



Response to the Law Society of Ontario's
Access to Justice Approach: Call for Comment

Date: May 31, 2019

Submitted to: Law Society of Ontario, Access
to Justice Committee

Submitted by: Ontario Bar Association



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Introduction

The Ontario Bar Association (the “**OBA**”) is pleased to provide input to the Law Society of Ontario’s Access to Justice Committee (the “**LSO Committee**”) on its “*Review of the Law Society’s Access to Justice Approach: Call for Comment*” (the “**Call for Comment**”).

The LSO Committee issued the Call for Comment on February 28, 2019, with the intention that input would provide guidance to the new Convocation that was subsequently elected in April 2019.

The Ontario Bar Association

Established in 1907, the OBA is the largest legal advocacy organization in Ontario, representing some 15,000 lawyers, judges, law professors and law students. OBA members are on the frontlines of our justice system in no fewer than 40 different sectors and in every region of the province.

This submission was prepared in consultation with the OBA’s elected Provincial Council members, who represent a critical cross-section of the bar, including senior and junior lawyers, from managing partners to new calls, who practise across Ontario as solicitors and barristers in solo, small, medium and large firms from all eight judicial regions of the province.

Background

The LSO’s Call for Comment briefly summarizes the LSO’s access to justice role under the *Law Society Act* and the LSO’s Access to Justice Achievements in the following areas:

- facilitating access to legal services,
- promoting accurate and clear legal information for the public,
- supporting an accessible, fair and effective justice system, and
- providing assistance to external organizations.

The Call for Comment also poses the following seven questions:

1. What do you think of the Law Society’s current access to justice initiatives?
2. Should some of these initiatives be enhanced? If so, which ones and why?
3. Should some of these initiatives be reduced? If so, which ones and why?
4. Should the Law Society launch new access to justice initiatives? If so, which ones and why?
5. What do you or your organization do to facilitate access to justice? Could the Law Society collaborate with you on your initiatives? If so, how?
6. Should the Law Society institute a levy on lawyers and paralegals to support additional access to justice initiatives?
7. Do you have additional comments on the Law Society’s approach to access to justice?



Comments

Overview

Access to justice is a fundamental interest for the OBA's members and the public we serve. Every year across the province our members volunteer countless hours in their practices and in their communities to help ensure the public has meaningful access to justice through the assistance of lawyers, who can help them understand and uphold their rights and responsibilities.

The OBA has been a strong advocate for many important access to justice initiatives over the years including advocating for the need of a robust and stable legal aid system, a province wide unified family court system, unbundling, coaching, improved technology, modernization of the courts and pro bono work. These are critical initiatives and we encourage all justice sector participants to continue supporting the work achieved through them. We strongly recommend that advocacy efforts in the area of access to justice focus on persuading the Provincial and Federal governments to properly and more robustly fund legal aid programs. Improved legal aid funding would do more than anything else, and more equitably, to improve access to justice.

The Call for Comment provides the briefest overview of the four categories listed under the "Access to Justice Achievements" heading, which range from the LSO's substantial activity in "Facilitating Access to Legal Services" to its more limited activity in "Providing Assistance to External Organizations". In reviewing the Call for Comment, our members noted that insufficient information had been provided to meaningfully answer the consultation questions in significant detail. As such, our submission is presented in line with the consistent themes raised by our members regarding the LSO's current and future access to justice activities.

Effective Decision Making

With respect to the heading of "Facilitating Access to Legal Services", the LSO frequently considers important regulatory issues in areas that relate to access to justice. The OBA has provided advice with respect to the access to justice implications in numerous LSO consultations, a recent sample of which include the importance of competence in ensuring public protection (e.g. Family Legal Services Review), transparency and clarity of client services (e.g. Contingency Fee Reforms Consultation), practice affordability to reduce client costs (e.g. Consultation on Lawyer Licensing) and supporting professional obligations (e.g. Civil Society Organizations).

For such initiatives, the questions posed in the Call for Comment about whether to maintain, reduce, or enhance activities are not as relevant as how to ensure that the expertise and direct client experience of practicing lawyers appropriately informs Convocation's analysis and decisions. As stated in the OBA's submission on governance reform, informing Convocation's analysis and



decisions with the experiences of practicing lawyers is critical for the LSO to facilitate access to justice in carrying out its statutory function, duties and powers.

Key Objectives and Performance Metrics

For a number of the initiatives referenced in the Call for Comment, our members believe it is critical for the LSO to clearly articulate the underlying objectives and performance metrics for assessing progress, particularly for the more discrete, time-limited initiatives such as the recent LSO website redesign and public marketing campaign. An overarching comment is that for many of the initiatives referenced in the Call for Comment there is little or no information in the document or readily available elsewhere to allow for a critical assessment or measurement of the success of the various programs.

Relevant information includes how initiatives are situated within the LSO's mandate, the specific objectives and the data and analysis anticipated to appropriately track progress. The success of each initiative in achieving its objectives is an important starting point for meaningfully responding to the questions posed in the consultation about whether to reduce, retain or expand the activities, although regular reporting of metrics is also useful to guide adjustments and improvements in the normal course. Two specific examples of this referenced in the Call for Comment are addressed below.

First, the Call for Comment indicates that the Law Society Referral Service (“**LSRS**”) provided over 45,000 referrals in 2017, which suggests the program contributes to access to justice for a meaningful segment of the public. However, the Call for Comment does not provide further analysis of the program that would help to assess its overall success and future direction, including the regional uptake of the program, assistance rate of referrals and what efforts have or could be undertaken to improve access. For example, while many of our members had participated in the LSRS, the question was raised whether the annual fee lawyers must pay to offer free services through the program unintentionally functions as a barrier to its uptake and impact.

Second, the Call for Comment refers to the launch of the new LSO website in 2018, which we understand was intended to promote accurate and clear legal information for the public. As a starting point for assessing this initiative, it would be helpful to at least review common webpage analytics, such as page visits, the average time spent by visitors on any given page and data reflecting new and returning visitors, in comparison to data regarding the prior webpage and against the projected metrics of success. There are myriad other metrics by which the effectiveness of the initiative could be measured. These are simply examples of considerations that should be reviewed in assessing the LSO's activities.

Levy on Licensees

The Call for Comment asks if a levy on licensees should be instituted to support additional access to justice initiatives. In sum, our members made it clear that a levy on licensees is at best, given the



information provided through this consultation, a premature question, but overwhelmingly were against a levy at this time.

A number of our members agreed that a consideration of how to fund initiatives should sensibly follow a decision about which access to justice initiatives the LSO should undertake or continue, whether funding is already adequate to provide for those initiatives, and the rationale for raising any additional funds, if needed, by way of a levy. Members also raised a concern about the way in which levies would be connected to the availability of initiatives throughout Ontario.

However, more broadly, our members expressed concerns about an additional lawyer levy – owing to concerns that the overall annual regulatory fee is already too high and/or a lack of clarity in the rationale for funding a subset of LSO initiatives this way.

Law Society Assisting Access to Justice

Lastly, the Call for Comment asks if there are opportunities for the LSO to assist organizations in their work to facilitate access to justice. In our view, there are undoubtedly low cost or no cost opportunities for the LSO to support the bar in increasing access to justice and the LSO should work to expand these.

One opportunity that the OBA has raised in prior submissions is for the LSO to increase access to information that would help lawyers understand and respond to changing demographics. We have specifically noted the importance of such information in addressing the “greying of the bar”, which continues to present significant challenges for members in many places across Ontario. Detailed and up to date information about the supply of legal services, including such information as practise area and lawyer age within communities and regions, would be a helpful resource for the bar in better aligning services to support access to justice.

The OBA has also noted the role the LSO can play in constructively supporting initiatives that associations have undertaken that support access to justice. In the context of mentoring and coaching, the OBA has identified the need to continually encourage participation in programs that are already available. The LSO could helpfully increase awareness of these programs throughout Ontario to support participation, growth and sustainability.

Conclusion

In conclusion, the OBA continues to support and applaud the goal of addressing access to justice issues across the province. Strong analysis of existing LSO initiatives, including possible enhancements or reductions of them must be considered in further depth before thought is put forward to creating new ones. Consideration should also be given as to whether the LSO is well placed to provide support for existing access to justice initiatives advanced by the various justice sector organizations instead of expanding their current access to justice work. In light of the above,



and concerns regarding existing licensing fees, our members do not support a levy at this point in time. Going forward, the OBA and its members would be pleased to work with the LSO, on its assessment and development of access to justice initiatives, including consideration of future calls for comment, as well as the Access to Justice Committee as they continue their work in this important aspect of our justice system.