



LEGAL INFORMATION, LEGAL ADVICE & ACCESS TO JUSTICE

**THE FIFTH ANNUAL DEAN'S FORUM MEETING
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EXECUTIVE SUMMARY

The distinction between legal information and legal advice is a conceptual framework used to mark the boundary between the legal assistance lawyers and non-lawyers can provide to the public and the scope of assistance lawyers can offer without the obligations of a lawyer-client relationship. This Report considers how this framework is understood and navigated by people working in various legal, near-to-law, and non-legal professional settings.

Our research identifies a number of notable themes. First, some but not all interviewees used a “legal information versus advice” framework to define the scope of services they could offer. This framework posits that only lawyers can provide “legal advice” while non-lawyers can provide “legal information.” For those who operated within the “legal information versus advice” framework, there was inconsistency and a lack of clarity around where the boundary lies. While the study initially presumed this framework marked the operative limit of the extent of service provided to the public, many interviewees identified other, often more significant, limitations. While the unauthorised legal practice rules set out in legislation undoubtedly operate in the background and partly explain why limitations to legal assistance by non-lawyers exist, the consultees tended not to point directly to the legislation as the most significant barrier they experience. Internal limitations identified by consultees included:

- Perceived lack of expertise in the law,
- Limited comfort level with legal topics, and
- Concerns about individuals relying on information to their detriment.

External limitations described by interviewees included:

- Limits on assistance established by workplace superiors,
- Liability concerns,
- Time constraints,
- Lack of referral resources,
- Concerns about discipline for “practicing law” without authorisation,
- Concerns about creating a lawyer-client relationship, and
- Boundaries around individuals’ own non-lawyer profession.

Interviewees also often expressed concerns about the lack of accessible legal services and supports for the public. Many indicated a desire to increase legal information, referral, and other assistance resources, though there were concerns in some contexts about taking on this work themselves based on time and resource constraints, lack of interest, and feeling that such was outside their own professional roles.

While proposing policy changes was not the primary purpose of the consultations, some possible directions forward emerged from the themes that surfaced in these discussions. Taking the form of proposals, these directional themes fall within three categories: those that relate to clarifying the distinction between legal information

and advice; those focused on improving access to legal services generally and dealing with some of the concrete barriers to providing assistance identified by consultees, and those related to adopting an alternative, more direct, framework to defining the appropriate scope of legal services provided by lawyers and non-lawyers.

INTRODUCTION

The concept of access to justice (“A2J”) has become nearly as common in policy discussions as the problems it describes are in the justice system. While its precise meaning varies, A2J can be broadly understood to include three dimensions: a procedural dimension concerned with the ability to participate in justice system processes, a substantive dimension concerned with the ability to attain fair outcomes, and a psychological dimension concerned with the ability to receive respect and recognition from the justice system.¹

Access to legal services is fundamental to all three dimensions of A2J. Critical thought and creative innovation are driving themes in A2J initiatives, and thus need to be applied to our current system of legal service delivery. One barrier to service delivery innovation is the current ambiguity regarding the boundary between “legal advice” and “legal information.” The distinction between legal advice and legal information (the “Distinction”) is important because in many contexts it informs and controls the level of legal services that lawyers and non-lawyers are comfortable, willing, or even able to offer those in need.

This Report explores the Distinction. It seeks to:

- Understand how legal service providers and the justice community in Saskatchewan conceptualise the Distinction,
- Understand how the work of legal service providers and the justice community is affected by the Distinction,
- Identify the concerns at play with potential shifts in the boundary between legal information and advice, and
- Understand how the Distinction impacts the public and A2J.

¹ Jennifer Bond, David Wiseman & Emily Bates, “The Cost of Uncertainty: Navigating the Boundary Between Legal Information and Legal Services in the Access to Justice Sector” (2016) 25:1 Can J L & Social Pol 1, online: <<http://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1222&context=jlsp>> at 3.

ISSUES AT PLAY

A. The Legal Information and Advice Distinction and Access to Legal Services

There exists a major gap between the cost of standard legal services and the financial resources available to the vast majority of Canadians to address their legal problems.² Public legal aid coverage is not available for most people and their legal issues.³ Consequently, many Canadians either turn to a wide range of alternative legal service providers for assistance or have their legal needs completely unmet.⁴ In its 2013 *Access to Civil & Family Justice: A Roadmap for Change* report, the Action Committee on Access to Justice in Civil and Family Matters notes that over 20% of the Canadian population takes no meaningful action on their legal problems, and approximately 50% of people “try to solve their problems on their own with no or minimal legal or authoritative non-legal assistance.”⁵

Alternative legal service providers play an important role in providing legal assistance to Canadians who cannot afford lawyer-provided services within the traditional private lawyer-client model, and are therefore crucial to promoting A2J.

On a basic and generalised level, the Distinction is seen to operate as follows: Everyone is permitted to professionally provide legal services that amount to the dissemination of legal information, but only lawyers working within a formal lawyer-client relationship are able to provide legal services considered legal advice. The Distinction is a tool used to mark the boundary between “what lawyers do” and “what everyone else can do.” It is therefore fundamental to the provision of legal services. For example:

- **For lawyers,** the Distinction informs the extent of assistance they can provide to the public without formally forming a lawyer-client relationship or incurring considerable potential liability and obligations;
- **For near-to-law professionals such as paralegals,** the Distinction informs the extent of assistance they are permitted to provide the public;
- **For some front-line justice system employees working in courthouses and at administrative tribunals across the province,** the Distinction informs the extent of assistance they provide the public;
- **For non-legal professionals such as family mediators working closely with lawyers,** the Distinction delineates the boundary between the services they provide and the services lawyers provide;

² *Access to Civil & Family Justice: A Roadmap for Change* (Ottawa: Action Committee on Access to Justice in Civil and Family Matters, 2013) at 3 [the “Cromwell Report”].

³ *Ibid.*

⁴ *Ibid* at 4.

⁵ *Ibid.*

- **For non-profit legal service providers**, the Distinction limits the extent of assistance they are permitted to provide the public; and
- **Perhaps most importantly, for the public**, the Distinction informs the limits of available legal assistance. Those unable to retain a lawyer (either through the private bar or through a *pro bono* means) often rely on alternative legal service providers, most of whom do not give assistance that can be characterised as legal advice.

The Distinction is therefore fundamental to A2J initiatives that see legal services being delivered in any context outside the traditional lawyer-client relationship.

B. The Legal Context of the Distinction

The Distinction is often, though not always, sourced to the unauthorised practice of law provisions in Saskatchewan’s *The Legal Profession Act, 1990*.^{6,7} Section 30 of the Act describes the scope of activities that only can be performed by a member of the Law Society—a lawyer—who holds a certificate entitling them to practice in the province.⁸ While the legislation and case law that interprets it do not define the unauthorised practice of law in the terms of the Distinction, both provide important information about the purposes behind the Act’s creation of a lawyer-held monopoly over legal service delivery and the scope of that monopoly. Whether one understands the Distinction as originating from the Act’s prohibition on the unauthorised practice of law or understands the Distinction and the Act’s prohibitions to be parallel and overlapping restrictions with a common purpose, understanding the purpose and scope of the Act’s relevant provisions is highly relevant to any discussion of the Distinction. The most relevant section of the Act reads as follows:

- 30(1)** No person, other than a member who holds a certificate, shall:
- practise at the bar of any court of civil or criminal jurisdiction in Saskatchewan;
 - advise, do or perform any work or service for fee or reward, either directly or indirectly, in matters pertaining to the law of Saskatchewan or of any jurisdiction outside Saskatchewan;
 - sue out any writ or process; or
 - commence, carry on or defend any action or proceeding in any court.⁹

⁶ It is important to note that our research demonstrates that many affected by the Distinction do not have a clear understanding of the source of the Distinction nor how it relates to the *Legal Profession Act, 1990*. See “Summary of Consultations,” A, iii in this Report.

⁷ SS 1990-91, C L-10.1 [the Act].

⁸ *Ibid*, ss 2(1), 4.

⁹ *Ibid*.

Subject to exceptions set out in s. 31, *actual or likely* contravention justifies an order for an “injunction enjoining [a person] from doing any act or thing that contravenes” the Act or the rules, along with “any other relief [the court] considers just.”¹⁰

While the Act does not explicitly clarify what it means to “advise, do or perform any work or service [...] in matters pertaining to the law” for “fee or reward,” case law provides some guidance.¹¹ In *Law Society of Saskatchewan v Mattison*, the Law Society successfully applied for a s. 82 injunction against Harold Mattison for practicing law without a licence.¹² In deciding to order an injunction against Mattison, Justice Layh discussed the purposes behind and the scope of the s. 30(1)(b) prohibitions.¹³

i. The purpose of restricting the unauthorised practice of law

Justice Layh connected the unauthorised practice provisions to s. 3.1 of the Act, which outlines the duties owed by the Law Society as a regulatory body of the legal profession:

- (a) to act in the public interest;
- (b) to regulate the profession and to govern the members in accordance with this Act and the rule; and
- (c) to protect the public by assuring the integrity, knowledge, skill, proficiency and competence of members.¹⁴

Justice Layh placed “protect[ing] the public” at the centre of the enquiry into whether the unauthorised practice rules were contravened and what remedy is appropriate.¹⁵ Citing Ontario jurisprudence, he noted that the Law Society plays an important role in “protecting the public from the activities of unlicensed and unregulated persons holding themselves out to be lawyers and paralegals.”¹⁶ Non-lawyers are not required to carry insurance, maintain records, handle client money through trust accounts, or otherwise be accountable and subject to auditing by the Law Society.¹⁷ There likewise exist “no mechanisms for public complaints nor an obligation to participate in mandatory continuing legal education programs.”¹⁸ By

¹⁰ *Ibid*, s 82.

¹¹ *Ibid*, s 30(1)(b).

¹² 2015 SKQB 323, 259 ACWS (3d) 547 [*Mattison*]; the Act, *ibid*. Mattison was a lawyer, but had been barred from practicing law outside the supervision of an approved lawyer as part of a Law Society disciplinary action against him.

¹³ The Act, *ibid*; *Mattison*, *ibid* at paras 36 to 40.

¹⁴ *Mattison*, *ibid* at para 37, citing the Act, *supra* note 7.

¹⁵ *Mattison*, *ibid* at paras 38-40.

¹⁶ *Ibid* at para 38, citing *Law Society of Upper Canada v Augier*, 2013 ONSC 451, [2013] OJ No 350 at para 9 [*Augier*].

¹⁷ *Mattison*, *ibid*, citing *Augier*, *ibid*.

¹⁸ *Mattison*, *ibid* at para 39.

ensuring only those with these safeguards practice law, the Law Society protects the public.

ii. The clause 30(1)(b) restriction

While the Act does not expressly define what it means to “advise, do or perform any work or service [...] in matters pertaining to the law,” the terms of the injunction ordered against Mattison provide some content.¹⁹ Justice Layh prohibited Mattison from “advising [on], doing, or performing for a fee or reward”:²⁰

- The drafting of legal documents like affidavits, statements of claim or defence, legal notices, and “any other court forms or documents in civil proceedings”; on the applicability and meaning of statute;
- Legal procedure matters;
- The application of case law;
- Representing a person to negotiate the resolution of a legal issue;
- Appearing in court to advocate for or advise a party;
- “Acting as an advocate” for anyone respecting a legal matter in writing or in person; and
- Writing to any lawyer, court official or justice system party on behalf of another person regarding a legal matter.

Many of these activities would also clearly fall within the ambit of “providing legal advice” as conceptualised by our interviewees.

RESEARCH METHODS

Our research spanned two broad phases. **First, we surveyed existing literature²¹ and programming innovations related to the Distinction to familiarise ourselves with the topic.** This phase of the project provided us with a knowledgeable foundation for the second phase of research.

We then moved on to the qualitative research phase of the project, completing in-person and telephone interviews with various stakeholders. This research was primarily exploratory. Through the research, we sought to understand how legal service providers and the justice community view and operate within the Distinction. More specifically, we explored how they:

- 1) Conceptualise the Distinction,
- 2) Are affected by the Distinction, and
- 3) Are concerned about or interested in potential changes to where the Distinction currently lies, if at all.

¹⁹ The Act, *supra* note 7, s 30(1)(b).

²⁰ *Mattison*, *supra* note 12 at para 42.

²¹ See Appendix.

While the main purpose of the consultations was not to gather opinions on specific potential policy changes related to the Distinction, such information did surface organically in the interviews.

The information gathered during this phase of research comprises the majority of the content of this report. Consequently, this report is primarily descriptive and not analytical. The themes that emerged from the interviews, which are organised and presented in this report, provide important insight into the thoughts and opinions of those affected by the Distinction. **Understanding the experiences and opinions of those affected by the Distinction is necessary for understanding the Distinction more generally.**

We sought to interview a diverse group of people who could offer varied insights on the topic. Although the voices of policy makers and those currently working on A2J initiatives in the province are important, we also endeavoured to include those of professionals working on the front lines of legal service delivery. We were particularly interested in hearing from those who provide legal services directly to the public and have insight into how members of the public may be impacted by the Distinction.

Our study has a number of limitations. Of note, our research ethics approval only permitted consultation with people affected by the Distinction in their professional, and not personal, capacities. The lack of voices from self-represented litigants (“SRLs”) or others who have tried to procure legal services is a significant limitation of this Report and should be addressed by future research. We were also unable to consult with community organisations that frequently assist individuals with legal issues but have primary mandates other than the provision of legal services—for example, organisations that assist recent immigrants and refugees or youth centres.

We were able to interview a variety of knowledgeable and experienced individuals including:²²

- **Anonymous Self-Employed Clinical Social Worker and Family Mediator** with over 35 years experience;
- **Anonymous Saskatchewan small centre librarian;**
- **Anonymous Saskatchewan large centre librarians (2);**
- **Barbra Bailey**, Policy Counsel, Saskatchewan Law Society;
- **Lochani Bala**, Client Service Representative, Office of Residential Tenancies (ORT), Ministry of Justice;
- **Alicia Harder**, Client Service Representative, Office of Residential Tenancies (ORT), Ministry of Justice;
- **Nikki Barlow**, Sheriff-Local Registrar, Swift Current Queen’s Bench Court House, Ministry of Justice;

²² Some interviewees participated in their official capacities, while others chose to keep their names and/or organisations anonymous.

- **Kathy Brower**, Deputy Local Registrar/Supervisor, Saskatoon Queen's Bench Court House, Ministry of Justice;
- **Joel Janow**, Executive Director, Public Legal Education Association of Saskatchewan (PLEA);
- **Jocelyn Gagne**, Legal Writer, Public Legal Education Association of Saskatchewan (PLEA);
- **J. Glen Gardner, QC**, Deputy Minister of Justice and Deputy Attorney General, Ministry of Justice;
- **Wendy Johnston**, Self-Employed Financial Planner Specialising in Divorces, Next Step Financial Solutions;
- **Kara-Dawn Jordan**, Executive Director, Pro Bono Law Saskatchewan;
- **Patricia Martynook**, Self-Employed Family Law Paralegal with 30 years experience;
- **Kim Pidskalny**, Legal Assistant and Front-desk Worker, Community Legal Assistance Services for Saskatoon Inner City (CLASSIC);
- **Neil Robertson, QC**, Saskatchewan Branch President, Canadian Bar Association; and
- **Kim Newsham**, Crown Counsel, Saskatchewan Ministry of Justice (Innovation and Strategic Initiatives); and
- **Suneil Sarai**, Counsel, Family Law Information Centre for Saskatchewan.

A summary of our consultations and the common themes that emerged therein follows.

SUMMARY OF CONSULTATIONS

While the variety and number of consultees make it challenging to synthesise and generalise the consultation results with brevity, our interviews did identify a number of themes and trends. We have organised the consultations results around these themes rather than our research questions.

These themes can be broadly divided into two categories. The first category directly relates to the Distinction. Themes in this category flowed from our primary questions and demonstrate how legal service providers and justice stakeholders in Saskatchewan conceptualise and are affected by the Distinction. Our consultations showed that some interviewees were familiar with the Distinction and had a clear idea of where it lies, while others were unfamiliar with this type of framework or thought it was unclear.

The second category relates to the delivery of legal services and questions of A2J more broadly. Themes in this category flowed from follow-up questions and conversations. They demonstrate how service providers and justice stakeholders view their roles and A2J issues more generally.

A. Themes Directly Concerning the Distinction

Several of the consultation questions were directed toward exploring the interviewees' understandings of the contours of the Distinction. **While many interviewees operated with the Distinction in mind, a number of the interviewees did not adopt the legal advice/information framework for determining the limits of assistance that non-lawyers can provide. Among those familiar with this type of a framework, some indicated the Distinction is clear while others felt it was unclear.** Even for those who expressed clarity on the matter, the definitions of “advice” compared to “information” varied significantly.

i. Some interviewees used a legal advice/information framework, while others did not

a) Interviewees who used a legal advice/information framework

Generally speaking, interviewees with legal training (lawyers, people who work closely with lawyers, people who work for community legal service providers) saw and understood the issue in terms of distinguishing between “legal advice” and “legal information.” Others conceptualised the Distinction more in terms of “what only lawyers do” and “what non-lawyers do,” and adopted a framework of legal advice/information only upon prompting.

b) Interviewees who used alternative frameworks

A number of people described using a framework of what they do versus what they do not do, or what they may do versus what they are not permitted to do, rather than one based on the Distinction.

For example, two of the interviewees—the social worker/mediator and financial advisor—are professionals who provide non-legal advice and support to clients who are also typically represented by lawyers. Apparently partly because these clients

Two non-lawyer professionals expressed the boundary between what they do and do not do as being based on their comfort level, expertise, and professional roles rather than a division between legal advice and information.

have ready access to lawyers, these interviewees indicated that they regard providing most legal assistance—whether advice/information—as being within the lawyer’s role and not their own. The social worker/mediator felt restricted to providing only very basic legal information, such as descriptions of dispute resolution processes, general information about custody arrangements that exist, and information about child support guidelines. **Both professionals expressed the boundary between what they do and do not do as**

being based on their comfort level, expertise, and professional roles rather than a division between legal advice and information.

Another context where the Distinction was not drawn was described in consultations with Office of Residential Tenancy (the “ORT”) frontline staff. These staff members have a very expansive view of the extent to which they can assist the public. Frontline staff in this context have a high degree of expertise in the area of residential tenancy law and procedure. These individuals provide detailed information about rights and obligations of landlords and tenants and procedural matters; they direct people to specific forms and provide guidance regarding the content of these forms; they suggest what kinds of evidence are relevant and helpful for particular claims proceeding to a hearing; for simple matters, they advise on particular courses of action; for more complex matters, they outline various potential next steps; and they act as intermediaries between parties to try to resolve disputes in informal manners. These interviewees described their assistance to only not extend to helping people determine specific claim amounts, advising on probable outcomes, and actually assisting with a hearing. The interviewees from the ORT speculated that the reason they provide this level of assistance is because the area of law they deal with is confined to one piece of legislation and its regulations. As a result, in this context, members of the public receive substantially beneficial guidance in their decision-making and legal actions.

The perspectives of the ORT staff and other non-lawyer professionals show that other ways of framing the boundary around the legal profession’s monopoly over legal service delivery are possible and potentially helpful. Alternative frameworks are briefly discussed in the “Moving Forward” section of this Report.

Similarly, one interviewee suggested it is unhelpful to focus on the Distinction for the purpose of clarifying the scope of activities that lawyers have a monopoly over. In his opinion, the Distinction is not clear and any definitions he has seen have been unhelpful, incomplete, and inconsistent. The ambiguity around the Distinction, to him, means that the boundary currently serves no purpose. This interviewee suggested moving away from “providing legal advice” as the basis for distinguishing between the services lawyers and non-lawyers can provide. He suggested it would be helpful to focus discussions about lawyer-only services on what is valuable in lawyers’ professional service, which might be their unique judgement, coaching ability, and so forth.²³

“Any definitions I have seen are unhelpful and incomplete and inconsistent.”

- Lawyer

²³ This point parallels John M. Greacen’s discussion in “Legal Information vs. Legal Advice – Developments During the Last Five Years” about the scope of assistance staff at courthouses can provide. Greacen suggests in this article that concerns about staff providing legal advice amounting to unauthorised legal practice focuses attention on the wrong issues. He suggests that the

- ii. **Of those who used a legal advice/information framework, some interviewees were clear on the Distinction while others were not**
 - a) **Interviewees with a “clear” understanding of the Distinction and where they thought it lies**

A large portion of those interviewed were “clear” on what the boundary was between legal advice and information for their own purposes, though many acknowledged that others may not agree with their definitions. One lawyer said she “can define what [the Distinction] means to [her]” but that “whether that is correct or not [she doesn’t] know.” Others, including both non-lawyers and lawyers, indicated they feel there is no clear boundary. One individual stated that “the distinction is very grey and this disturbs me” while another called it “bogus.”

“I can define what [the Distinction] means to me, but whether that is correct or not, I don’t know.”

- Lawyer

While the definitions provided by those interviewees who used this type of a framework were not unanimous, some themes can and should be highlighted.

For some interviewees, “legal information” was defined as providing information about what the law is (for example, describing the content of the Federal Child Support Guidelines), while

“legal advice” includes recommending a course of action and/or applying legal information to the particular facts of a person’s situation. Others expressed the Distinction in terms of providing facts (legal information) as opposed to opinion (legal advice), or between providing information that needs no qualification (for example, giving someone a pamphlet about a legal topic or a copy of the Federal Child Support Guidelines) versus providing something that requires interpretation or qualification.

“The distinction [between legal information and advice] is very grey and this disturbs me.”

- Near-to-Law Professional

The boundary between advice and information fell in significantly different locations depending on who was asked. For some, providing assistance within the scope of “legal information” includes going so far as to assist SRLs with filling out forms by providing examples of the content that could be included, telling them how they can improve their answers, and answering direct questions about legal

administration of legal advice, if done impartially, does not infringe on what lawyers do, which is to advocate on their client’s behalf. Like this consultee, Greacen encourages his reader to focus on the unique service role lawyers can provide, rather than on potentially arbitrary frameworks to define the scope of a lawyer’s practice ((2000), “Unauthorized practice of law,” online: <<https://isc.idaho.gov/judicialdu/clerks/Greacan%20Article%20on%20Legal%20Advice.pdf>>).

issues based on their own knowledge of the law. For others, legal information is limited to simply providing books, pamphlets, or websites and having no personal involvement in assisting that person with understanding the material.

This boundary was also unclear on a practical level. One interviewee, for example, questioned whether the difference between the concepts was based on semantics and technicalities rather than anything substantive. For example, outlining a number of potential legal options but emphasizing one in particular would not fall clearly on either side of the boundary.

Comparably unclear is the difference between providing “legal advice” and other advice. For example, the social worker/mediator interviewee was clear about not providing specific legal advice/information. Yet, as a social worker, it was within this person’s expertise and comfort level to offer recommendations about custody and residency arrangements for children. Such “advice” may not differ substantially from what a lawyer would offer. Similarly, a paralegal with a high degree of expertise in the law talked about how she feels comfortable outlining options for clients, and even indicating which option they are likely to do should they move forward, with the qualification that these courses of action are “based on the information [the client gave] her” and her professional experience, and that the ultimate decision would be made with the lawyer.

b) Interviewees with an “unclear” understanding of the Distinction

As stated previously, many of the interviewees were not clear on the Distinction. For example, one court staff person stated that there is not a clear definition of legal advice/information in her workplace. She stated that some staff have said that telling people which court form or family law self-help kit to use is “giving legal advice,” which is regarded as outside the scope of assistance properly offered to the public in this context. That said, this person also spoke of doing exactly this, apparently without issue. This person also described how she talks with members of the public in a manner that encourages them to think of how to proceed in their situation—for example, by suggesting they might attempt to enforce a child custody/access order by speaking with a lawyer about filing an Application Without Notice or contacting the police for assistance. Yet this person also expressed that she feels comfortable navigating the Distinction despite this lack of clarity, and is careful to continually remind people that she is not a lawyer and cannot provide legal advice.

Some people expressed worry that the result of this ambiguity is that people either may be overly cautious in the information and assistance they provide to the public or else may exceed what they are competent and potentially

legally able to provide, thereby potentially disadvantaging the person they are assisting.²⁴

iii. Interviewees did not have a clear understanding of the source of the Distinction

Even among those who used a legal advice/information framework and claimed to have a clear understanding of where the Distinction lies, interviewees generally did not have a clear understanding of what the source

Interviewees generally did not have a clear understanding of the source of the Distinction.

of the Distinction was. Asked to identify the source, many interviewees simply reiterated their conceptualisation of the Distinction and mentioned the practical reasons for why the Distinction exists. For example, the primary basis on which interviewees distinguished between what lawyers can do (in the context of a lawyer-client relationship, for lawyer interviewees) and what others can do was linked to concerns around competency, expertise, and training. Lawyers were regarded as having particular expertise that equips them to deal with complicated legal matters.

Interviewees also frequently cited the fact that lawyers are accountable to those they assist by virtue of being a regulated profession that provides redress for people who receive poor service.

Some interviewees expressed the opinion that the boundary around the legal profession demonstrated “protectionism” on the part of lawyers, while others dismissed this position.

Other interviewees shared the perspective that the Act is the source of the Distinction.²⁵ One interviewee indicated that they thought the Act’s broad “unauthorised practice” provisions prohibit providing any legal services in the context of a paid position, admittedly rightly or wrongly.

B. Themes concerning A2J and the Delivery of Legal Services Generally

²⁴ Bond, Wiseman and Bates note that the lack of clarity between “legal information” and “legal services” (the latter of which would include advice) has a chilling effect on innovation in the context of non-profit legal assistance programming. The lack of clarity means that organisations are not clear about the services they can lawfully provide the public and incur extensive costs associated with obtaining legal guidance on the matter, defending and investigating any unauthorised practice claims made against their organisation, and revising programs to comply with Law Society requirements, among other things (*supra* note 1).

²⁵ *Supra* note 7.

As each of the consultations proceeded, conversations shifted away from the Distinction and towards A2J and the delivery of legal services more generally. There was consensus among the interviewees that A2J is a problem in Saskatchewan and that the public is in need of increased access to legal services. The following themes emerged from these discussions.

i. Both internal and external limits affect the assistance provided to the public in the contexts examined

Interviewees identified both internal and external limits on the scope of the information and assistance they can and do provide to the public. These factors operate alongside but also independently of the limitations imposed by the Distinction and the Act's unauthorised practice rules.

Internal limits on the extent of the legal advice/information interviewees provide include:

- Personal comfort level with legal topics and feelings of limited expertise in the area,
- Related concerns about providing insufficient or inaccurate information, and
- Concerns about people misunderstanding the content of the assistance to their detriment.

External limits include:

- Superiors in workplaces describing and reinforcing the boundary between legal advice/information and the limits of the assistance that can be offered by non-lawyers,
- Liability concerns (in terms of potentially being sued and more generally, being responsible for a bad outcome for someone who relied on their assistance),
- Time constraints,
- Concerns about creating a lawyer-client relationship (for lawyers providing assistance),
- Lack of referral resources,
- Concerns about being disciplined or prosecuted for the unauthorised practice of law, and
- Boundaries around what they can do within the scope of their own non-lawyer profession.

ii. Many believe informational and referral resources should be made more widely available

Our research showed that many areas across the province have minimal free legal advice/information resources, and are not equipped to deal with legal questions from the public. Some smaller centres and rural locations offered only

minimal access to public legal education pamphlets (for example, those distributed by the Public Legal Education Association of Saskatchewan) and books on the law.²⁶ Similarly, based on our consultations, librarians and court staff in these areas tended to be more conservative in their definitions of the type of legal information that could be provided by non-lawyers. Unbundled legal services, through which lawyers offer limited but more affordable legal assistance to members of the public, also appear to be largely unavailable in these contexts.²⁷

Even in urban areas, interviewees described how it is beneficial to be able to

“The Family Law Information Centre and Family Matters really help on the family [law] side. There aren’t as many resources for the civil side ... [Regarding] things to do with immigration, workers’ compensation, occupational health and safety, [there is a] lapse in access.”

– Urban Court Staff Member

refer people to resources that provide legal information and other support. One urban court staff member spoke of it being much easier to assist people dealing with family law matters because of the relatively large amount of legal information resources available for that area of law.²⁸ Similarly, a public librarian emphasised how they find it very useful to be able to

refer people to things like pamphlets and other legal resources produced by third parties. Existing resources are very valuable and interviewees were clear that having more of these types of resources would be beneficial.

²⁶ In addition to various programming initiatives, PLEA has designed numerous plain language pamphlets and online resources to assist individuals with various legal issues. These pamphlets are available at community centres like Community Legal Assistance Services for Saskatoon Inner City (CLASSIC), public libraries, courthouses, and the ORT.

²⁷ Unbundled legal services generally refer to legal services with a limited scope retainer. Compared to typical legal representation, which has a lawyer see all aspects of a legal matter through to resolution, unbundled legal services might have a lawyer help a client by, for example, preparing a person to represent themselves in court, completing particular forms and documents, or providing coaching and advice without actually representing that person.

²⁸ PLEA has designed a website specific to the family law context that asks plain language automated questions and generates the relevant court forms for the user to complete. Users are also able to contact PLEA to have a lawyer review their completed forms and answer questions. Saskatchewan’s Family Law Information Centre, available at a toll free number, provides additional resources in this area of law. The Family Law Information Centre connects callers with a government-employed lawyer who provides legal information and self-help kits to guide them in completing court forms. The Family Services Branch of the Ministry of Justice has initiated an additional pilot project called Family Matters. In this program social workers and mediators triage and refer members of the public to relevant services. (See “Family Law Saskatchewan,” online: <www.familylaw.plea.org>; “Family Matters: Assisting Families through Separation and Divorce,” online: <<http://www.saskatchewan.ca/residents/births-deaths-marriages-and-divorces/separation-or-divorce/family-matters-program#resources>>).

iii. Clarifying expectations of the public and boundaries of legal services that can be provided is important

From the perspective of consultees, many SRLs approach libraries, courthouses and other contexts hoping that non-lawyers will be able to provide them with the legal advice/information they are seeking.

“Clearly framing understandings and expectations on the front end is important.”

- Community Legal Service Provider

The interviewees spoke of the

public often being unaware of the limits on what these staff can do for them.

This requires frontline staff to navigate potential conflicts between the public’s hopes and expectations and the limits of what they feel they can do as a result of either the internal or external limitations identified previously.

Even when the employee is explicit about the boundaries of the assistance they can provide, consultees indicated that members of the public do not always understand these limitations. Interviewees talked about how this at times leads to conflicts between staff and the public. It has also led to SRLs making statements in court and elsewhere about how the court staff recommended a particular course of action that did not work out.

Interviewees indicated that it would be helpful to clarify what the public can expect in terms of assistance, and from whom they can expect it.

iv. Many are cautiously interested in expanding the level of legal services some can deliver

Many people we consulted work in roles where they or their organisations are tasked with providing legal and other information to the public. Of these, some wanted to be able to provide more information and/or advice, while others did not.

A number of barriers to be able to provide more extensive or detailed information were identified by consultees. These included:

- **Time/capacity limitations and insufficient staffing.** Though, notably, staff at the ORT expressed the opinion that providing *more* assistance and direction to individuals actually saves time because it reduces unmeritorious claims, assists with resolving disputes outside the tribunal, and helps ensure people are following the correct process and thereby avoiding delays associated with adjournments and other measures needed to remedy issues within claims.
- **Liability and accountability concerns.** The threat of liability in the form of a lawsuit against a person providing legal information/advice was expressed as a potential concern, though perhaps not a realistic or significant one. For instance, one lawyer who provides legal information to the public indicated

they felt it unlikely that someone would be so upset about the outcome of relying on information that they would take this course of action.

- **Concerns about quality of the information, and feeling unqualified to provide more assistance.**

Many people thought increased legal information was necessary and would contribute to A2J. When asked about the prospect of restricting the amount of information non-lawyers could provide, most consultees expressed concern that this would negatively impact A2J. **As stated above, the most significant concerns around expanding legal assistance and information services centred on ensuring these services are sufficiently high quality.**

Many of the consultees emphasised that providing increased legal information and assistance to the public would assist in A2J. One individual spoke of the need for legal “navigators” to ensure the justice system does

The most significant concerns around expanding legal assistance and information centred on ensuring these services are sufficiently high quality.

not serve only “the advantaged.” A staff person at a court talked about the high demand for legal information among those people who cannot afford counsel. This is particularly the case in areas of law that currently lack free support services. This staff person also suggested that many people need only small questions answered for an application to be successful or not, which could presumably be addressed through limited scope services. **Another consultee described her “biggest hope” to be “that people, no matter where they come from in the discussion, would be pushing toward trying to make this [expanding the provision of legal**

“[W]e can’t just have a theoretical exercise.”

- Lawyer

services] work rather than [focusing on] the reasons it can’t.” A fourth interviewee similarly emphasised the need to “look for practical things we can do for A2J,” which need not “be big, but [according to him,] we can’t just have a theoretical exercise.”

MOVING FORWARD

While the main purpose of this project was to explore how the Distinction operates in Saskatchewan, some possible directions forward surfaced organically in the interviews. Such options emerged first as themes common to the earliest consultations. As the themes were repeated and reinforced, they came to resemble proposals for change. This section outlines these proposals, the themes that informed them, and concerns that were expressed relating to their potential implementation.

The first proposal relates to rethinking the utility of the legal advice/information framework. Our exploration of the Distinction raised interesting questions about the utility of maintaining such a framework. In this proposal, we invite readers and stakeholders to focus on the concerns and interests that underlie the Distinction, and move to address those directly, rather than considering only where the boundary should fall.

The next three proposals outlined directly relate to modifying or clarifying the Distinction and operate firmly within the existing legal advice/information framework. They are ultimately aimed at increasing the public's access to legal supports, including affordable quality legal advice/information.

Our consultations also suggested the impact of direct changes to the existing legal advice/information framework on increasing A2J, although helpful and worth considering, may be limited. For example,

[T]he impact of direct changes to the existing legal advice/information framework on increasing A2J, although helpful and worth considering, may be limited.

efforts to clarify the boundary between legal advice/information--that is, clarifying the scope of what a non-lawyer can do or what a lawyer can do without creating a lawyer-client relationship--would only have a significant impact if doing so expands the scope of non-lawyer service. Even if this occurs, our consultations suggested **other initiatives should be undertaken or expanded to ensure legal services actually increase.** The

consultations showed there are many significant barriers to the provision of legal services *other* than the legal advice/information boundary which also need to be considered moving forward, such as:

- Expertise limitations,
- Resource limitations, and
- Interest on the part of personnel.

For this reason, this paper also outlines proposals that emerged from the consultations that are more broadly aimed at increasing access to legal services in light of these other barriers. Such proposals are particularly helpful since broader policy or legislative changes would be relatively slow to implement and are unlikely to immediately remove all barriers to increasing accessible legal services. For this reason, such changes would benefit from being accompanied by concrete measures aimed at providing more legal resources to the public and to professionals tasked with providing legal assistance.

A. Proposal Related to Adopting a New Framework

i. Explore a conceptual framework other than the distinction

Origin of the Proposal: All of those interviewed indicated that there is a need for the public to have greater access to legal services. This project has framed the issue in the terms of the Distinction between legal information and legal advice, exploring how the boundary between these types of services creates barriers to expanding the scope of services non-lawyers or lawyers working outside of traditional lawyer-client relationships can provide the public.

The legal advice/information framework has been widely adopted in a number of A2J initiatives and legal contexts. **According to the interviewees, defining the boundary between the work of lawyers and non-lawyers in the terms of the Distinction is useful – it provides a cohesive, general concept that serves a number of important purposes, including: ensuring people provide assistance that corresponds to their level of expertise, ensuring the public has recourse when they rely on others for assistance, and ensuring assistance is of adequate quality.** The Distinction is a relatively simple, helpful tool that is directed at protecting a number of important interests and needs of the profession and the public.

It is nonetheless important to recognise the limitations of this tool. In some contexts, using the Distinction as the boundary that limits the assistance available is useful in that it accurately ensures that individuals with limited expertise do not assist the public beyond their competency, do not incur liability, and do not step outside their own professional roles. **In other contexts, however, setting the scope of non-lawyer services to be limited to providing “information” is unnecessary to protect the concerns that underlie the Distinction and in fact would be harmful to the public.** For example, staff at the ORT provides high quality advice to the public on a routine basis that is well within their expertise and capacity, but which likely qualifies as “legal advice” by most definitions. Barring them from providing these services simply because they likely fall within the scope of “legal advice” would not be minimally impairing and would severely reduce A2J in this context.

As discussed previously, the ORT is an example of one context where the “legal information versus legal advice” framework is not explicitly used to determine the degree of legal assistance frontline staff offers the public. The concerns that underlie the distinction—like ensuring the public receives high quality information and advice and that staff provides assistance only within their expertise—are addressed through other, more direct means. For instance, our consultations suggested the scope of assistance ORT staff provide the public is primarily limited by the degree to which staff are confident in the advice they are asked to provide—they appear to provide advice only if they are certain it is correct. For example, staff members would be comfortable telling a landlord of a tenant in arrears he or she could either

pursue eviction or claim for outstanding rent because the ORT staff member is certain these courses of action are open. By contrast, staff would never advise a member of the public on the likely outcome of a claim or the particular amount a person should claim for because such could never be stated with certainty. This approach ensures a member of the public would not rely on potentially inaccurate information or advice provided by ORT staff who, at the same time, are able to actively help members of the public understand the courses of action open to them, the remedies available, and the process of compiling evidence. This provides one example of how the use of alternative, more direct, frameworks can be very beneficial for the public.

Our consultations, therefore, showed that the Distinction is but one basis for defining the appropriate scope or limitations of services provided by non-lawyers in various contexts. It is a useful, but limited, framework and other frameworks should be explored.

Proposal: Focus on the concerns and interests that underlie the Distinction, and move to address those directly, rather than considering only where the boundary between information and advice should fall. For example, this would mean not asking what should be considered “legal advice” or “legal information,” but rather asking directly what level of services *person x* should provide *person y*, considering their level of expertise, their degree of oversight, their degree of accountability, the needs of the public, and the other important concerns that underlie the legal information versus legal advice framework.

B. Proposals Related to the Distinction

i. Amend *The Legal Profession Act, 1990*

Origin of Proposal: The broadly worded prohibition on who can practice law or provide legal services imposed by ss. 30 and 31 of the Act was an important concern raised during our consultations.²⁹ As previously mentioned, **clause 30(1)(b) states that no person, other than a member who holds a certificate or who is privileged by an explicitly outlined exclusion, shall “advise, do or perform any work or service for fee or reward, either directly or indirectly, in matters pertaining to the law of Saskatchewan or any jurisdiction outside Saskatchewan.”**³⁰ Our interviewees implied this clause is not minimally impairing, meaning the current legislation likely prohibits more activity than is necessary to achieve its purposes.

While the wording of the legislation is vague and has not been clarified through extensive litigation, according to one consultee, it could be read to include any

²⁹ *Supra* note 7.

³⁰ *Ibid.*

individual receiving money for their services. Thus, court staff, librarians, and even staff at non-profit organisations are potentially offside when they provide legal services as non-lawyers, even if they are operating in accordance with their understanding of the Distinction, their level of expertise, and their workplaces' guidelines. This provision therefore creates a legal barrier to the provision of legal services that supersedes the Distinction.

Regardless of where one decides the Distinction lies and regardless of whether an individual would be prosecuted for being offside or not, the uncertainty created by the broad prohibition leads to restrictively cautious approaches to providing legal assistance and should therefore be addressed.

Proposal: Explore redrafting ss. 30 and 31 of *The Legal Profession Act, 1990* to clarify and potentially narrow the prohibition on the unauthorised practice of law.

Concerns to Bear in Mind: Amending the relevant sections of *The Legal Profession Act, 1990* is a complex endeavour and would need to focus on both maintaining the purpose of the Act and encouraging innovative legal service delivery. The protection of the public has been identified by the courts as the primary purpose of unauthorised practice laws.³¹ At the same time, the legislation should encourage the continuance and development of innovations that benefit the public by increasing access to legal guidance provided by qualified non-lawyers.

ii. **Adopt measures to encourage lawyers to give advice outside traditional lawyer-client relationships**

Origin of Proposals: While *The Legal Professions Act, 1990* limits the degree of service non-lawyers are able to offer the public, other external barriers limit the degree of service lawyers are able to offer or feel comfortable offering the public outside formal traditional lawyer-client relationships. **Lawyer interviewees repeatedly stated that worries about conflicts and potential liabilities limit the scope of service they are able to offer the public in such situations.** These barriers therefore have notable implications for lawyers who offer unbundled services, work as legal coaches,³² or struggle to respond to informal, unsolicited public requests for help.

For example, according to the Law Society of Saskatchewan's *Code of Professional Conduct*, a client is any "person who [...] having consulted the lawyer, reasonably

³¹ *Mattison, supra* note 12 at para 40.

³² Some legal practitioners have carved out new roles in the legal profession as "legal coaches" or by providing unbundled legal services to clients. In these roles, lawyers do such things as providing detailed and case-specific legal information to parties in legal disputes and mentoring people in their legal matters, without doing the legal work for them. For examples, see: "Lana Wickstrom: Separation Specialist," online: <<http://www.lanawickstrom.com>> and "Waymark," <<http://waymarklaw.ca/about/>>.

concludes that the lawyer has agreed to render legal services on his [or her] behalf.”³³ Once formed, the lawyer-client relationship imposes a series of important obligations on the lawyer, such as the requirement to avoid conflicts. **The fact that lawyer-client relationships can be potentially triggered without a lawyer’s consent or knowledge leads to restrictive caution in providing assistance.** This approach to determining when a lawyer-client relationship exists is informed by jurisprudence and directed at protecting the public by, for example, ensuring lawyers do not shirk their responsibilities toward those they assist on the ground that they are not “clients” from the lawyer’s perspective. That said, it is worth considering whether this approach in fact helps the public when it reduces the scope of assistance lawyers can provide, and whether this end can be achieved through alternative means.

The Law Society of Saskatchewan has already innovated in this area. For example, the Law Society of Saskatchewan’s Code has softened its obligations regarding conflicts of interest in certain *pro bono* contexts.³⁴ Lawyers are now permitted to provide “short-term summary legal services” (advice or representation to a client under the auspices of a *pro bono* or not-for-profit legal service provider with the expectation by the lawyer and the client that the lawyer will not provide continuing legal services in the matter) without taking extensive, cumbersome steps to determine whether there is a conflict of interest.

The uncertain area of negligence law that surrounds the duty of care owed by lawyers to non-clients is another area of concern. While there is a general rule that a lawyer owes no duty of care to non-clients,³⁵ courts have identified a “developing line of authority in Ontario and elsewhere” for finding lawyers liable to non-clients in negligence.³⁶ The requisite proximity to establish a duty of care may be found in instances where a non-client reasonably relied on the lawyer’s advice and the lawyer was reasonably aware or ought to have been aware of such reliance.³⁷ While a detailed discussion of this area of law is well outside the scope of this paper, it is important to note that such a duty of care can be found to exist, the law in the area is unclear, and for this reason and others, many lawyers are reluctant to provide legal services outside a traditional lawyer-client relationship.

Proposal: Explore amending the Law Society of Saskatchewan’s *Code of Professional Conduct* with a view to increasing the requirements for initiating a lawyer-client relationship, particularly in the *pro bono* context.

³³ (2012) at 1.1-1 [the Code].

³⁴ *Ibid* at 3.4-2A – 3.4-2D.

³⁵ See example *Jensen v MacGregor* (1992), 65 BCLR (2d) 224, 89 DLR (4th) 68 (Sup Ct).

³⁶ *Robinson v Rochester Financial Ltd*, 2010 ONSC 463 at para 30, [2010] OJ No 187.

³⁷ Andrew A Sanfilippo, “The Real Estate Lawyer’s Duties: Defining the Duty with Reference to Elements of Proximity and Reliance” in *Special Lectures of the Law Society of Upper Canada, Real Property Law: Conquering the Complexities* (Toronto: Irwin Law, 2002).

Proposal: Explore legislating so as to eliminate or clarify the duty of care owed by lawyers to non-clients.

Concerns to Bear in Mind: Amending the *Code of Professional Conduct* and legislating as to clarify the duty of care owed by lawyers to non-clients are both complex endeavours. Interviewees noted that both negligence law and the *Code of Professional Conduct* exist to protect the public, so any potential changes would of course need to preserve this important function. While a detailed discussion of what innovations in this area may look like is outside the scope of this paper, it is also important to note that any amendment to the *Code of Professional Conduct* would also need to be cognisant of the jurisprudence that informs it.³⁸

iii. Create context-specific guidelines for distinguishing between what is legal advice and what is legal information

Origin of Proposal: Two interrelated concepts regarding the boundary between legal information and advice emerged during our interviews. First, the Distinction was unclear to many. Second, those who thought the Distinction was clear to them believed the Distinction was not the same to everyone; indeed, the Distinction varied considerably depending on whom we were talking to. The consultations revealed a number of concerns stemming from this ambiguity. For example, service-providers may provide no legal assistance in an effort to “play it safe,” people may “go over the line and put service-seekers at a disadvantage,” and the public often has unclear expectations regarding the level of service that can be provided to them which leads to confusion, disappointment, and conflict. **Almost all interviewed thought that providing clear direction on the Distinction, or on the level of services an individual is permitted or not permitted to provide, would be helpful.**

Proposal: Provide instruction or guidelines regarding what constitutes the Distinction in specific contexts, or regarding what level of services may be provided, to clarify expectations and obligations. An example of this type of a solution can be seen in the pilot project recently undertaken by the National Self Represented Litigants Project with the Nova Scotia Department of Justice Court Services and consultant John Greacen, which focused on clarifying the types of assistance and information that can be provided by court services staff to the public.³⁹

³⁸ For example, the test for when a formal lawyer-client relationship is triggered is partially informed by *Descoteaux v Mierzwinski*, [1982] 1 SCR 860 at 876, 141 DLR (3d) 590: “When dealing with the right to confidentiality it is necessary, in my view, to distinguish between the moment when the retainer is established and the moment when the solicitor-client relationship arises. The latter arises as soon as the potential client has his first dealings with the lawyer's office in order to obtain legal advice.”

³⁹ See National Self-Represented Litigants Project, “How Can I Help You?” Clarifying the Legal Advice/Legal Information Distinction for Court Staff and the Public” (2014), online: <<http://representingyourselfcanada.com/how-can-i-help-you-clarifying-legal-advice-legal-information/>>. This project used revised guidelines for distinguishing legal information from legal

Concerns to Bear in Mind: While almost all interviewed thought such guidelines would be helpful, some expressed hesitations. For example, some individuals stated that worrying about adhering to complex rules and guidelines would inhibit their daily work. Others expressed concerns that such guidelines may not, in fact, have a significant impact on increasing the scope of legal information services provided to the public. It is possible that guidelines could further restrict the amount of information individuals provide by limiting the discretion of staff persons in assisting the public, or by clarifying that their scope of assistance must be more limited than it is currently thought to be.

C. Proposals Related to Improving Access to Legal Services Generally

i. Expand the role of near-to-law professionals⁴⁰

Origin of Proposal: The prospect of expanding the ability of near-to-law professionals who can provide legal information, services, and even advice surfaced in nearly every consultation. Almost every interviewee was in favour of expanding such roles, stating near-to-law professionals have expertise and skills that would benefit the public and are currently underutilised.

The consultations suggested the scope of practice for new legal service providers should be focused primarily on areas of significant legal need and for which new legal service providers will have the skills and knowledge necessary to provide competent legal services.

Proposal: Continue to explore and implement plans to expand the level of legal service near-to-law professionals are able to offer.

Concerns to Bear in Mind: While support for this proposal was nearly unanimous, many also expressed reservations and insisted that doing so would need to be done

advice as the basis of a training program for Nova Scotia court staff. The staff rated this training, and especially the clarification of the boundaries of legal information that they could provide, very highly.

⁴⁰ Innovation in this area is currently being undertaken in Saskatchewan. The Ministry of Justice and the Law Society of Saskatchewan recently began work on a joint project aimed at increasing A2J by making some basic legal services more readily available to the public through potentially expanding the scope of legal services provided by near-to-law professionals. Two different surveys were developed and distributed. The first survey was designed for the public and the second for lawyers and others who currently provide legal services in some form. The hope is that these surveys will assist in determining perspectives and needs regarding expanded legal services. Currently, the survey results are in the process of being analysed. The next steps of this project will include the formation of a Task Force to determine needs and recommendations regarding expanded legal services and will further include extensive consultations with legal organisations and other stakeholders within Saskatchewan's justice system. See "Non-Lawyer Legal Service Provider" (Law Society of Saskatchewan), online: <<https://www.lawsociety.sk.ca/for-lawyers-and-students/non-lawyer-legal-service-provider.aspx>>).

“properly” or “carefully.” Many interviewees were concerned with ensuring appropriate training for new service providers was mandated, that proper measures be in place to ensure regulation and public protection, and also that their scope of practice be appropriately defined. Another concern expressed was that increasing the scope of practice of near-to-law professionals may not automatically increase the availability and accessibility of legal services—if the purpose of the endeavour is to increase the affordability of legal services, measures may need to be taken to ensure this actually happens.

ii. Dedicate staff members in major courthouses to providing public legal assistance

Origin of Proposal: Many interviewees mentioned that courthouse staff is unable to provide many of the legal services requested by the public in this context. **Because courthouses are a setting where the public seeks assistance, there is opportunity to increase the scope of service available at these publically accessible locations.** While staff who work in courthouses often have a high degree of expertise in legal procedure, the consultations showed they are not always interested in providing more assistance to the public and, in many cases, lack the time to do so given their other workplace commitments. Courthouse staff explained they would like for such services to be available at courthouses, but are restricted by a personal lack of capacity to increase their workload and also have concerns about the limitations of their knowledge and training.

Two potential ideas emerged from these discussions. First, some interviewees suggested providing additional training to courthouse staff. While this may be beneficial, the consultations suggested its impact would be limited given that many court staff expressed that they do not have capacity for increased duties. An alternative option discussed with these consultees was the idea of creating specific staff positions dedicated to providing legal information and basic assistance to the public.

Creating specified roles where this is the primary or sole responsibility for particular staff members would increase the capacity of courthouses to provide public legal assistance, ensure that only those with specialised training are tasked with providing this legal assistance, and would reduce the frequency of distracting public legal service requests fielded by other court workers.

Proposal: Dedicate and train certain staff members to provide basic legal assistance to the public. The ORT’s framework, which sees specialised frontline staff providing quality legal information and assistance to the public on matters that fall within residential tenancy law, could be used as a model.

Concerns to Bear in Mind: The primary concern expressed was that expanding the legal assistance available at courthouses could increase the expectations of the

public and blur their understanding of the role of the court and the services they could expect in this context. Second, measures would need to be taken to ensure sufficient expertise and current knowledge of processes for these positions, so some degree of specialisation may be needed. Finally, many expressed reservations for any initiative that could potentially increase the workload of courthouse staff. Because court staff indicated they feel overburdened by their current workloads, creating specified roles likely requires hiring additional staff persons. If this innovation were pursued, it would be helpful to look to other contexts—like the ORT and courthouses in other jurisdictions—that have implemented this type of service for data regarding costs, successful practices and implementation processes, and outcomes of these services.

iii. Expand existing beneficial programming

Origin of Proposals: Speaking generally about A2J or increasing access to legal services, **many interviewees praised the usefulness of existing initiatives and expressed desire to see them expand in scope.**

For example, **a number of the consultees praised the value of the Family Law Information Centre**, which sees an insured lawyer available to provide basic legal services remotely to the entire province. Frontline staff mentioned that it is very helpful to be able to refer people to this resource and that it has effectively reduced the number of questions directed at busy courthouse and library staffs. A court staff member also specifically noted that because of this resource, people experiencing family law problems are often more educated about legal procedure and substantive law than those with problems that fall into other areas of law. Several interviewees expressed a desire for the service to be expanded, as no comparable services are available in areas of law such as wills and estates, employment, and immigration and refugee law.

Some interviewees also noted the benefit of public legal assistance and education events, identifying a need to increase these types of resources. Many praised the work of organisations like Community Legal Assistance Services for Saskatoon Inner City (CLASSIC) and Pro Bono Law Saskatchewan (PBLs), which provide free legal services to low-income people in the province. Similarly, one interviewee mentioned the importance of the knowledgeable, experienced, and professional service Legal Aid provides its clients. Services such as CLASSIC and Pro Bono Students Canada (PBSC) also regularly provide public legal education presentations carried out by law students under the supervision of lawyers, which provide valuable legal information to the public, as well as to the staff and clients of the community organisations where they are held.

Nearly all interviewees mentioned the benefit of PLEA's work. The frontline staff interviewed expressed appreciation at having plain language, high quality resources to provide to members of the public seeking legal information. Some court

workers explicitly stated that they are able to more efficiently assist people in the family law context because of the availability of such resources in this area of law—for example, by directing people to a self-help, court form generating family law website. Many of these interviewees were interested in increasing the quantity and availability of these resources.

Proposal: Explore expanding the Family Law Information Centre model of legal service delivery into other areas of law.

Proposal: Explore ways of increasing the capacity of organisations such as Legal Aid, CLASSIC, PBSC, and PBLs to provide public legal education events and other legal services.

Proposal: Explore expanding the quantity and availability of PLEA materials.

CONCLUSION

For the many people who cannot afford lawyers working within the traditional lawyer-client model, alternative legal service providers play an important role in increasing A2J. While the “legal information versus advice” framework is frequently relied on to inform the boundaries of the legal assistance alternative legal service providers provide, our research shows that there is little agreement on exactly where the Distinction lies. Our research also demonstrates that, while clarifying where the Distinction lies would be a useful, it will likely only have a significant impact on increasing A2J if doing so expands the scope of non-lawyer services and if other barriers to alternative legal service delivery models are also addressed.

APPENDIX: LITERATURE REVIEW

"The Cost of Uncertainty: Navigating the Boundary Between Legal Information and Legal Services in the Access to Justice Sector" by Jennifer Bond, David Wiseman, and Emily Bates⁴¹

This article considers issues relating to navigating the boundary between legal information and legal services (which includes the provision of legal advice) through a case study of the University of Ottawa Refugee Assistance Project (UORAP).

The article has three components to it. First, the authors discuss the accepted notion of there being an A2J “crisis” in Canada and a corresponding need for action to address this crisis. While conceding the lack of consensus regarding the content of “A2J,” the authors describe the concept as involving three dimensions: a procedural dimension concerned with people’s ability to participate in justice processes, a substantive dimension regarding the ability to have fair outcomes, and a symbolic dimension concerned with the recognition and respect given to the system in its entirety. The authors identify UORAP as a service developed outside state-funded legal aid programming to address A2J issues that affect refugee claimants. UORAP has assisted refugees with claim processes by developing written materials that provide information to help with identifying and acquiring evidence to support refugee claims, and by training community support workers to provide these materials to refugee claimants and assist with their use. Because non-lawyers deliver the materials, the program had to ensure the services did not inadvertently violate laws regarding who can provide legal assistance.

Next, the authors discuss some of the provincial legislation that narrowly restricts and regulates the provision of legal services to certain persons in particular circumstances, and the types of action the provincial law societies can take to enforce the dichotomy between the provision of legal information and services. Unfortunately there is little literature or other guidance about how this distinction can be interpreted and applied in complex circumstances. While there are particular statutory exceptions for non-lawyers to assist refugee claimants, this uncertainty around the boundary between legal information and legal services has significant costs for organisations involved in A2J initiatives, including the potential that initiatives will be shut down, the potential for complaints through law societies creating organisational distractions, costs associated with needing to obtain legal guidance on the topic, and a potential “chilling effect” on developing new A2J initiatives.

The authors argue that parties in addition to the A2J sector must expend resources to clarify the boundary between legal information and legal services.

⁴¹ *Supra* note 1.

“No Legal Advice From Court Personnel’ What Does that Mean?” by John M. Greacen⁴²

In this article, John Greacen discusses the prohibition on court workers giving “legal advice” in the American context. He suggests the prohibition is problematic because the term “legal advice” has no inherent meaning, and the definitions offered by courts are confusing and heterogeneous. This lack of clarity led to negative consequences for court staff and the public – for example, SRL rates are increasing and clerks may end up helping only those they choose to, or those they feel comfortable assisting. Greacen suggests that instead of a blanket “no legal advice” rule, court staff decisions considering the assistance they are and are not able to offer should be guided by five principles:

- 1) Court staff members have an obligation to explain court processes and procedures to litigants, the media, and other interested citizens.
- 2) Court staff members have an obligation to inform litigants, and potential litigants, how to bring their problems before the court for resolution.
- 3) Court staff cannot advise litigants whether to bring their problems before the court, or what remedies to seek.
- 4) Court staff must always remember the absolute duty of impartiality. They must never give advice or information for the purpose of giving one party an advantage over another. They must never give advice or information to one party that they would not give to an opponent.
- 5) Court staff should be mindful of the basic principle that counsel may not communicate with the judge *ex parte*. Court staff should not let themselves be used to circumvent that principle, or fail to respect it, in acting on matters delegated to them for decision.

“Legal Information vs. Legal Advice - Developments During the Last Five Years” by John M. Greacen⁴³

In this paper Greacen reflects on the “No Legal Advice From Court Personnel” article he wrote five years prior. He notes that between 1995 and 2000 SRL rates continued to climb. He also notes that in that same period his article was used to instruct some court staff and had even been adopted into a set of guidelines. The earlier article also triggered some criticism that suggested it did not go far enough in describing the court’s obligation to provide meaningful assistance to the public – there may be an obligation on courts that derives from the American Fourteenth Amendment rights to take affirmative steps to provide SRLs with some form of “adequate” legal assistance. Greacen supplements his original paper with a brief discussion on three topics: “a knowledgeable staff,” “a just outcome,” and “the

⁴²(Winter 1995) *The Judges Journal*, online:
<<http://www.srln.org/system/files/attachments/34judgesj10.pdf>>.

⁴³ *Supra* note 24.

unauthorized practice of law.” He notes that a lack of knowledge on the part of court staff is not typically the impediment to their ability to provide meaningful information to the public—by contrast, he has found most staff is thoroughly knowledgeable about court procedure and other topics. He also engages with academic literature to conclude that it is not realistic to ask courts to act as both dispute resolvers and advocates providing advice for both sides; any administering of legal advice and information by courts must be done in a manner that maintains impartiality. Finally, he posits that concerns that court staff giving legal advice may amount to the practicing of law without a license focuses attention on the wrong issues. The administration of legal advice, if done impartially, does not infringe on what lawyers do, which is to advocate on their client’s behalf. The limitations on what court staff can do in terms of answering questions from the public arise from this principle of impartiality, which is central to the public’s trust and confidence in the institution.

“New Roles For Non-Lawyers To Increase Access to Justice” by Richard Zorza and David Udell⁴⁴

In this article Zorza and Udell consider how A2J can be increased through the expansion of roles for non-lawyers in the legal field. The authors note that such roles have been expanding in the United States context, particularly in the paralegal profession.

The authors describe the various roles of non-lawyers in the non-profit and for-profit sectors, both under lawyer supervision (typically as paralegals) and not (for example, as social work caseworkers in the non-profit sector or as regulated independent paralegals in Ontario). Zorza and Udell suggest that such roles potentially contribute to the cost-effectiveness of legal services in both settings, and describe ways these roles can be expanded by, for example, researching effective collaborations between lawyers and non-lawyers, expanding the services paralegals can provide, training lawyers to integrate and supervise paralegals into their practices, and developing training and/or certification requirements for these professionals.

The authors additionally argue that the existing unauthorised practice laws, which restrict the bulk of legal service provision to lawyers, should be reconsidered in light of societal changes and changes to legal practice and the justice system. Zorza and Udell suggest such would follow other trends to modernise analogous features of the justice system, such as non-lawyer court staff now being authorised to provide significant procedural help to self-represented litigants. In light of their recommendations, the authors discuss potential training requirements and regulatory structures to ensure the quality of non-lawyer legal service provision.

⁴⁴ (2015) 41:4 Fordham Urban LJ 1258.

The authors also speculate about the implications the expansion of such services could have on the legal marketplace in terms of increasing the visibility of non-lawyer professionals, encouraging innovation in the structure of professional organisations and regulation of the profession, influencing legal service pricing, and creating divisions of labour in the profession. The authors propose that such innovations may potentially make a positive difference for those who proceed in civil legal matters without the opportunity for legal representation by lawyers.

As projects develop across the country, it will become easier to rigorously examine the impact the expansion these roles can have on A2J.

“The National Self-Represented Litigants Project: Final Report (Executive Summary)” by Julie Macfarlane⁴⁵

In this excerpt, Macfarlane discusses some of the results of her study on self-represented litigants that relate to the issue of distinguishing legal advice from legal information. Here, she discusses how the self-represented litigants in the study indicated a desire for better sources of legal information and guidance, rather than direction, in their legal matters. She proposes that the expansion of legal information services could alleviate some pressure on other public legal services. She indicates that court staff is one such, and a primary, source of legal information for self-represented litigants. Such staff includes those persons working at registry counters and in various court programs. That said, these resources are often not visible to litigants and there are significant limits on the time and scope of information that can be offered by these people. She notes that both court staff and self-represented litigants complain about the legal information/advice distinction, which places an unfair burden on court staff to determine what information they can and cannot provide. This results in both a hesitation on the part of staff to answer questions and inconsistent responses to self-represented litigants seeking assistance.

The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants (Final Report) by Julie Macfarlane⁴⁶

This section of Macfarlane’s Full Report likewise discusses issues stemming from the ambiguous distinction between legal advice and legal information for court registry and program staff tasked with assisting self-represented litigants. She notes that both categories of employees complained about a lack of a meaningful and clear distinction between what they can dispense to self-represented litigants (legal information) and what they cannot (legal advice). Staff indicated they felt forced to

⁴⁵ “Legal information for SRL’s,” Section 8,” online: <<http://representingyourselfcanada.com/wp-content/uploads/2016/09/executive-summaryfinal.pdf>>.

⁴⁶ Julie Macfarlane, *The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants: Final Report* (2013), online: <<http://representingyourselfcanada.com/wp-content/uploads/2015/07/nsrlp-srl-research-study-final-report.pdf>> at 69 to 70.

err on the side of withholding even simple information/advice from self-represented litigants—such as which forms to complete and how to complete them—especially in light of the large volume of people they deal with. This results in a high degree of personal discretion being used on the part of staff when dealing with self-represented litigants, and creates an impression on the part of these litigants that court staff is unwilling to help them.