administration/paralegals/; and the Washington State Bar Association's decision to sunset the limited license legal technician program: https://www.wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/limited-license-legal-technicians.

or more recently. We submit that they could be scaled across the province with the benefit of promotion, resources and public education, in order to advance access to justice in a meaningful way.

- Further to the above, increasing numbers of family lawyers are offering different service provision and billing models, including unbundled services, legal coaching and flat fee services, which enhance lower-income Ontarians' access to legal counsel. There is a lack of public education about these alternatives, as well as the lower hourly rates of many family lawyers. A greater awareness among Ontarians about this could go a long way to advancing access to justice.

- The Bonkalo Report highlighted many of these initiatives and practice and billing models, some of which were just underway. However, at the time of the Bonkalo Report their impact was still too new to assess. It has been four years since the Bonkalo Report and The Advocates' Society submits that the impacts of these initiatives and the ways in which these initiatives could be financed and advanced should be considered in preference to the FLSP proposal.

i. Family Law Limited Scope Services (FLLSS) Project

The goal of Ontario's Family Law Limited Scope Services Project is to improve access to family justice for middle income Ontarians by promoting awareness to the public about the ability to retain lawyers on a limited basis — to assist with some aspect of their case — and connecting clients to lawyers who provide limited scope legal services.

Historically, lawyers were wary to offer limited scope services for fear of professional liability claims. The law surrounding limited scope services has developed,[14] which has provided lawyers with guidance as to their role and responsibility when offering limited scope services. Many lawyers now offer unbundled services to clients.

The Project facilitates access to and the use of unbundled family law services through its website, which hosts a province-wide roster of trained lawyers willing and able to provide such services. Ontarians can search this Lawyer Directory by location, type of service sought and languages in which services are offered, to find family lawyers in their area who may be able to assist. The Lawyer Directory can be accessed at: https://www.familylawlss.ca/lawyer-directory/.

The project website also provides information and resources about limited scope legal services, tools for clients to help them make the most of the unbundled services that they obtain, and precedents to support lawyers who want to do this work.

The Project is an unprecedented, private-bar driven effort, with strong support from each family bar organization in Ontario as well as the courts. It is supported by a broad Advisory Committee, with representation from The Advocates' Society; the Ontario Bar Association Family Law Section; the Federation of Ontario Law Associations; the Association of Family and Conciliation Courts – Ontario Chapter; the Family Lawyers Association; experts in non-traditional legal services delivery (e.g. Lisa Eisen of Family Law: A La Carte); and researchers.

[14] See for example *Trillium Motor World Inc. v Cassels Brock & Blackwell LLP*, 2017 ONCA 544.

The Project team also works with Legal Aid Ontario, the Law Society, LawPro and Community Legal Education Ontario (CLEO).

The project is funded through the Law Foundation of Ontario's Access to Justice Fund.

More information is available here: www.familylawlss.ca/

ii. Advice and Settlement Counsel (ASC) Toronto

ASC Toronto is a pilot project developed in consultation and cooperation with the 361 Bench and Bar Committee and the Judiciary and Court Services. The program is part of the larger FLLSS Project. Funded by the Law Foundation of Ontario, the FLLSS Project is working to increase the availability of limited scope services in family law in Ontario. The ASC program provides family lawyers who can assist the self-represented litigants on a limited scope retainer.

The program's goal is to help self-represented litigants in the following ways:

- attending motions;
- attending court conferences;
- assisting with negotiating consents when both parties are present;
- providing summary advice about an upcoming court conference or motion, including advice about potential settlements, drafting settlement terms offers, and court protocols;
- providing summary advice on consents at a prior session with a Dispute Resolution Officer, mediation, court conference or motion;
- providing summary advice (and coaching about next steps) before an upcoming court attendance or where a party wishes to commence or respond to a case;
- preparing "to do" lists so that a self-represented litigant can understand what steps need to be taken next; and
- supporting individuals who are not in court or who do not want to be in court with summary legal advice on their family law matter.

There are now 50 lawyers on the roster for ASC Toronto. ASC Toronto provides low-cost services at $200.00 per hour, 5 days a week, from 9:00 a.m. to 5:00 p.m. All services are being provided virtually during the COVID-19 pandemic.

More information is available here: www.ascfamily.com

iii. Pro Bono Students Canada Family Justice Centre (FJC)

Pro Bono Students Canada, Epstein Cole LLP, and Legal Aid Ontario have partnered to launch the FJC. The FJC aims to address long-standing gaps in the family justice system by hosting virtual legal clinics for Ontarians dealing with family law issues who are unable to afford a lawyer, but do not meet the threshold to qualify for legal aid services.

At the virtual clinics, family law lawyers will supervise law students in the delivery of unbundled legal services to self-represented litigants in Ontario. The FJC will also create public legal education resources to support self-represented litigants in navigating the family law process.

The aim of the FJC, by providing virtual clinic services, is to reach clients throughout Ontario, including in remote areas where access to services has historically been limited. Whenever possible, the FJC will endeavour to support clients in accessing technology by providing referrals and instruction, and also by communicating through telephone instead of videoconferencing.

The FJC will be providing unbundled legal services in the form of summary advice and, when appropriate, assistance with document drafting. A chart detailing a client's path through the FJC is attached at Schedule "B".

More information is available here: www.probonostudents.ca/family-justice-centre

iv. These Initiatives Require Promotion, Resources and Expansion

Of the above initiatives, the Family Justice Centre launched only in September 2020; the Advice and Settlement Counsel project started in late 2019; and the Family Law Limited Scope Services Project launched its website and started the bulk of its promotion only in the spring of 2019.

These initiatives merit time to grow and develop. The Advocates' Society submits that resources are best focused on these initiatives rather than on models involving non-lawyers.

There are numerous other access to justice initiatives across the province, many of which could greatly benefit from public education and dissemination. Details of some of these initiatives are highlighted at Schedule "A".

In addition, Legal Aid Ontario provides a number of services to assist low and middle class income Ontarians. For example:

- Legal Aid Ontario provides advice and duty counsel services in every Ontario Court of Justice family court location in Ontario, and in Unified Family Court locations in the Ontario Superior Court of Justice. The Legal Aid Ontario Family Law Service Centre provides free services to parties on family law matters (including child protection) if they qualify. Legal Aid Ontario also has family law mediation services in Milton, Ottawa, Brampton, Peel and Newmarket.

- Although not a family law clinic, Aboriginal Legal Services refers family law matters to lawyers in various communities who practice family law and accept legal aid certificates. More information is available here: www.aboriginallegal.ca.

- Legal Aid Ontario lawyers at Family Law Information Centres in courthouses provide 20 minutes of free general advice, regardless of income qualification. An example is on the Six Nations Reserve, where intake is completed by Six Nations Justice and there are three Indigenous lawyers who rotate into the clinic every Tuesday from 9:00 a.m. to 1:00 p.m. More information is available here: www.legalaid.on.ca/services/family-legal-issues/

The Advocates' Society has advocated for improved funding for Legal Aid Ontario for many years. There is also need for improved public education about the availability of the above services.

Many of the existing services or models (including lawyers providing limited scope retainers, sliding scales and flat fees) remain underutilized because the general public is not aware of these options. There is a need for a public education campaign and a more centralized approach to presenting the various resources that already exist, to enhance access to justice across the province.

We submit that the Law Society of Ontario, along with the Ministry of the Attorney General and the courts, should take a more active role in linking the public and lawyers to information about initiatives around the province to help facilitate awareness about these services and initiatives, virtually all of which have been spearheaded and run by professionals who are already lawyer-members of the LSO. Many of these initiatives already have success and could be improved upon with additional funding, support and public education.

For example, many people think that using a lawyer will make their family law matter more contentious and do not realize the benefits that lawyers can provide. Or, some individuals who are not eligible for a legal aid certificate may not realize that they can access services at a clinic or duty counsel services.

Some Ontarians may not be able to afford a lawyer on a full retainer, but they may be able to represent themselves in a proceeding with the support and/or coaching of a lawyer on a limited scope retainer as needed. However, they may not know that this is an option or how to find a lawyer who accepts limited scope retainers.

We submit that many Ontarians have no idea that family lawyers in the province offer unbundled services or rates on a sliding scale — or even what those options mean. We are also concerned that there is a lack of available information about lawyers' hourly rates or how to find them. The Advocates' Society submits that the public and family law bar may benefit from a public posting of rates and services through a central repository. By offering links to these programs on the Law Society's website, more detailed profile information about lawyers on the lawyer and paralegal directory, and highlighting the services available to the public, the LSO could help facilitate these access to justice initiatives.

The LSO could use the resources at its disposal to support, strengthen and expand on existing programs and initiatives, and to partner with the bar, the Attorney General and the courts in a public campaign to promote these existing and creative access to justice initiatives.

v. Systemic Family Law and Court Reform

The expansion of Unified Family Courts ("UFC") in Ontario is an excellent response to the specialized services families require when dealing with a separation or a divorce, adoptions, child protection, among other family law issues. UFC locations provide coordinated services in family law, including duty counsel and Family Law Information Centres through which self-represented litigants can receive legal coaching.

In the 2013 McFarlane report entitled "The National Self-Represented Litigants Project: Identifying and Meeting the needs of Self-Represented Litigants Final Report", referenced in the Consultation Paper, Professor Julie MacFarlane concludes that self-represented litigants seek this kind of legal coaching among other services. An evaluation of the impact of these coordinated UFC-based services, along with their adequacy (e.g., with respect to staffing), would be another helpful metric in evaluating access to justice solutions. Further, the UFC should continue to be expanded to all jurisdictions in Ontario.

Even within the UFC, however, it cannot be ignored that there are opportunities to streamline and simplify family law procedure as a means of reducing costs and improving access to justice. Our members operate within the court system on a daily basis. We are keenly aware that the current system has problems.

The Advocates' Society submits that adding non-lawyer representation to the mix will only add to the problem. It will be another layer in an overburdened, underfunded, hierarchical system that is slow, unresponsive and often not the most elegant or efficient way of addressing many of the core issues confronting separating spouses.

Expanding the role of non-lawyers in family law would do nothing to change the overarching system in which we operate. Rather, it may actually encourage litigation as more "advocates" would then be available.

The Advocates' Society submits that the optimal solution to saving costs, reducing steps and improving access to justice is to reimagine how the court system operates and to determine other mechanisms to avoid wasted procedures, processes and appearances. We are happy to consult on this point further.

vi. Inspiration Outside of Ontario

If the LSO intends to spend its resources developing new programs, then it should consider taking inspiration from programs outside of Ontario as well. A full review of options outside of Canada was beyond the scope of this submission, but two programs caught the Society's interest:

- **MyLawBC.com** was developed by Legal Aid British Columbia as an online resolution service. The service features an online negotiation tool to help separating couples make agreements, access to online mediation to help co-parents make parenting plans and deal with child support, and guided pathways that produce personalized action plans to address common legal problems including separation and divorce.

- The **Second Acts Pilot Project** was launched by the Pro Bono Institute in the United States to create institutional support for lawyers transitioning to retirement who are interested in a second, volunteer career in public interest law, including family law for low income families. The project provided grants to public interest organizations (Legal Aid Society in New York, Boston Bar Association, Bar Association of San Francisco and Bay Area Legal Aid, and Kids Matter, Inc.) to pilot four demonstration projects to make significant use of the talents and skills of seasoned lawyers. This included creating an expert litigation panel to utilize the extensive experience of transitioning and retired attorneys to expand much needed representation and provide mentorship to less experienced volunteer attorneys. The project launched with the following message: "Due to the aging of the "baby boomer" generation, the number of lawyers aged 50 and older in the United States was expected to triple over the next two decades. This age cohort will be the largest, healthiest, and wealthiest generation of lawyers to approach senior status and will

undoubtedly reinvent and reshape the nature of transition and retirement. It has been estimated that if only five percent of these lawyers transition to public interest practice, the number of lawyers available to meet the legal needs of low-income and underserved communities will double." The same principles could be used to seek the involvement of retiring social workers, mediators, financial experts, etc. to mentor younger less experienced professionals in Canada interested in providing support to a low to mid-level income demographic. More information is available here: http://www.probonoinst.org/projects/second-acts/

vii. The Role for Paralegals and Law Clerks

The Advocates' Society supports articling students, summer students, law clerks and paralegals playing a role in the practice of family law so as to minimize costs and improve access to justice — *under the direct supervision of a lawyer*.

Law Clerks and Students. Many family lawyers in the province operate with the assistance of at least one law clerk. Those who practise in firms that are equipped to take on the responsibilities associated with supervising articling students and summer students often do so.

Law clerks and students are invaluable to the practice. They conduct a wide range of work from drafting letters, simple court documents and financial statements, to gathering and reviewing financial disclosure, to assisting with court preparations.

The key is that all of this work is completed at the direction, and under the supervision, of a practising lawyer.

Paralegals. As with law clerks, The Advocates' Society does not oppose paralegals assisting with a wide range of work, including drafting letters, simple court documents and financial statements, gathering and reviewing financial disclosure, preparing simple agreements, and assisting with court preparations — again, provided this work is done ***under the direct supervision of a lawyer***.

The Advocates' Society is aware of a civil litigation business model in which one lawyer supervises a large number of paralegals.[15] This model of supervision may be appropriate for paralegals appearing before Small Claims Court, where they are already permitted to appear independently. However, The Advocates' Society does not support this model for delivering family legal services if the ratio of lawyer to paralegals is too low. The Advocates' Society similarly does not support the concept of paralegals practising "in association with" a firm or lawyer, as that implies a form of supervision or endorsement by the firm or lawyer that would be misleading. It is critical that the supervising lawyer be not only *responsible* for the work of paralegals but also practically able to *review and supervise* the work in a meaningful way. The protection of the public demands no less.

The Advocates' Society strongly believes that law clerks and students should be able to continue their work in this capacity, but their responsibilities should not include *carriage* of or *full responsibility* for a file. **It is critical that a lawyer in good standing maintain ultimate responsibility for the matters, for the reasons discussed above.**

[15] See, for example, Toronto lawyer Jordan Farkas who operates under the name "Mr. Small Claims Court."

Appearing Before the Court is a Distinct Responsibility. While The Advocates' Society recognizes that law clerks, paralegals and students have a role in the practice of family law completing delegated work under the supervision of a lawyer in good standing, we do not agree with permitting the delegation of work to extend to court appearances as a general rule.

As discussed further above, this is in recognition of the complexity and importance of the majority of legal matters outside of the Small Claims Court realm (and in particular in the family law realm), the education, expertise, and judgment that lawyers bring to bear on legal matters, the concern that non-lawyers empowered to appear in court may command a false sense of authority (or a false sense of security) when they may not in fact offer value to clients (in particular clients from marginalized communities, who may be most inclined to seek assistance from a non-lawyer).

The Advocates' Society supports articling students appearing before the court on small matters such as scheduling dates where sensitive judgment calls are not required. Again, however, this would be at the instruction, and under the supervision, of a lawyer in good standing.

e. Recommendations

In sum, The Advocates' Society submits that Ontarians in need of access to family law justice will be best served when:

- The LSO focuses its attention and resources on promoting and expanding existing lawyer-led access to justice initiatives — many of which have started only in the past 1 to 2 years and have significant promise.

- The LSO leads a broad education campaign about options and resources for family law litigants. This should include the development of a centralized internet-based resource for the public, as well as outreach and connection with the family law bar.

- The LSO continues to advocate for the expansion of the Unified Family Court.

- The LSO advocates for reform of family law court processes to advance access to justice. The Society is happy to consult on this further.

- Lawyers continue to be responsible for providing the majority of family law services, including court attendances.

- Law clerks, paralegals, articling students and summer students assist with family law work — under the direct supervision of a lawyer in good standing, and outside of the court itself.[16]

[16] With the exception of articling students appearing before the court on small matters such as scheduling dates where sensitive judgment calls are not required, under the supervision of a lawyer in good standing.

4. If the LSO Proceeds With the FLSP Proposal

a. FLSP Scope Must be Significantly Reduced

If the LSO decides to proceed with the FLSP proposal, contrary to our submissions, and a new class of licensees is permitted to provide family legal services under a FLSP Licence unsupervised by lawyers, then The Advocates' Society submits that it is imperative that the scope of the proposed FLSP work be significantly reduced.

The Advocates' Society is concerned that the scope of activities set out in Appendix B of the Consultation Paper is vastly too broad and will not adequately provide for competent legal services to be provided to members of the public.

In particular, The Advocates' Society submits that FLSPs should not be permitted to provide legal representation in contested matters before the court in any situation.

The Advocates' Society consulted with the family law bar to consider a scope of possible practice in the event that the LSO proceeds with the FLSP licensing despite The Advocates' Society's submissions. The Advocates' Society recommends that the scope of proposed activities be significantly reduced to include only the following – and only if high standards of education and training are met (as discussed further below):

1. Simple uncontested divorces and joint uncontested divorces, without property or contested child or spousal support issues as corollary relief.

2. Simple *uncontested* motions, e.g. motions on consent for disclosure or procedural steps by Form 14B.

3. Court appearances where there is no possibility of an Order being made without consent, e.g. first appearances or attending to obtain an order on consent.

4. Simple Form 14B motions, e.g. to change the Table Amount of child support on an annual basis, *after* it has already been established in a Separation Agreement or Court Order, and only if the payors' income is a straight T-4, Line 150 total income determination, and there are no other related issues (i.e., undue hardship, imputation of income).

5. Assistance completing financial statements, limited to minor matters other than income and valuation issues.

6. Claims relating to division of household contents, pet ownership or vehicle ownership (provided that the value is under $35,000 or the Family Claims Court limit in the particular jurisdiction).

7. Enforcement of child and spousal support matters *in an existing Order or written Separation Agreement*, including preparation of garnishment documents, filing requirements and follow-up with the Family Responsibility Office, including assistance with completion of the Statement of Arrears and other documentation required by the Family Responsibility Office.

8. Changes of name under the *Change of Name Act*.

b. Education, Training and Competencies

The Advocates' Society submits that the list of competencies provided in the Consultation Paper is inadequate.

The type of competencies, the amount of education and training, and the nature of ongoing training and supervision will vary depending on the scope of work that FLSPs would be permitted to do. The broader the scope of proposed practice, the more extensive the competencies, education, training and supervision required.

If the LSO ultimately decides that FLSPs should essentially be "practising" family law, in our submission, the training of FLSPs should be akin to that of lawyers.

Ultimately, if the LSO decides to proceed with the proposed FLSP licensing — which The Advocates' Society opposes — then we ask for further opportunity to weigh in on the particulars of competencies, education and training required in light of a defined scope of practice.

c. Responses to Questions in the Consultation Paper

By way of summary, at Schedule "C", The Advocates' Society summarizes the responses to each of the 13 questions posed in the Consultation Paper.

Schedule "A": Key Ontario Initiatives to Improve Access to Justice in Family Law

	Program	Description	More information
1.	*The National Self-Represented Litigants Project (NSRLP)'s Director of Professionals Assisting SRLs*	NSRLP is creating a National Directory of Professionals who offer services such dispute resolution coaching to self-represented litigants. The NSRLP has a searchable directory of professionals offering individualized assistance and services to the primarily self-represented. The NSRLP also has a "NSRLP Resource, The Nuts and Bolts of Unbundling" on their website for lawyers who wish to provide unbundled legal services to SRLs	https://representingyourselfcanada.com/national-directory/
2.	*Luke's Place*	Luke's Place connects women to family law lawyers for free summary legal advice. Women in Durham Region who have been subjected to violence in their relationship can set up an appointment with the weekly legal clinic and receive summary legal advice from a lawyer on family law issues, like arrangements for children, child and spousal support, division of property and the matrimonial (family) home, and restraining orders and separation agreements for free. There is also a Virtual Legal Services Clinic where which connects women across the province to Family Law Lawyers for summary legal advice. In addition to summary legal advice, the lawyers at this clinic help with legal documentation and preparing for court.	https://lukesplace.ca/for-women/pro-bono-summary-advice-clinic/
3.	*JusticeNet*	JusticeNet is a not-for-profit service helping people in need of legal expertise, whose income is too high to access legal aid and too low to afford standard legal fees. The legal professionals listed on the site have agreed to devote a portion of their practice to qualifying clients at reduced fees. JusticeNet is a nation-wide program available to anyone living in Canada whose net family income is under $59,000 and is experiencing financial difficulties. Reduced fees are calculated according to a sliding scale which takes into account the number of individuals supported and amount of income from all sources (including employment income, self-employed earnings, employment insurance, worker's compensation pensions, social assistance, commissions, child tax benefits, rental income, etc.).	www.justicenet.ca/

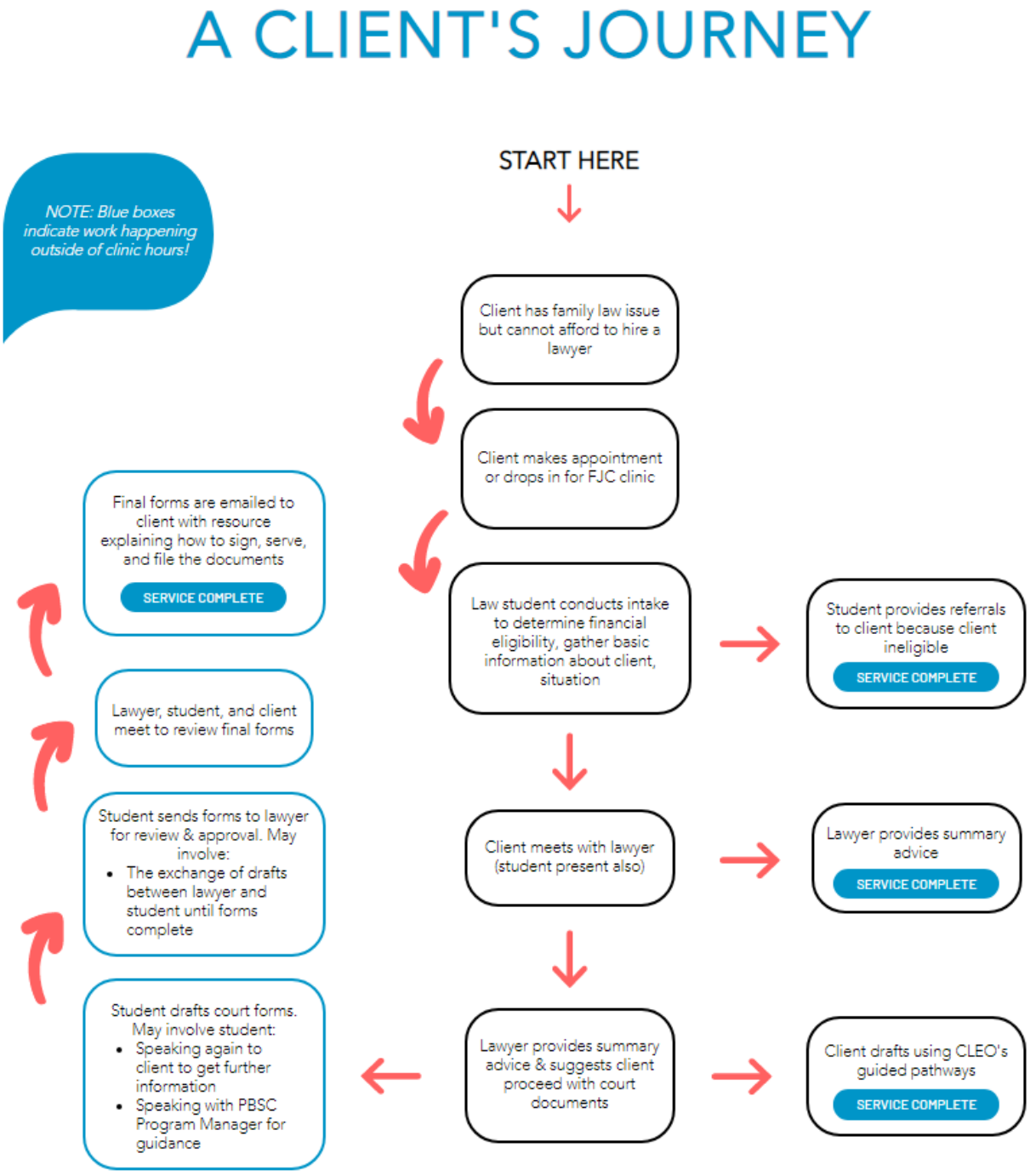
	Program	Description	More information
4.	*The Family Law Workshop*	Two senior family lawyers in Toronto, Lisa Eisen and Susan Blackwell, have created "The Family Law Workshop". This workshop is designed to give self-represented litigants much needed guidance on going to family court without a lawyer. The Top 10 Tips cover how to fill out court forms, negotiate with lawyers, follow court rules and much more. The workshop is designed for clients working with a lawyer on an "unbundled" basis and are provided at an affordable rate.	www.blackwellfamilylaw.ca/bflblog/2020/10/13/family-law-online-workshop-survey and here: https://familylawalacarte.ca/legal-coaching
5.	*Metro Toronto Family Law Services*	Legal Aid Ontario provides family law services to financially eligible low-income clients at community legal clinics and other locations in Toronto. Interpretation service is available.	https://cleoconnect.ca/organization/metro-toronto-family-law-services/
6.	*The Queen's Family Law Clinic (QFLC)*	QFLC provides support to local residents in Kingston as they navigate Ontario's family court system. Students work for academic credit, sometimes in a paid summer position, and on occasion as volunteers under the supervision of licensed lawyers. The clinic operates year round. The QFLC is funded by Legal Aid Ontario (LAO) in partnership with the Queen's University Faculty of Law, with additional support from Pro Bono Students Canada (PBSC) and the class of Law'81. Student caseworkers provide services to low-income clientele including some who, for a number of reasons, may not be otherwise eligible for LAO assistance with Family Court matters. The clinic operates based on a limited scope retainer model by assisting litigants who represent themselves in Family Court by completing their documents, helping them negotiate the Family Court process, or referring them to other family justice resources. The QFLC works closely with and assists LAO-funded duty and advice counsel. The clinic is exclusively dedicated to family law and provides serves on a range of issues including custody, access and child support. In addition to applications, answers and conference briefs, QFLC student caseworkers welcome referrals for matters not normally covered by the LAO certificate program such as simple divorces, motions to change, motions for substituted service, affidavits for uncontested trial or other matters where student assistance may be helpful to the litigant.	https://queenslawclinics.ca/family-law

	Program	Description	More information
7.	*Student Legal Clinics*	Other Law Schools have similar programs to the QFLC. In student legal clinics at law schools across the province, Student Caseworkers are supervised by lawyers and provide services to low income families. Although the clinics may not be exclusively dedicated to family law, there are legal clinics with family law sections. Examples of student clinics offering family law services at law schools across Ontario include Downtown Legal Services ("DLS") at the University of Toronto, Community Legal Services at Western Law School, and Community Legal Clinic at Ottawa University.	https://law.uwo.ca/legal_clinics/community_legal_services/index.html http://downtownlegalservices.ca/our-services/family-division/ https://commonlaw.uottawa.ca/community-legal-clinic/about
8.	*The Women's Centre of Halton*	The Women's Centre of Halton offers a free legal clinic for family law (as well as immigration and criminal defence issues) and does not screen for financial eligibility. Clients are offered half hour of free legal advice. The Women's Centre of Halton will also be expanding their services to provide educational seminars on family law issues free of charge.	https://thewomenscentreofhalton.com/
9.	*Family Mediation and Resources Centre (FMRC)*	The Family Mediation and Resources Centre is a group of experienced family professionals in Ontario who provide support for families. FMRC hosts free information sessions at local libraries for the public. These sessions are conducted by a family lawyer and provide a general overview of the areas of law that are relevant to separation and divorce, such as the different rights for married couples versus couples who are not married but live together, the law regarding spousal support, child support and support enforcement. Sessions are held at public libraries in Durham, Milton, and Toronto. FMRC also provides reduced rate mediation sessions co-mediated with at least 1 mediator being a lawyer.	
10.	*Kingston Military Family Resource Centre*	Family lawyers in Kingston, Ontario run a free advice clinic at the Kingston Military Resource Centre (Jacques Menard and Chris Ecclestone). Clients can meet with a lawyer for a free 30 minute legal advice consultation in English or French. The Legal Advice clinic is open to all Canadian Armed Forces members and their families in the Kingston and area. The Clinic is being offered virtually during the pandemic, on Thursdays from 1:00p.m. to 3:00p.m.	www.cafconnection.ca/Kingston/Adults/Military-Families/Legal-Advice-Clinic.aspx

	Program	Description	More information
11.	*C.A.R.E. Hub for Separating Families: Community, Assessment, Referrals and Education*	The group of lawyers and non-lawyer mediators from Durham, Barrie and Ottawa working on this new project is focused on trying to respond to where the client is at – on the assumption that separation is a 'relationship breakdown with legal consequences', not a legal problem with emotional impacts. C.A.R.E is a multi-disciplinary Triage network that helps clients create a Separation Plan at a low cost (e.g. $150 for a 1-2 hour Separation Planning/Triage meeting). By giving clients the option of resolving their separation out of court, C.A.R.E ensures that those who need court are able to access judicial expertise more efficiently. If there are safety issues, the client is immediately triaged to a domestic violence advocate. The result is that those who do not need or want to litigate have a more affordable, cooperative and timely option. C.A.R.E will be Family Law Portal that was developed at the Ryerson Legal Innovation Zone and other online programs to educate clients. It also allows professionals to begin to assess the type of help clients need so C.A.R.E can refer them to relevant professional and community resources. C.A.R.E will encourage clients to complete relevant legal and other information online once the team has determined the issues they wish to address – making the process more affordable. C.A.R.E's hope is that people will use their limited resources to make the best use of the professional services offered – and the outcome will be durable agreements and a reduction in conflict.	www.familylawportal.com/start-here
12.	*Lawyers and Lattes*	Lawyers and Lattes is a legal café in midtown Toronto. The café provides various family law services at flat fees, including the drafting of Separation Agreements and assistance with uncontested divorces.	https://www.lawyersandlattes.com/legal-services/
13.	*Alternative Dispute Resolution*	Alternate dispute resolution or dispute resolution is very important component of family law. In Toronto senior lawyers act as Dispute Resolution Officers (DROs). In Ottawa, there is a virtual family law project where experienced family law lawyers offer their services to act as mediators, arbitrators and take carriage of case conferences, and in some cases, settlement conferences where approved by the administrative Justice, to assist in reducing the cost of proceeding to Court. In other areas family lawyers are offering their time as "amicus" and duty counsel.	

	Program	Description	More information
14.	*CLEO Connect*	Community Legal Education Ontario (CLEO) has a very detailed family law resources website through CLEO connect. The public can search by topic and discover in court and out of court resolutions to assist them in resolving their family law matters. The language is accessible.	https://cleoconnect.ca/legal-topic/family-law/
15.	*Steps to Justice*	Steps to Justice is a guide to law in Ontario led by CLEO with funding through Legal Aid Ontario, the Department of Justice (Canada) and The Law Foundation of Ontario. The family law website has resources for the public.	https://stepstojustice.ca/legal-topic/family-law
16.	*Family Law Education for Women*	Family Law Education for Women provides plain language legal information on women's rights in family law matters in Ontario in 14 languages.	https://onefamilylaw.ca/

Schedule "B": A Client's Path Through the Family Justice Centre



Source: The Family Justice Centre, online: https://www.probonostudents.ca/family-justice-centre

Schedule "C": Responses to Questions in Consultation Paper

Question 1: Will the proposed scope of permissible activities support increased access to affordable, competent family law legal services? If so, how?

A premise of the Consultation Paper is that a FLSP would be less expensive than family law counsel. The Advocates' Society submits there is no evidence a FLSP would be less expensive and additional data should be gathered and analyzed (pages 4 to 9). The practice of family law is complex (and increasingly so) and reflected in the cost of operation such as computer costs (hardware and software), premises and continuous upgrading of skills and knowledge. Many costs associated with being a family law lawyer would be necessary for a FLSP and greater than those incurred by a paralegal (pages 8 to 9).

The more effective way to support increased access to affordable, competent family law legal services is to continue to expand existing lawyer-led access to justice initiatives (pages 13 to 18).

Question 2: Will the proposed scope of permissible activities enable the FLSP to develop a business model that is viable? If so, why? If not, why not?

The Advocates' Society submits the market for a FLSP will be modest. We submit that most self-represented litigants lack the means to hire a FLSP, just as they lack the means to hire a lawyer. This applies even if FLSPs charge less than lawyers (which we submit the evidence does not support). This is one of the key reasons that we think the FLSP proposal does not advance access to justice needs. (See for example pages 3, 4, 9 and 10.)

Question 3: Will the proposed competencies ensure the appropriate level of competence to deliver family legal services as outlined in the proposed scope? Are there other competencies that should be considered?

The Advocates' Society submits that the list of 8 general areas of competencies on page 8 of the Consultation Paper and the 209 detailed competencies listed in Appendix C of the Consultation Paper are inadequate. If the LSO decides that FLSPs should essentially be "practising" family law, the competencies required of FLSPs should be akin to those of lawyers and TAS asks for a further opportunity to weigh in on the particulars of competencies (page 22).

Question 4: In your view, what scope of activities would best support increased access to affordable, competent family law services?

The Advocates' Society supports paralegals playing a role in the practice of family law, along with articling students and law clerks, so as to minimize costs and improve access to justice – *under the direct supervision of a lawyer* (page 19). The Advocates' Society reiterates its overall recommendation that the LSO not proceed with the FLSP proposal to allow a new class of licensees to provide family legal services under a FLSP Licence, *unsupervised by lawyers* (page 20). Should the LSO decide to proceed with the FLSP program, The Advocates' Society submits that the scope of the proposed FLSP work set out on page 7 and in Appendix B of the Consultation Paper is too broad and will not provide sufficient protection to the public. In particular, The Advocates' Society strongly recommends that the FLSPs should not be permitted to provide legal representation in contested matters before the court in any situation. The Advocates' Society sets out on page 24 a list of 8 possible practice activities for FLSPs and only if high standards of education and training are met (pages 21 to 22).

Question 5: Is the proposed training program of sufficient duration and rigour to enable candidates to achieve the proposed competencies?

The Advocates' Society submits that the 11 courses to be taken over 6 to 8 months with a potential field placement for a length still to be determined as proposed in the Consultation Paper is inadequate. The Advocates' Society's position is that no matter the training or requirements that might be put in place for paralegals, there is no substitute for the legal education and training a lawyer undergoes before being admitted to the Bar, including: having gained admission to university; completed an undergraduate degree; gained admission to law school; completed a law degree; passed the Bar exams, and successfully completed an articling placement. These gate-keeping mechanisms establish a series of criteria to provide assurance of educational and professional standards for lawyers, including developing essential skills such as issue identification, legal analysis, problem-solving, effective written and oral advocacy, and ethical lawyering. To suggest otherwise undermines the legal profession and the legal system and risks bringing the administration of justice into dispute (pages 10 to 11). The Advocates' Society submits that if the LSO decides that FLSPs should essentially be "practising" family law, the training of FLSPs should be akin to that of lawyers and asks for further opportunity to weigh in on the particulars of education and training (page 22).

Question 6: What type of prerequisite experience in legal services provision, if any, should be required for the FLSP?

The Advocates' Society submits that there is no substitute for the complete educational and experiential training completed by lawyers admitted to the Bar in Ontario. The Advocates' Society emphasizes the training undertaken by lawyers called to the Bar in comparison with that of paralegals now being considered to provide family law services (pages 10 to 11).

In the event the Law Society of Ontario decides to proceed with the proposed FLSP licensing, which The Advocates' Society opposes, we will seek an opportunity to provide a more detailed response with respect to the education and training required in light of a defined scope of practice (page 22).

Question 7: What length and form of experiential training should be incorporated into the licensing process for the FLSP to support the competencies? If a field placement is required, who will provide the placements?

It remains The Advocates' Society's view that FLSPs, like law clerks and students-at-law, should at all times be under the direct supervision of a lawyer – not for the defined term of a 'field placement' or other experiential training program, but permanently as a condition of their licence. The Advocates' Society emphasizes that supervision is required to ensure the public interest is protected and prioritized in the event paralegal work is extended to the area of family law (pages 19 to 20). As with our response to question 6, in the event the Law Society of Ontario proceeds with the proposed FLSP licensing, which TAS opposes, we will seek an opportunity to provide a more detailed response with respect to the experiential training and/or field placement required in light of a defined scope of practice (page 22).

Question 8: Is a CPD requirement focused on family law appropriate for the FLSP?

The Advocates' Society submits that in the event the FLSP licensing program proceeds, the nature of ongoing training will vary depending on the scope of work that FLSPs would be permitted to do. Given

the outstanding question as to the ultimate scope any FLSP licensing program may include, in the event the Law Society of Ontario proceeds with the proposed FLSP licensing, we will seek an opportunity to provide a more detailed response with respect to the appropriate CPD requirements for FLSPs in light of that defined scope of practice (page 22).

Question 9: Should law clerks be eligible for the FLSP license? Are there other groups of professionals who should be considered?

The Advocates' Society strongly encourages the Law Society of Ontario to consider an alternative and less expensive path to bar admission for established and qualified foreign lawyers (page 11).

Question 10: What characteristics of an FLSP would make this provider appealing to self-represented litigants? (billing practices, cost structure, accessibility, practicality, other?)

The Advocates' Society submits that most self-represented litigants cannot afford to pay for legal services and there is insufficient evidence to support a view that the services of FLSPs will be materially less expensive or add value to self-represented litigants (pages 4 to 10).

Question 11: Given the recent enhancements to accessing family law (i.e. court modernization, Steps to Justice, etc.), is the FLSP design appropriate?

The Advocates' Society submits that in the past 1 to 2 years many lawyer-led initiatives have been implemented that, if properly resourced and expanded, will promote justice in a meaningful way (pages 13 to 18).

Question 12: Are any aspects of the proposed licensing framework unfeasible?

The Advocates' Society does not consider the proposed framework feasible or optimal as set out in our submissions. We have outlined recommendations to best serve Ontarians that do not incorporate the proposed licensing framework. The Advocates' Society would welcome further discussion of the recommendations outlined at page 20 of the submission.

Question 13: Is there additional information or are there other factors that should be considered?

The Advocates' Society does not consider the proposed framework feasible or optimal as set out in our submissions. We have outlined recommendations to best serve Ontarians that do not incorporate the proposed licensing framework. If the LSO proceeds with the FLSP proposal, The Advocates' Society submits that it is imperative that the scope of the proposed FLSP work be significantly reduced. The Advocates' Society proposes a limited scope of activities FLSPs should engage in and the standard of education necessary to engage in those activities (pages 21 to 22). The Advocates' Society would welcome the opportunity to discuss these recommendations in detail with the LSO.