

## Better connecting consumers of legal services and alternative legal service providers

*Future of Legal Services Committee*

Given several important initiatives underway, the Future of Legal Services Committee is highlighting key information regarding access to justice and the work of the [Committee](#). Look for information to continue to follow on next steps in implementing the Legal Services Task Team recommendations [report](#).

In the first [article](#), the focus was on how legal information can help and ways lawyers can communicate their services and billing practices more transparently to clients, better responding to client priorities and concerns to effectively resolve legal problems. As highlighted in this article, there can be real harm when people cannot access legal services and attempt to resolve legal matters without qualified professional guidance. For those dealing with life-changing matters involving legal issues, the absence of legal advice and support can result in adverse outcomes.

**KEY DATA** "Nearly one-third (30%) of respondents had justice-related problems that had not been resolved."

Additionally, there remains an access to legal services gap as identified in the Legal Services Task Team final report. Current studies are underway to better understand this issue in Saskatchewan, however the most recent data available in Canada highlights that 52% of people reported experiencing a justice-related problem over a two-year period.<sup>1</sup>

Earlier data for Saskatchewan indicates individuals most frequently experienced problems related to consumerism, debt, family (relationship breakdown), discrimination, and housing.<sup>2</sup> Additionally, a 2016 study highlights that nearly one-third (30%) of respondents had justice-related problems that had not been resolved, with an additional 15% who had one problem resolved with another problem ongoing.<sup>3</sup> Among those with at least one unresolved problem, 16% reported the ongoing problems had become worse. Essentially, there exist serious access to justice gaps and individuals with unmet legal need.

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<sup>1</sup> World Justice Project, *Global insights on access to justice: Findings from the World Justice Project general population poll in 101 countries*, 2019, available: <https://worldjusticeproject.org/sites/default/files/documents/WJP-A2J-2019.pdf>. This is supplemented by prior studies that highlight key access to justice information as reported by the Department of Justice Canada (available at: <https://www.justice.gc.ca/eng/csj-sjc/access-acces/index.html>): in Canada, almost half of the adult population will experience a serious legal problem over the course of a three-year period; many of those reporting one serious legal problem will experience multiple legal problems; barriers related to financial cost, time, complexity, lack of information and availability of services, among others, contribute to legal problems remaining unaddressed; vulnerable and traditionally marginalized populations face additional barriers to accessing justice, including in relation to gender and gender identity, race, culture, age, language, literacy, disability, income and geographical location; and technology can help solve some, but not all, access to justice issues.

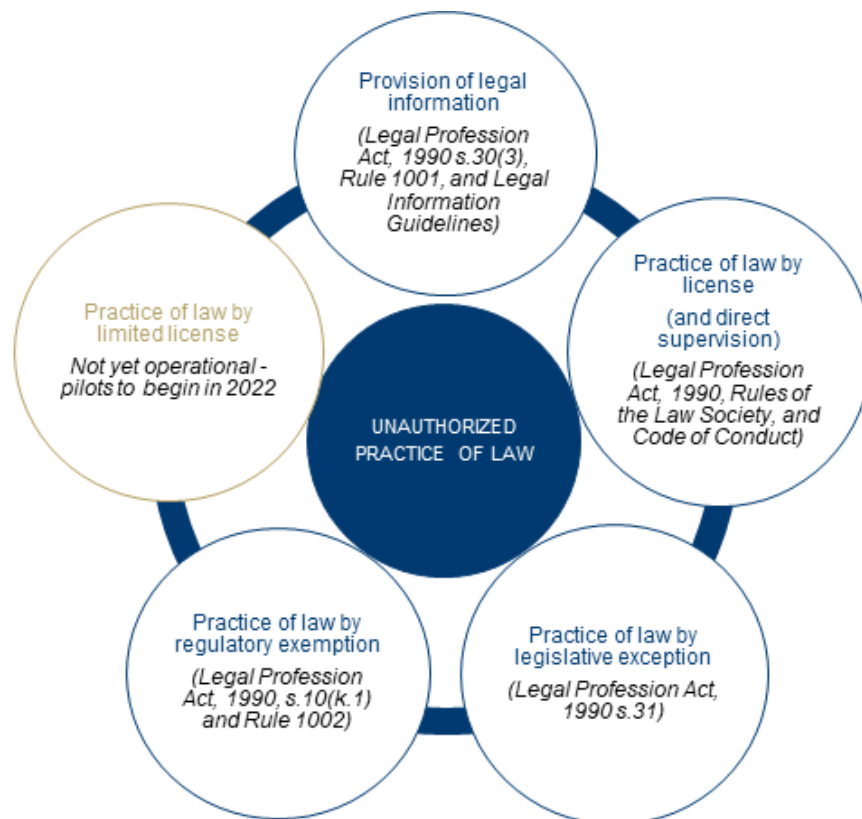
<sup>2</sup> Currie, A., *The legal problems of everyday life: The nature, extent and consequences of justiciable problems experienced by Canadians*, 2009, available: [https://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr07\\_la1-rr07\\_ai1/rr07\\_la1.pdf](https://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr07_la1-rr07_ai1/rr07_la1.pdf).

<sup>3</sup> Farrow, T. C. W., Currie, A., Aylwin, N., Jacobs, L., Northrup, D., & Moore, L., *Everyday legal problems and the cost of justice in Canada: Overview report*, 2016, Canadian Forum on Civil Justice, available: <http://www.fcjc-fcjc.org/sites/default/files/Everyday%20Legal%20Problems%20and%20the%20Cost%20of%20Justice%20in%20Canada%20-%20Overview%20Report.pdf>.

As a partial response to this known need, the Legal Services Task Team recommended developing a regulatory framework for alternative legal service providers to support access to legal services. The recommendations included:

- modernizing the legislation regulating legal services to provide more flexibility for future developments in this area;
- expanding the list of exemptions to the prohibition against practicing law to recognize existing service providers;
- providing the Law Society with licensing authority to allow service providers to practice law with a limited licence on a case-by-case basis;
- creating guidelines to help educate the public about legal services; and
- conducting pilot projects to help develop and test the recommendations.

In this second article, the focus shifts to alternative legal service providers and how consumers of legal services are beginning to have additional choice with respect to selection of authorized legal service providers. At present, Saskatchewan has a regulatory model which authorizes the practice of law or delivery of legal services in several ways:



To begin, the provision of **legal information**, which encompasses general information about the law and legal procedures for the public, may be provided by any person or persons working within a for-profit or not-for-profit organization, or through an automated service, provided Saskatchewan's [Legal Information Guidelines](#) are adhered to. Legal information is different from legal advice or the practice of law in that it does not interpret and apply legal information for specific circumstances.

It is unlawful for individuals to practice law or provide legal services directly to the public without a license, this is considered the **unauthorized practice of law**. Unlicensed individuals who offer legal services for a fee or misrepresent themselves as lawyers may put the public at risk, and therefore are prohibited from doing so. The Law Society has authority to prosecute individuals who engage in the unlawful practice of law.

However, there are also **exceptions and exemptions to unauthorized practice** which permit alternative legal service providers to deliver legal services in limited circumstances within specified terms to facilitate the administration of justice and access to legal services. These are detailed in section 31 of the *Legal Profession Act, 1990* and Rule 1002 of the Law Society Rules of Professional Conduct:

#### EXCEPTIONS TO UNAUTHORIZED PRACTICE

*Legal Profession Act, 1990, s.31*

- a. an articulated student-at-law in specific circumstances;
- b. a lawyer who is not a member of the Law Society of Saskatchewan in specified situations;
- c. a member of a police force appearing for the Crown before a judge of the Provincial Court of Saskatchewan or justice of the peace;
- d. an employee of the Government of Saskatchewan or the Government of Canada prosecuting summary conviction cases for the contravention of an Act or an Act of the Parliament of Canada, or a regulation made pursuant to an Act or an Act of the Parliament of Canada;
- e. a sheriff with respect to proceedings in specified situations;
- f. a person who is a plaintiff or defendant in proceedings and who commences, prosecutes or defends in the person's own name an action or proceeding in a court of civil or criminal jurisdiction;
- g. a person preparing a document for the person's own use or in relation to a proceeding to which the person is a party.

#### EXEMPTIONS TO UNAUTHORIZED PRACTICE

*Rules of the Law Society of Saskatchewan, s.1002*

- i. a person serving in a neutral capacity as a mediator or conciliator;
- ii. a person participating in labour negotiations, arbitrations, conciliations or proceedings respecting collective bargaining rights or agreements;
- iii. a person exercising an adjudicative function pursuant to statutory authority;
- iv. a person acting as a legislative lobbyist;
- v. a public officer acting within the scope of the person's authority as a public officer;
- vi. a person employed by the government to act as a lay representative before administrative agencies or tribunals;
- vii. a notary public exercising the powers conferred on the notary public by law;
- viii. a person who delivers courtworker services to Aboriginal people through an Aboriginal delivery agency that has contracted with the Government of Saskatchewan or the Government of Canada to deliver courtworker services as part of the Aboriginal Courtworker Program;
- ix. a person authorized to practice law in accordance with any provincial or federal statute;
- x. an officer or employee of an incorporated or unincorporated organization preparing a document for the use of the organization or for an action or matter to which the organization is a party;
- xi. a university law student in respect of services permitted to be provided by that student in accordance with the Rules;
- xii. an individual who is representing a person in an administrative adjudicative proceeding if the administrative tribunal determines that the individual would be of assistance to the person and the tribunal; and
- xiii. an individual who is appearing in a court as an agent pursuant to The Small Claims Act, 2016, The Summary Offences Procedure Act, 1990, or the Criminal Code of Canada, provided that they are unpaid as required by clause 30(2) of the Act.

There exists a variety of alternative legal service providers who are not lawyers, but who are authorized to facilitate the administration of justice and access to legal services.

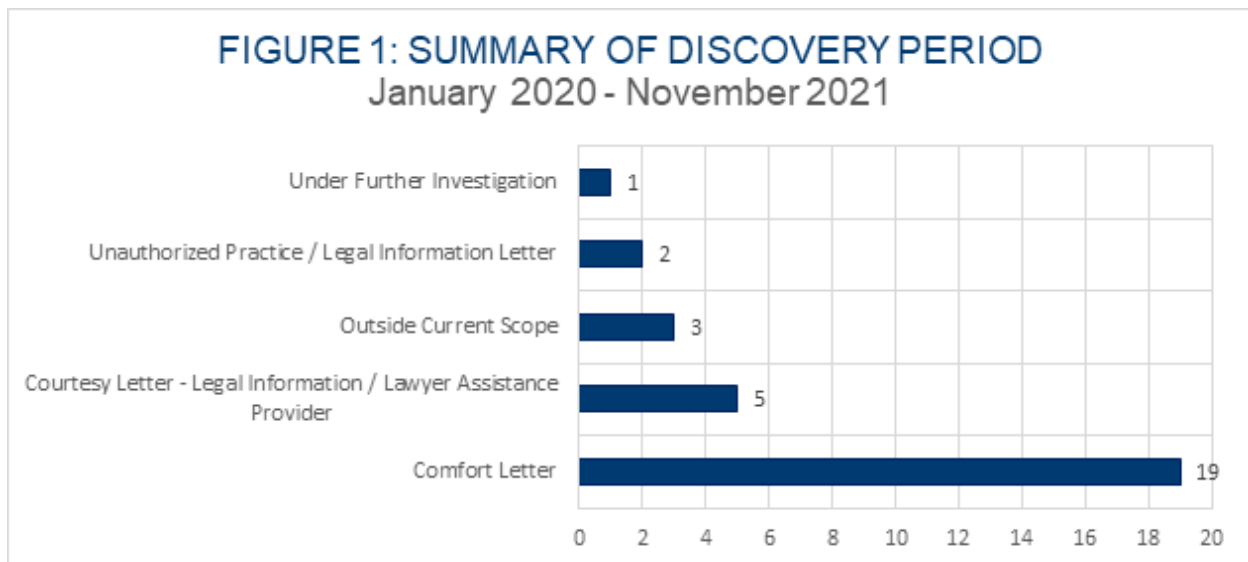
Additionally, the Law Society is developing a framework for **limited licensing** to authorize additional alternative legal service providers. Since January 2020, a Discovery Period has been open to allow alternative (non-lawyer) legal service providers to identify themselves to the Law Society through a Notice Form with the aim to:

- refine existing exemptions and expand the list of exemptions to unauthorized practice; and
- develop a framework for limited licenses for legal services that can be granted by the Law Society on a case-by-case basis.

### Learning from the Discovery Period and Transitioning to Pilot Projects

The Discovery Period provides data for evidence-based decision-making to help better connect consumers of legal services and alternative legal service providers.

As of November 2021, the Discovery Period involved contacting 162 organizations and receiving 14 inquiries. In November 2021, final outreach and an information session will be held to encourage submission of any additional Notice Forms. To date, 30 notices have been received and considered by the Law Society and resulted in the issuance of comfort (19) and courtesy (5) letters, an indication that outside current scope (3), notice of unauthorized practice (2), or further investigation by the Law Society (1). Figure 1 provides a summary of the Discovery Period (January 2020 to November 2021).



A risk-based approach has been adopted, and criteria considered for risk assessment and issuance of courtesy, comfort, or unauthorized practice letters includes:

1. Pre-existing (January 2020) services / length of time
2. Insurance
3. Nature of services
4. Experience
5. Fees charged
6. Access to justice
7. Complaints, lawsuits, criminal prosecutions and indication towards respect for the rule of law and the administration of justice

The alternative legal service providers who have submitted notice are delivering services in a range of areas of limited scope in known areas of access to justice concern or niche areas for specific groups. Often, lower costing and efficiencies are identified, helping those with difficulty affording legal services access legal advice and assistance.

In January 2022, the Law Society will transition from the Discovery Period to Pilot Projects, inviting participation from Notice Form providers or other interested individuals. The Law Society is not creating an entirely new professional group with a robust regulatory structure, but is considering how to extend a limited authority to practice law to alternative (non-lawyer) legal service providers on a case-by-case basis through limited licensing. There are context-specific needs that can be serviced by alternative legal service providers operating within a specific, individualized scope of practice reflecting the knowledge, training, and experience of the service provider.

The overall goal of implementing a limited license program is to enhance access to legal services for underserved Saskatchewan individuals balanced with ensuring public protection. As the granting of a limited license to practice law is a novel approach to legal regulation in Canada, a new licensing system needs to be developed. The development of the limited licensing system involves pilot projects and additional consultation to support the advancement of appropriate rules and regulation.

Further information about the consultation questions and the parameters for the pilot project are available on the Law Society's [website](#).

### **Conclusion**

Better connecting consumers of legal services and alternative legal service providers is an important step to support access to legal services and therefore improved access to justice in Saskatchewan.

*The Future of Legal Services Committee will continue to provide updates on this initiative and invites comments and input at: [consultation@lawsociety.sk.ca](mailto:consultation@lawsociety.sk.ca).*