



CONSULTATION DOCUMENT

Alternative Legal Services Providers

I. Background

In 2017, the benchers of the Law Society of Manitoba developed a Strategic Plan that included an objective for the Law Society to demonstrate leadership in the advancement, promotion and facilitation of increased access to justice. With that key objective in mind and following the receipt of recommendations from the President's Special Committee on Alternate Legal Services Providers, in 2018 the benchers sought legislative amendments to *The Legal Profession Act* (the "Act") that would permit the benchers to authorize the provision of prescribed legal services in the area of family law by persons who are not lawyers acting under the supervision of a lawyer or by persons with a limited license.

The President's Special Committee also recommended that the Law Society ought to:

- work with stakeholders within the family law system to identify the scope of services that could be undertaken by persons without a law degree working under the supervision of a lawyer;
- work with stakeholders within the family law system to identify the scope of services that could be undertaken by persons without a law degree working independently;
- engage with the public, the profession, and other stakeholders through a survey or some other form of consultation about unmet legal needs and the provision of legal services by alternate legal services providers;
- pursue opportunities to develop a pilot project that will facilitate collaboration among stakeholders to provide legal information and advice in a narrow range of areas.

Subsequent Special Committees on the Delivery of Legal Services and the Regulation of Legal Entities considered issues and recommended to the benchers an initial framework that would support the legislative amendments sought from the Province.

However, consultations with key stakeholders were put on hold in light of two important developments that were poised to significantly change how family breakdown might be resolved within the family law system in Manitoba, namely:

- i) the “Family Law Modernization Project;” and,
- ii) new Court of Queen’s Bench Family Law Rules.

Recently, [Bill 24](#) was introduced by the Provincial Government. It contains Act amendments to allow the benchers to create additional exemptions that would permit persons who are not lawyers to provide specified legal services that would otherwise constitute “unauthorized practice.” Other amendments would permit the benchers to authorize the creation of a new category of regulated legal services providers called “Limited Practitioners” who would be able to provide legal services within a limited scope.

Now that the Family Law Modernization Project has reached a certain phase (see [July 2020 Action Plan](#)) and the “new” Queen’s Bench Rules in Family Law have been in place for approximately 18 months, key family law justice system stakeholders have experienced the effects of some system changes. It should also be noted that Bill C-78 will come into force on March 1, 2021. It represents the first substantial update to federal family law in 20 years. The Bill acknowledges that persons who are not lawyers may be able to assist in certain family law matters. It is therefore an opportune time for the Law Society to begin its critical consultation process.

II. Stakeholder Engagement

The first priority of the benchers is to consult with stakeholders within the family law system - as this appears to be an area where the need for increased access is most readily apparent.

This consultation document is intended to outline the issues and identify some main areas that require consideration by a broad range of stakeholders and to serve as a focal point for a meaningful consultation process.

III. Alternative Legal Services Providers (in Family Law) – Under the Supervision of a Lawyer

In Manitoba, many lawyers have “paralegals” who work within their firms. Quite often these paralegals provide services with respect to real estate transactions and in the area of corporate law. However, unlike in Ontario, where there is a regulated paralegal

profession governed by the Law Society of Ontario, in Manitoba “paralegal” is not a defined term. Community colleges tend to provide courses for legal assistants and graduates are hired by firms to provide administrative assistance to lawyers. Typically, assistants receive further (on-the-job) training within law firms in order to provide more advanced services within the firm and then are sometimes referred to as “paralegals.”

Several years ago, Red River College worked with the Law Society to explore the development of a paralegal program. For a variety of reasons, development of the proposed program halted. Some concerns were expressed about whether there would be enough of a job market for paralegals. In addition to concerns about whether the profession would hire graduates of the program to assist with the provision of legal services, it was unclear whether there would be legislative amendments made to the Act that might result in the ability for persons without a law degree to deliver legal services independently to the public (i.e. not only under the supervision of a lawyer) or to make appearances in court on behalf of clients. At one point, after ceasing its work on a paralegal program, Red River College considered the advisability of developing a “stand alone” family law course that could be taken by graduates of the legal assistant program and by other legal assistants.

Members of the College’s “Paralegal Program Committee” considered numerous ways in which alternative legal services providers acting under the supervision of a lawyer may be able to provide valuable and important services to clients and members of the public.

Consider the following examples:

- Being present at the initial meeting with the lawyer and at subsequent meetings. Subsequent meetings could also take place (as directed by the lawyer) between the paralegal and the client alone in order to obtain specific information or to perform specific tasks.
- Applying for and obtaining any required documentation, such as marriage certificates, birth certificates and property searches.
- Drafting the originating document and responding documents, at the lawyer’s direction. The documents would need to be reviewed by the lawyer prior to reviewing with the client and filing.
- Drafting a wide variety of documentation (at the lawyer’s direction) in ongoing matters, including documents for unopposed divorces by way of affidavits, court orders and notices of motion.
- Assisting with the drafting of affidavits, with the lawyer’s specific direction.
- Obtaining the documentation and information necessary for the drafting of the financial statement form 70D, and drafting the form 70D.
- Obtaining the documentation and information for the drafting of *The Family Property Act* accounting forms and drafting them.
- Arranging for the filing of documents in court.
- Arranging for the service of documents.

- Drafting the documents necessary to obtain orders of substitutional service, where required. With a change in legislation, the paralegals could appear to obtain such orders.
- Attending to consent adjournments, and the scheduling of hearings, court proceedings, and other matters upon consultation with the lawyer as to desired dates.
- Conduct some negotiations, with the direct approval of the lawyer, and within clearly defined parameters.

Some might argue that so long as a lawyer supervises the alternative legal services provider, it should be up to the lawyer to determine what matters could be or should not be delegated, similar to the relationship between a lawyer and an articling student. The Law Society no longer lists specific tasks that a student may or may not undertake. It is up to the supervising lawyer to make decisions based upon an assessment of competency, etc.

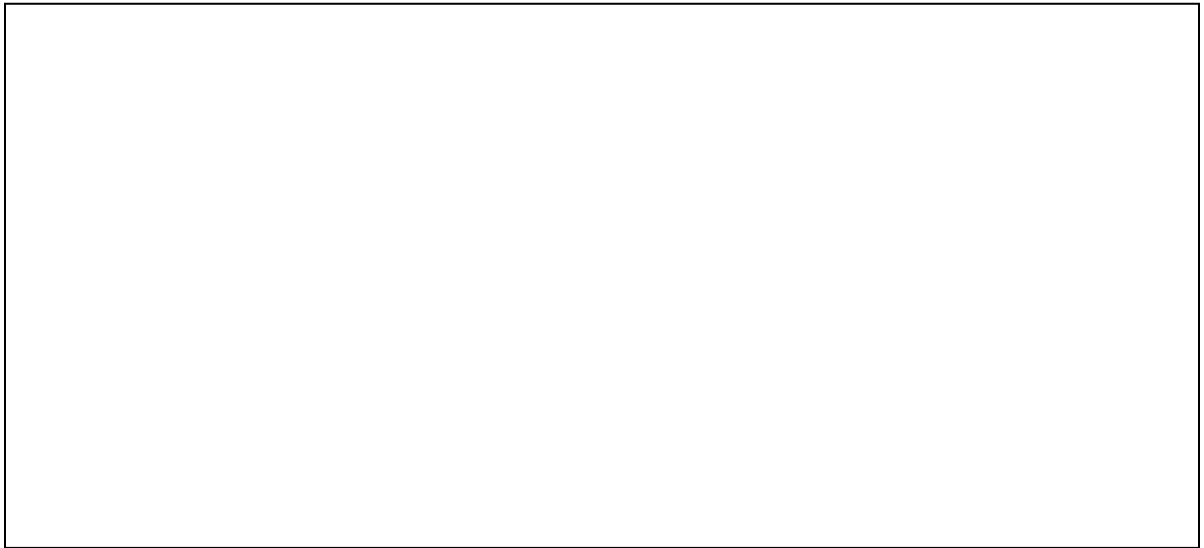
However, there is an important distinction if in this context we are talking about supervising alternative legal services providers who have not undergone a course of study or training relating to family law and procedures. When considering the knowledge and abilities of an articling student, some comfort can be taken by the supervising lawyer that the student has undergone some significant legal training (even if the student has not taken a “Family Law” course). Therefore, it can be expected that a student with a law degree has acquired an important foundation relating to a broad range of legal principles, likely coupled with some experiential learning or skills-based training such as oral advocacy.

Currently, legal assistant programs at community colleges do not appear to contain advocacy or negotiation components nor are these types of skills considered to be core competencies.

It may be useful to consider what kinds of family law matters or activities should clearly **not** be handled by/delegated to an alternative legal services provider – that is, a person who is not a lawyer - even under the supervision of a lawyer.

Question No. 1:

Should alternative legal services providers (persons who are not lawyers) acting under the supervision of a lawyer be permitted to provide defined **family law legal services** and, if so, what would be an appropriate “scope of practice?”



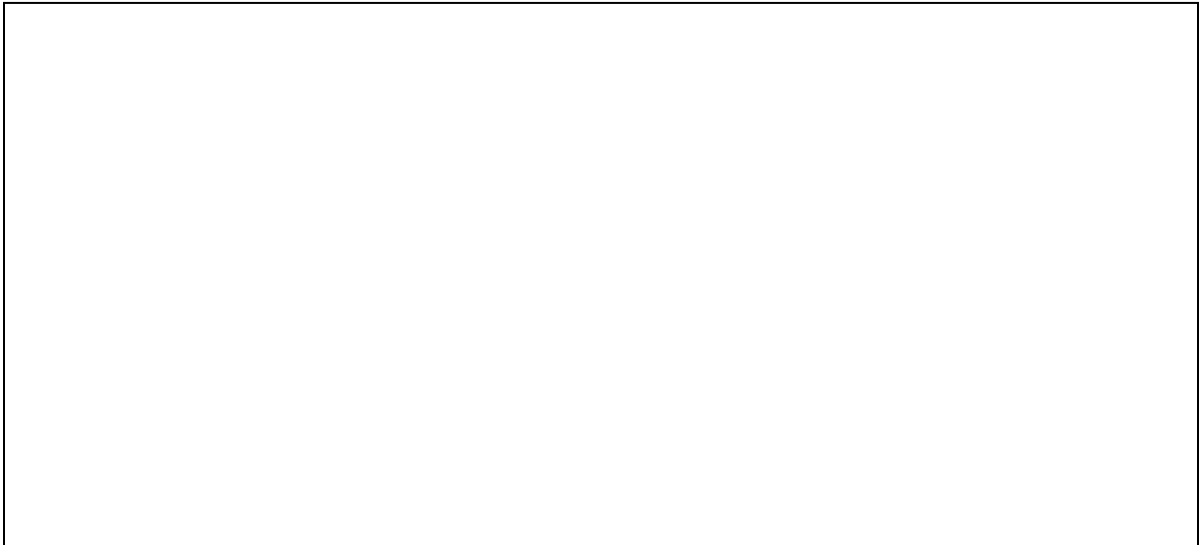
Question No. 2:

Is the answer to question 1 contingent upon whether the alternative legal services provider has completed an appropriate course of study or training?



Question No. 3:

Should the scope of practice be less restrictive in circumstances when the alternative legal services provider has successfully completed an appropriate course of study or training?



Question No. 4:

Are there some matters or activities that should not be handled by or delegated to an alternative legal services provider acting under the supervision of a lawyer having regard to the complexity of the issues or the level of skills required?



IV. Independent Alternative Legal Services Providers (in Family Law)

(i) Scope of Practice

It would be helpful to identify tasks that could be undertaken **independently** by persons other than lawyers who have received appropriate training. It may also be useful to identify matters or tasks that should only be undertaken by a lawyer. This has been considered to some degree by other jurisdictions.

(ii) Other Jurisdictions

Ontario

In a report dated December 31, 2016, commissioned by the Attorney General of Ontario and the Law Society, Justice Annemarie Bonkalo made a number of recommendations relating to the creation of “a specialized licence for paralegals to provide specified legal services in family law.”

In response to the Bonkalo Report, the Law Society of Ontario and the Ministry of the Attorney General jointly committed to an action plan to improve access to family legal services. In December 2017, the Law Society approved its Family Law Action Plan and approved the development of a licence for licensed paralegals and others with appropriate training to offer some family law legal services. While the Law Society initially planned to develop two licences, recognizing the urgency of the need for greater assistance being available to the public, the Society ultimately determined “...that a narrow licence focussed on form completion and process navigation would be limited in responding to the needs of the average family experiencing marital breakdown.” The Society found that “...assisting families with parenting, support, and division of property could safely fall within the scope of practice for a legal professional who has fulfilled the education and training requirements... and could provide a much needed potentially more affordable resource in this area.” Consequently, the two licences originally contemplated were collapsed into a single broader licence.

The development of the licence was informed by the following guiding principles:

- 1) Access to justice: The licence should address areas of unmet legal needs in family law and have an impact on the challenges of access to justice.
- 2) Public protection: The activities that fall within the scope can be performed competently with appropriate education, training, licensing, and regulation.

- 3) Viability: The licence should form the basis of a viable practice that can attract a critical mass of candidates. It is important that the training requirements are attainable and that the prospective client pool is large enough to sustain a legal services practice.

With those principles in mind, the Law Society developed a range of activities that a family law services provider (“FLSP”) could undertake. They focussed on discrete activities within family law for routine, lower-conflict matters where a family law services provider could assist a family of modest financial means. In developing activities within a potential scope of practice, they considered factors such as area of need, frequency, level of risk, level of conflict/complexity, and whether it was “teachable” in the proposed training program.

A licensing framework was proposed with the following (simplified) scope of permissible activities.

The FLSP will be authorized to offer the following services:

- Legal advice
- Drafting legal documents
- Representation in court or before an adjudicative body
- Negotiating legal interests or rights

The FLSP will be authorized to offer the above services in the following general areas of family law, with exclusions and limitations to be specified in the applicable by-law:

- Divorces
- Parenting orders and decision-making (custody and access)
- Child and spousal support
- Contempt/enforcement of orders
- Separation agreements, paternity agreements, and family arbitration agreements provided that the client agrees to obtain independent legal advice from a lawyer
- Change of name applications
- Division of Property

Out of scope activities include:

- Matters involving income determination
- Third-party experts or valuers
- Relocation/mobility
- Cohabitation agreements and marriage contracts

Regarding property, the FLSP may not act where there is more than one home, or where there are equitable or trust claims, or claims for unequal division of property.

More generally, the FLSP will not, at any time, be allowed to act in the following circumstances:

- Where the client is under the age of 18 or is mentally incapable
- Child protection matters
- Adoptions
- Declarations of parentage
- Appeals or motions for leave to appeal
- Matters involving reproductive/fertility law issues
- Matters overlapping with an area that is out of scope for the licence
- Matters overlapping with an area that is out of scope for paralegals generally under the current By-Law 4
- Where legal issues or assets are outside of Ontario

The Law Society of Ontario's website contains a [consultation paper](#). Comments and submissions were welcome until November 30, 2020.

The Law Society of Ontario has worked closely with the Attorney General and other partners in an effort to improve the public's experience in the family justice system. The work has proceeded at a slow pace, even though there is an existing paralegal profession, sophisticated training programs and a fully developed regulatory regime.

British Columbia

In 2018, the Law Society of British Columbia posted on its website a consultation paper relating to family law legal service providers. The consultation paper proposed that the new category of "Family law legal service providers" would be members of the Law Society and authorized within the scope of permitted activity to "practice law" as defined in the profession's Act, with certain exceptions. They would be trained to standards set by the Law Society to ensure that they were qualified to provide the contemplated services.

The proposed framework anticipated that the following scope of practice would be excluded:

- All matters where the involvement of third parties outside the spousal relationship is expected to raise claims within the proceedings (e.g. family trusts);

- All matters with respect to children that:
 - Involve the relocation of a child;
 - Raise allegations of alienation of affection;
 - Identify child protection concerns.
- Matters relating to the division of pensions other than benefits under the Canada Pension Plan;
- All matters relating to the *Hague Convention*.

Otherwise, under the proposal the new category of legal professional would be permitted to “practise law” in family law matters, including the preparation of documentation and proceedings and to act and advise on specific areas of family law.

Subject to the agreement of the Courts, it was proposed that family law legal service providers be permitted to appear in court to assist a client to represent himself/herself. The proposal was to begin this initiative with a “McKenzie Friend-like” role, where the service provider would be able to assist the client in preparing for and appearing in court and advise the client during the appearance. It was not proposed that the service provider would be permitted to act in a full representative capacity akin to counsel in court. The consultation document was considered widely, however the proposal was contentious and the profession was generally not in favour of legislative amendments that would allow alternate family law service providers to practice family law on a limited basis. Legislation was passed but never proclaimed creating a class of licensed paralegals who could deliver limited legal services as defined and approved by the benchers.

A recent report from the Law Society of British Columbia reflects a decision to move away from this approach and create a “regulatory sandbox” that will allow “licensed paralegals” to apply to provide legal services beyond their traditional scope of practice. This would permit individuals to apply to the Law Society to provide legal advice or services in areas where the Law Society determines it is in the public interest to expand the permitted services, as well as in areas where the Law Society has assessed that there are no services (or insufficient services) being provided by lawyers.

V. Made in Manitoba Solution

A. Family Law

While it is important to consider developments elsewhere, it would be desirable to develop a “made in Manitoba” solution to the access issues that Manitobans experience in the area of family law.

If there is a role for alternative legal services providers to provide some legal services in family law on an independent basis, this is the type of service provider who could be designated by the Law Society to be a Limited Practitioner in accordance with Bill 24. Such designation would be subject to licensing, training, insurance and other regulatory requirements.

Question No. 5(a):

What types of legal services could be provided by a new category of trained legal services providers, i.e. "Limited Practitioners"?

Examples:

- Representing people before a court
- Representing people at a mediation
- Providing legal advice to a client
- Assisting a client to fill out legal forms
- Other types of services?

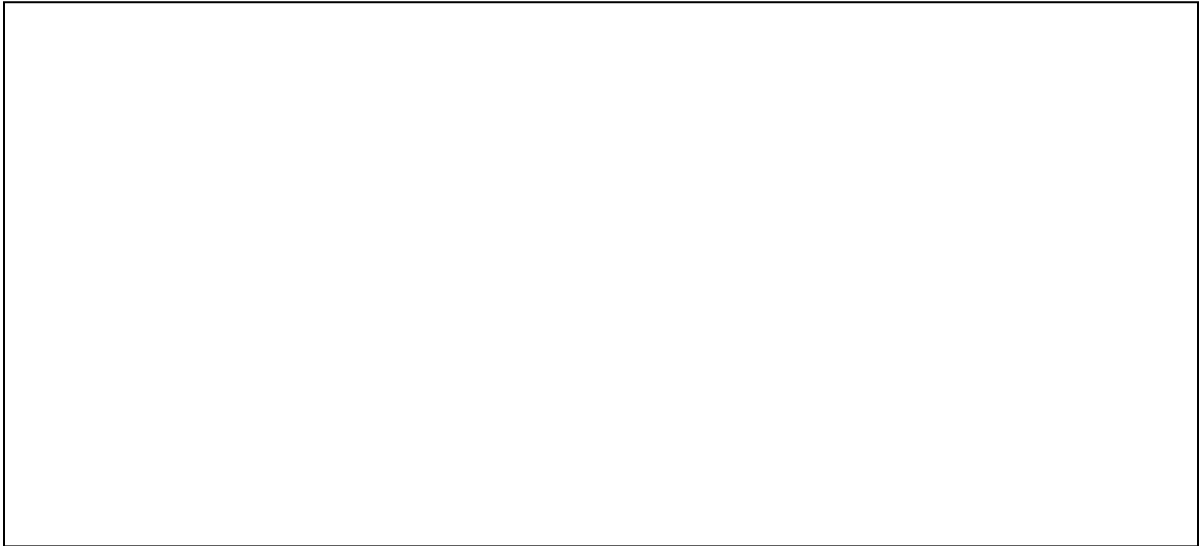


Question No. 5(b):

Are there certain types of legal services that should not be provided by Limited Practitioners?

Examples:

- Should the ability to appear in court depend upon whether a matter is contested or not?
- Should Limited Practitioners be entitled to appear in court on behalf of clients so long as the appearances relate to services provided within a permitted scope of practice?
- Should it depend upon whether an order sought is interim as opposed to final?
- Should Limited Practitioners be entitled to attend at case conferences?
- Should Limited Practitioners be entitled to conduct trials?



Question No. 5(c):

In what areas of family law should legal services provided by Limited Practitioners be permitted?

Examples:

- Custody
- Access
- Child support
- Restraining orders
- Enforcement of orders
- Divorces without property



Question No. 5(d):

Is there a scope of practice in family law that ought to be restricted such that services can only be delivered by lawyers?

Examples:

- Child protection
- Spousal support
- Property matters
- Relocation
- Child abduction – *Hague Convention*



Unmet Legal Needs and Impact on Access in Other Areas of the Law

Studies demonstrate there are significant unmet legal needs – especially in the area of family law – particularly with respect to the “working poor” or those who do not qualify for Legal Aid but who also cannot afford the services of a lawyer. However, in Manitoba, it has been challenging to identify pockets of data that may exist and to find data that has been coordinated or collated amongst various service providers or the courts. We tend to rely upon anecdotal evidence of unmet legal needs in the area of family law, and in other areas of law. To the extent that it is desirable to respond to access concerns with data-driven policy decisions, historically we have been at a disadvantage.

Family Law

Question No. 6(a):

- i) Do you have data relating to unmet legal needs in the area of family law or an ability to collect data (even limited data), based upon the services you provide or your interactions with members of the public?


- ii) To what extent would the establishment of a new category of alternative legal services providers (“Limited Practitioners”) improve public access to legal services in the area of family law?



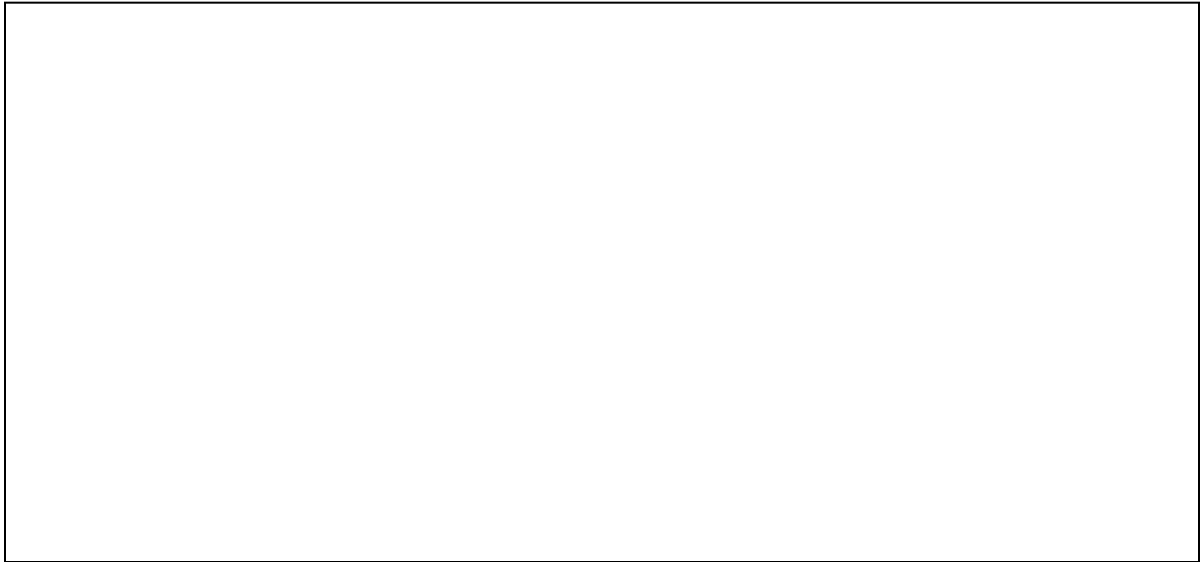
Other Practice Areas

Question No. 6(b):

- (i) Do you have some data relating to unmet legal needs in other areas of the law or an ability to collect data (even limited data), based upon the services you provide or your interactions with members of the public?



- ii) To what extent would the establishment of a new category of alternative legal services providers who are not lawyers (“Limited Practitioners”) improve public access to legal services in other areas of law?



Locations

Question No. 6(c):

In what locations would the provision of services by Limited Practitioners be most likely to meet unmet needs?

Examples:

- Law offices
- Courthouses
- Non-profit organizations
- Independent offices
- Government offices
- Other locations



Glossary of Terms

“paralegal”

- a) in Ontario, a licensed profession of persons who are not lawyers who provide legal services within a defined scope and who are regulated by the Law Society;
- b) in Manitoba, an undefined term; typically, a person who is not a lawyer who provides some limited legal services under the supervision of a lawyer and who may or may not have undertaken a formal course of study or training.

“alternative legal services provider” – a person who is not a lawyer who provides some limited legal services.

“limited practitioner” – a person who is not a lawyer who could provide alternative legal services independently under Bill 24 (with approval by the benchers and subject to licensing, training, insurance and other regulatory requirements).

How to Submit Your Feedback

Save and submit this document with your feedback to Darcia Senft at dsenft@lawsociety.mb.ca by no later than January 31, 2021.