



LAW COMMISSION OF ONTARIO  
COMMISSION DU DROIT DE L'ONTARIO

# **Towards a More Efficient and Responsive Family Law System**

## **INTERIM REPORT**

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The Law Commission of Ontario (LCO) was created by an Agreement among the Law Foundation of Ontario, the Ontario Ministry of the Attorney General, Osgoode Hall Law School and the Law Society of Upper Canada, all of whom provide funding for the LCO, and the Ontario law deans. It is situated at Osgoode Hall Law School, in the Ignat Kaneff Building, York University.

The mandate of the LCO is to recommend law reform measures to enhance the legal system's relevance, effectiveness and accessibility; improve the administration of justice through the clarification and simplification of the law; consider the use of technology to enhance access to justice; stimulate critical legal debate; and study areas that are underserved by other research. The LCO is independent of government. It selects projects that are of interest to and reflective of the diverse communities in Ontario and is committed to engage in multi-disciplinary research and analysis and to make holistic recommendations, as well as to collaborate with other bodies and consult with affected groups and the public more generally.

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# TABLE OF CONTENTS

<b>EXECUTIVE SUMMARY</b> .....	<b>VI</b>
<b>I. INTRODUCTION</b> .....	<b>1</b>
A. WHAT IS THE FAMILY LAW PROJECT ABOUT? .....	1
B. THE HISTORY OF THE PROJECT.....	3
<b>II. A PORTRAIT OF THE ONTARIO FAMILY</b> .....	<b>6</b>
A. THE FAMILY AS A REFLECTION OF ONTARIO SOCIETY .....	6
B. THE EVOLUTION OF THE FAMILY .....	8
C. THE IMPACT OF FAMILY BREAKDOWN .....	11
<b>III. THE FAMILY LAW SYSTEM: AN OVERVIEW WITH A FOCUS ON ENTRY POINTS</b> .....	<b>14</b>
A. INTRODUCTION .....	14
B. THE CURRENT SYSTEM.....	15
1. <i>Provision of Information and Advice</i> .....	16
2. <i>Access to Legal Services</i> .....	22
3. <i>Legal Assistance, Short of Full Representation by a Lawyer</i> .....	27
4. <i>Multi-disciplinary Centres</i> .....	30
5. <i>How Levels of Conflict, Domestic Violence and “Complexity” Affect Moving Through the System</i> .....	32
6. <i>Forms of Dispute Resolution</i> .....	40
C. WHAT WE KNOW ABOUT DISPUTANTS WHO DO NOT USE THE COURT SYSTEM .....	46
D. THE IMPORTANCE OF ENTRY POINTS.....	48
<b>IV. TOWARDS A MORE EFFECTIVE AND RESPONSIVE SYSTEM</b> .....	<b>52</b>
A. INTRODUCTION .....	52
B. PROVISION OF INFORMATION AND ADVICE .....	56
1. <i>Introduction</i> .....	56
2. <i>Obtaining Correct and Appropriate Basic Information</i> .....	57
3. <i>Strengthening the Role of “Trusted Intermediaries”</i> .....	59
4. <i>Written and Online Public Legal Information</i> .....	60
5. <i>Early Legal Information, Summary Advice and Referrals: the Role of FLICs</i> .....	61
6. <i>Summary Advice and Referral Before the Court House</i> .....	62
C. LEGAL REPRESENTATION ISSUES.....	63
1. <i>The Need for Immediate Measures</i> .....	63
2. <i>Unbundled Legal Services</i> .....	64
3. <i>Self-help for Unrepresented Litigants</i> .....	65
4. <i>Transparency in the Cost of Legal Fees</i> .....	67
5. <i>Pro Bono Services</i> .....	68
6. <i>Permitting Paralegals to Perform Some Family Law Services</i> .....	69
7. <i>Increasing the Scope of Legal Aid for Family Law</i> .....	70

8.	<i>Legal Insurance</i> .....	73
D.	DISPUTE RESOLUTION .....	73
1.	<i>Non-Judicial Forms of Dispute Resolution</i> .....	73
2.	<i>Judicial Dispute Resolution</i> .....	75
E.	RESPONDING TO A PLURALIST SOCIETY .....	76
F.	THE NEED FOR MORE KNOWLEDGE ABOUT DISPUTANTS AND THE SYSTEM .....	80
<b>V.</b>	<b>TRANSFORMING THE SYSTEM</b> .....	<b>81</b>
A.	INTRODUCTION .....	81
B.	A BLUEPRINT .....	83
C.	TRANSFORMING THE CURRENT SYSTEM.....	85
1.	<i>Comprehensive Entry Points: Multi-disciplinary multi-function centres</i> .....	86
2.	<i>Elements of the Multi-Disciplinary Multi-Function Centres</i> .....	92
3.	<i>Provision of Legal Aid Services</i> .....	98
4.	<i>Dispute Resolution</i> .....	100
D.	THE NEED FOR MORE KNOWLEDGE ABOUT DISPUTANTS AND THE SYSTEM .....	103
<b>VI.</b>	<b>NEXT STEPS</b> .....	<b>104</b>
<b>VII.</b>	<b>RECOMMENDATIONS</b> .....	<b>105</b>
	<b>APPENDIX A: ORGANIZATIONS AND INDIVIDUALS PROVIDING INPUT</b> .....	<b>113</b>
	<b>APPENDIX B: RESEARCH PAPERS COMMISSIONED BY THE LCO</b> .....	<b>115</b>
	<b>ENDNOTES</b> .....	<b>116</b>

# **Executive Summary**

## **I. Introduction**

The institution of the family occupies a major place in Canadian society. Individuals in a situation of family breakdown often face many challenges, not only legal but also economic and psychological, among others. The legal system must be able to respond to the needs of families in distress; however, too often the system adds to their difficulties. The purpose of the LCO's project on family law process, with its emphasis on the entry points to the system, is to recommend ways that the system can be simplified and made more effective and responsive to the diversity of families facing breakdown. We believe that the early stages of a family law problem are often crucial for the way a family dispute is resolved. Our projects builds on the reforms that have been implemented over the past two years by the Ministry of the Attorney General and other bodies such as Legal Aid Ontario, and takes into consideration the many studies and reforms proposed by others studying this area.

This Interim Report follows several other documents, released by the Law Commission of Ontario, including an Options Paper in 2009, a 2009 Consultation Paper and a 2010 paper setting out the results of the consultations. In this Interim Report we make short term recommendations, accepting that funding for more fundamental changes may be limited in the near future, and long term recommendations, intended to be more transformative. Information about providing feedback to this Interim Report can be found in Part VI: Next Steps.

## **II. A Portrait of the Ontario Family**

In order to reform the family law system effectively, it is crucial to appreciate the various kinds of families that exist in Ontario today. Equally, the different forms and practices of families reflect the pluralism in contemporary Ontario. Over the last decades, the makeup of Ontario's population has changed significantly. The changes are related to wider societal changes, such as the changing relationship between men and women, urbanization, increased mobility, the aging of the population and immigration. The ethnic and religious makeup of the province has become more diverse. Family breakdown can result from and in turn trigger other problems, related to debts, housing, employment and (mental) health. Persons who are vulnerable in a situation of family breakdown often need multiple family services.



The family justice system will have to respond in a flexible manner to the various situations that can arise in situation of family breakdown, while observing human rights and constitutional requirements; give access to safety for victims of abuse and violence; and take the interconnection between legal and other family problems into account.

### **III. The Family Law System: an Overview with a Focus on Entry Points**

Ontario's family justice system is fragmented and complex. The organization of the various family courts, the provision of information and legal services, various forms of non-judicial dispute resolution and family services can become a maze for many users.

Under the theme of four Pillars of Family Justice Reform over the last two years, some services have been expanded across the province, while new programs have been introduced. The court house plays a central role in the reforms, although important objectives of the reforms are to provide greater information to families in breakdown and to direct persons in a lower conflict to non-judicial dispute resolution. Legal Aid Ontario has also established new services and an on-line information program. We discuss these reforms in some detail.

In this chapter, we describe the existing system, emphasizing the importance of entry points, and set out what we perceive to be the benefits and challenges of the system. We focus on the provision of early information, access to legal services, how factors such as the presence of domestic violence, high levels of conflict and other forms of complexity affect "moving through the system", and forms of dispute resolution.

We conclude that while there is no shortage of information, it is not clear if it is as effective as it might be. In particular, online information is hard to access. Recently launched websites such as Legal Aid's Family Law Inform Program (FLIP) and Community Legal Education Ontario's (CLEO) website may offer more accessible entry points (information hubs) for users.

Many people cannot access legal services because of the high cost and eligibility criteria for legal aid. As a result, many family law litigants are unrepresented or may qualify for some legal assistance short of full representation. Increasingly, low and middle income persons may access "unbundled" or "limited retainer" legal services from private lawyers, obtaining advice or representation on some aspects of their case, but not others. There are some concerns with limited retainers which we discuss. Paralegals, who can now also offer unbundled services, are currently not allowed to represent parties in a family law case.

Apart from “case management” at the courts, triages to legal services or non-judicial dispute resolution are not common. Non-judicial dispute resolution can have many forms, including negotiation and court-annexed subsidized mediation, private mediation and community-based mediation which is sometimes based on traditional concepts of family life that disadvantage women. Commentators have raised concerns about the quality of the mediators and the risk that some persons, including victims of domestic violence, can be “coerced” into mediation. However, certified mediators are required to receive training and are supposed to screen cases.

The court system can be complex and very slow. About fifty per cent of the cases remain in the system for longer than one year and a significant number of cases can remain considerably longer in the system. Lengthy procedures can involve two or more judges. This often leads to more costs for disputants and the system, and frustrations for disputants who have to re-tell their stories. Processing times may be reduced to some extent by case management at the courts. A recent amendment to the Family Law Rules aims to reduce unnecessary conferences.

Disputants may opt out of the system, although for different reasons. Persons with a higher income may choose “high end” non-judicial out of court solutions, such as “collaborative law”. These solutions are considered speedier, more confidential and less adversarial, although they can be costly. Some low and middle income persons may opt out and not pursue claims. Other persons may choose “informal methods” to resolve a dispute, for example through community mediation. Despite specific programs for Aboriginal persons and the recognition in statutes of their specific circumstances, there are particular concerns that Aboriginal persons may not access the system because of distance and cultural barriers.

Effective entry points should assist people in negotiating the system; raise awareness of the consequences of personal and legal disputes; assess legal and family challenges; and refer or “triage” to services based on this assessment.

Entry points may take the form of an individual’s personal network (family and friends); professional service providers outside the family justice system (doctors, teachers, general referral services); professional workers with some connection with the family justice system (community workers, shelter workers); legal information and summary legal advice services (telephone advice services, Information Referral Coordinators, court-based or LAO provided information systems); and actors and services that can assist in achieving a solution (community mediators, private lawyers, certified providers of non-judicial dispute resolution, Legal Aid’s advice lawyers and duty counsels, clerks and judges at the court).

In Ontario there are some holistic multi-disciplinary centres that function as a “one stop shop” for persons with family-related, often serious, problems. They offer a clear entry point for users. There are some challenges with respect to multi-disciplinary services, relating to different funders, different professional rules, and privacy and anonymity when services are offered to, and associated with, persons having serious problems.

#### **IV. Towards a More Effective and Responsive System**

In this chapter, we make recommendations to address challenges for many users that we have identified in the previous chapter and that we believe can be implemented with little or no cost or which can be funded through changes in the provision of services. For entry points, a lack of continuity in legal services can make it difficult to direct persons to a pathway. With limited funding a number of measures may achieve access to justice for a wider group of users. While the Ministry of the Attorney General would need to take the lead in allocating funding, coordinating and streamlining services, specific agencies and organizations such as Legal Aid Ontario and CLEO, the Law Society of Upper Canada, the courts and community organizations may be best positioned to assist in designing and/or implementing changes.

##### ***Provision of Information and Advice***

Entry points must provide sufficient information to an individual to allow him or her to make an informed decision about the appropriate next steps in the process. In order to direct users to a next stage the entry points must have some understanding of the family dispute. Entry points of the family justice system may also play a referral role to wider family services. In order to ensure that persons have access to initial information on both legal and wider family services, *we recommend a basic brochure to be distributed at strategic places, including libraries, doctors’ offices, super markets, lawyers’ offices and mediators’ offices.*

Many users need face to face assistance, in addition to written and online information. “Trusted intermediaries” in community organizations can be a vital step to access the next level of information and advice, provided by legal services. *We recommend training and a database for frontline service providers, where local or community demand warrants this.*

There are too many websites, which are hard to navigate and are not well known/advertised. *We recommend one “neutral” information hub with clear and basic information, where users would routinely go and/or to which they are referred. We recommend more child-friendly information that is easily accessible for children.*

The Family Law Information Centres (FLICs) at the family courts are a main entry point to the family justice system. Their location at the court houses raises concerns about their accessibility for users who may find the justice system intimidating. *We recommend an evaluation of the FLICs as the entry point for the family justice system.*

We note that legal clinics, in general, do not provide family law services. This means that there are few subsidized services available outside the court house. *We recommend that some hours of subsidized legal advice be given to low income persons.* In certain communities there may be a shortage of legal services. In these situations *we recommend that legal aid lawyers be placed in community centres, or that legal clinics be subsidized to offer advice. We further recommend that, in rural and remote areas gaps in legal services be bridged by promoting the delivery of online services by legal professionals operating in other areas.*

### ***Legal Representation Issues***

Unbundled legal services (“limited scope retainers”) offered by lawyers can be useful for some users and *we recommend that the Law Society of Upper Canada ensure that lawyers are trained and tested about unbundled services and consider that only more experienced lawyers can offer unbundled services in family matters.*

Because of the complexity of family legal matters, many unrepresented persons are in need of representation rather than more information. For some users self-help could work if the materials are designed effectively and there is access to some assistance in using them. *We recommend that for unrepresented litigants who can benefit from “self-help” materials, more online forms and online materials be offered, or telephone lines be created to assist individuals in using these.*

Many persons are apprehensive about the legal fees in a family dispute. *We recommend that private lawyers give more transparency about costs.*

*Pro bono* services in family law could achieve access to justice for some individuals. *Pro bono* services could be allocated to individuals most in need of these by triage. *We recommend that Pro Bono Law Ontario be funded to act as a gateway for pro bono services in family law.*

Paralegals are currently not allowed to represent in family law. We consider that in simple, uncontested separations and divorces, paralegals can make a contribution to the family legal

system. *We recommend that the Law Society of Upper Canada review the scope of activities of paralegals in family law.*

The current scope of legal aid could be increased by, for example, offering unbundled lawyer's assistance, telephone services which assist in using "self-help" materials, an incremental use of (family) legal clinics, a further expansion of duty counsel services, and making legal aid certificates available for legal advice with respect to negotiating agreements and mediation.

*We recommend that Legal Aid Ontario explore how providing proportional legal aid services to different user groups can widen the scope of legal aid. We further recommend that LAO reserve funding for hardship cases.*

Although legal insurance could be a way of giving low and middle income persons access to legal assistance in family disputes, and in some jurisdictions this possibility exists, there are costs and complications, and we make no recommendation on this matter.

### ***Dispute resolution***

We have concluded that lawyers' services should be better integrated into non-judicial dispute resolution. *We recommend that low income persons should have access to some hours of subsidized legal advice.* The involvement of lawyers can change the dynamics of non-judicial dispute resolution. *We recommend that lawyers receive increased training about their role in non-judicial dispute resolution.*

In the judicial dispute resolution process, it is important that the nature of a conflict is detected at an early stage, so that court staff and judges can give priority to cases and allocate resources. *We recommend that for the management of high conflict cases court staff be assisted by mental health experts.*

### ***Responding to a Pluralist Society***

It is important that persons with specific needs have access to effective entry points that lead to a smooth and expedient transition to specific family justice services, and that there are appropriate referrals to other family services. *We recommend the evaluation at regular intervals of entry point services and early responses for persons with specific needs, for example related to language, literacy, age, culture, disability or being Deaf, deafened or hard of hearing.*

For persons in rural and remote areas it can be difficult to access services because of distance. Although telephone, online and chat services are not suitable for all users *we recommend the development of long distance services. We further recommend that priority be given to the delivery of traditional methods of dispute resolution for Aboriginal persons, including through funding for adequate education for providers of these types of dispute resolution.*

## **V. Transforming the System**

From our research and our consultation process we conclude that the family justice system is in need of a drastic change. A clear “front door”, a focus on early prevention of problems and continuity of services are essential for an efficient and responsive family justice system.

We believe that a comprehensive entry point should be the foundation of the family justice system and connect users to wider family services. “Multi-disciplinary multi-function centres” for all families with legal questions, challenges or problems regarding family matters should be close to the community, and provide a low-threshold front door. They should be supported by expert teams which operate from a central location, and by mobile services for persons in rural and remote areas (after addressing privacy and confidentiality issues). *We recommend a study with the objective of establishing a comprehensive system of multi-disciplinary multi-function centres, located in the community that can serve as the initial source of information and guidance in family law matters and related matters.*

Connecting multi-disciplinary multi-function centres to wider family services would involve a number of ministries and organizations. *We recommend that the relevant ministries dealing with family services establish a Steering Committee that explores how legal and non-legal family services can be connected.*

The multi-disciplinary multi-function centres have the following elements: they provide initial legal information and advice, they perform a basic triage to specialized services, they assist in the early resolution of disputes and they are a gateway to family services for families with serious multiple problems. *We recommend a comprehensive website which is the main reference for all persons facing family challenges and problems. We recommend the creation of a triage system preliminary to families entering the court system. We recommend funding for a function assisting disputants in achieving early resolution of a dispute, and we recommend that existing multi-disciplinary specialist services be strengthened and new services be created, where local demand warrants this.*

While entry points can, in our view, play a significant role in transforming the system, main elements of the family justice system are also in need of structural reform. *We recommend that more funding be given for legal aid and that more flexible eligibility criteria be established, so that subsidized legal assistance can be given according to legal needs.*

Although dispute resolution methods are not the subject of this report we briefly address these. We do not see significant benefits in making an attempt to mediate mandatory. *We recommend that the courts review their current processes to assess the effectiveness and responsiveness to litigants' needs. We further recommend that the Province work with the federal government to establish Unified Family Courts across the province. We also recommend that the courts, where possible, allocate one judge to a case after a settlement conference, in order to reduce duplications and ensure a timely process.*

Although reforms cannot wait until all desirable research has been completed, it can be undertaken contemporaneously with the design of reforms and realistically before the implementation of any transformation reforms. *We therefore recommend that data on services and users' use of these services be systematically collected.*





## I. INTRODUCTION

### A. What is the Family Law Project About?

This Interim Report is the Law Commission of Ontario's latest thinking in our Family Law project. It represents our assessment of changes that need to be made to the system to contribute to two objectives: its greater effectiveness for disputants and actors within the system, and increased responsiveness to the needs of diverse family disputants.

The choice of a project in family law reflects the centrality of a process that can effectively address the disputes that inevitably occur in familial relations. The family legal system sometimes needs to be able to help families temporarily in difficulty. It should always be able to assist those whose difficulties have reached the crisis point. Family members whose disputes require a response from the legal system - or seem to, at least - can face a difficult and emotional time. Trying to address their problems can be costly.

The institution of the family occupies a major place in most societies, Canada included, even though the structure of the family may be very different in different societies. This structure differs within Canada, including within Ontario. Irrespective of the structure of the family, we should be able to think of our family as a mainstay in our life, preferably as a sanctuary and source of support. But sometimes families are a source of discord, hurt and anger. The LCO's decision to undertake a family law project is a response to the reality that families do break down and that the consequences of breakdown can be exacerbated by the interaction of the parties with the legal system.

The fundamental importance of family life is reflected in international human rights instruments. For example, the family is entitled to protection by the State under the *Universal Declaration of Human Rights*.<sup>1</sup> Relations within the family as an institution are also considered worthy of international recognition. Article 16 of the *Declaration* says that men and women have equal rights to "marriage, during marriage and at its dissolution".

The legal framework governing family life and its application in Ontario and Canada as a whole has evolved over the past thirty-five years. From treating the man and woman as if they were "one" when they married, Ontario family law legislation now recognizes the equal relationship between the partners.<sup>2</sup> The meaning of "marriage" under federal legislation has acknowledged same-sex marriage.<sup>3</sup> The *Divorce Act* has been amended over the years to allow for the

cessation of a marriage simply on the basis that the couple has decided that their relationship no longer works.<sup>4</sup> Nevertheless, in many ways, the changes to the way the system actually *operates* have been grafted onto the existing system which has become complex and confusing.

This Interim Report is about creating a legal system that plays an appropriate part in helping the members of families move forward. Inevitably, therefore, it concentrates on the challenges families may face. It also is based on the assumption that many of those challenges, albeit not all, can be addressed by a family legal system that is responsive to their needs.

While there are many aspects of the family legal system that warrant study and recommendations for reform, the focus of the LCO's project is on "entry points" to the family justice system; put another way, "entry points" are the first approach an individual may take outside his or her immediate family to resolving a family dispute. Some of these entry points are informal (a religious advisor or extended family member, for instance), while others are part of the formal system, by which we mean all government services (such as Family Law Information Centres at the family courts<sup>5</sup>) and paid private services (such as those provided by a lawyer or a mediator) that can assist in the formal resolution of a family dispute. We believe that it is important to "get it right" at the early stages of a family dispute, since the early stages of a family law problem are often crucial for the manner in which a family law dispute is resolved. Points of entry can play an important role in informing families about their options, referring them to relevant services and advising them on the best way to address legal challenges and family disputes.

This Interim Report grapples with a range of questions: How do individuals move from informal to formal entry points? How comprehensively are the individual's needs identified at the initial formal entry point? What are the ramifications for how those needs are identified and an initial response is formulated? How can the legal system acknowledge and respond to the diversity of Ontario families and the relationship of their members to broader communities? How can costs be reduced, both to family disputants and the system itself? How can "workers" in the system most effectively fulfill the tasks expected of them?

We do not address methods of entering the system other than those applicable to disputants seeking separation or divorce. We do not, for example, consider child protection proceedings or, except in a minor way, issues that arise because one partner or parent has been charged with a criminal offence in relation to the other partner or children. Nor do we address situations in which the state requires individuals to enter the system. For example, Ontario Works<sup>6</sup> and the Ontario Disability Support Program<sup>7</sup> may require custodial parents to seek support from the other parent, and Passport Canada can require custodial orders.<sup>8</sup> As a result, people who did

not want to deal with the other partner may have to enter the family justice system. This may put extra pressure on the family justice system at the behest of the state, in particular in conflictual situations. Although this aspect of entry points may require further research, we will not address this in this study. We do also not address in detail issues relating to children, although we acknowledge that they may have an active part even at entry points to the system.<sup>9</sup> Identifying appropriate children's rights and how they might exercise them merits a specific study. However, in this interim report we will briefly address some of the main concerns about information for children, who often feel left out in a family law process.

## **B. The History of the Project**

The Family Law project was designed after considerable preliminary consultation. Even before the LCO began operations, its initial call for proposals was answered with a variety of family law proposals<sup>10</sup> and the LCO has received additional proposals since. The LCO undertook a study of the division of pensions on marital breakdown as one of its first projects, with the purpose of identifying "the" rule for when to value pensions.<sup>11</sup> Its recommendations in the Division of Pensions project were largely adopted by the Ontario Government in its reform of family law in 2009.<sup>12</sup>

Given the large number of quite different proposals in family law, we held a Family Law Roundtable in September 2008 as a way of assessing what workers in the family law system believed the most pressing issues to be. Participants included clinic workers, private lawyers, academics and representatives of community organizations, the Ontario government and the judiciary, among others. We subsequently released a paper setting out two options for a family law project, one on process and one relating to the matrimonial home.<sup>13</sup> Although both potential projects received support, overall the LCO determined that it could make a more effective contribution to the area by developing a process-related project. Accordingly, in June 2009, the Board of Governors approved a project to explore entry points, formal and informal, into the family law system. The LCO released a Consultation Paper in September 2009.<sup>14</sup> Following consultations, we released the results; this paper did not attempt to analyse the results, but simply reported them.<sup>15</sup> The concerns and observations of those who participated in this consultation process have been taken into account in developing the draft recommendations in this Interim Report.

The project has benefitted considerably from the input of the *Ad Hoc* Project Advisory Group composed of academics, members of the private bar, government representatives, judges and workers in legal clinics and community organizations (see p. ii for a complete list of members).

The participants in the consultations, other public feedback, the members of the Advisory Group, the LCO's own research and commissioned research papers<sup>16</sup> have all contributed to identifying the major issues addressed in this Interim Report and to the draft recommendations.

The LCO is only one body engaged in law reform around family law. Most notably, the Ministry of the Attorney General has undertaken a number of reforms of the system around the theme of "four pillars" of reform. These are discussed later in the Interim Report. Other studies and bodies that have played a major role in identifying and responding to the need for family law reform include:

- *Recapturing and Renewing the Vision of the Family Court ("the Mamo Report");*<sup>17</sup>
- *The Home Court Advantage project;*<sup>18</sup>
- *The Superior Court of Justice Family Law Strategic Plan;*<sup>19</sup>
- *The Ontario Court of Justice Family Law Vision Statement;*<sup>20</sup> and
- *The University of Toronto Middle Income Access to Civil Justice Initiative.*<sup>21</sup>

We have built on and complemented these ongoing initiatives. In particular, we note the reforms to the system over the period 2010-2011 initiated by the former Attorney General, the Honourable Chris Bentley. At the same time, we have attempted to tread a new path in our analysis and recommendations.

The draft recommendations in this Interim Report are of two kinds. Recognizing that reforms have been and are being implemented by the Government and accepting that the message has consistently been that significant increased funding is not available for the family law system, the first group of recommendations are those intended to be implemented in the short term with little or no cost, or with the expectation that they will save money elsewhere in the system. These recommendations identify effective practices for points of entry and their relationship to other stages in the system, drawn from Ontario and other jurisdictions, as appropriate for the Ontario context.

The second set of recommendations is long-term, intended to be more transformative, consistent with our conclusion (and that of others working in the area) that for the system to be truly effective and respond to the needs of families in distress, the reforms need to be more fundamental. These recommendations may help to continue the conversation and be helpful when the time arises for greater reform; it is also possible that elements of them may be implemented in the short term as the occasion arises.

This Interim Report has been posted on the LCO website<sup>22</sup> and distributed widely for feedback which will be considered in developing the final report. The final report, including recommendations, is subject to approval by the LCO Board of Governors.

*Feedback is requested by April 30, 2012. Details on providing feedback can be found at the end of this document in Part VI.*

## II. A PORTRAIT OF THE ONTARIO FAMILY

### A. The Family as a Reflection of Ontario Society

It is not possible to appreciate the diversity of the Ontario family without understanding the diversity of Ontario's population generally. Among other developments, for example, changes in immigration patterns have led to changes in the ethnic and religious make-up of the province. While women in Canada have increasingly gained more social and economic rights over the past two decades (more on this in the next section), the beliefs of some groups may appear to challenge the commitment to equality between men and women that has been recognized in the Ontario *Human Rights Code*<sup>23</sup> and the *Canadian Charter of Rights and Freedoms*.<sup>24</sup> These trends are not new, but they play a bigger role than in the past.

Ontario has reversed the proportion of its population living in rural and urban areas over the past 150 years. In 1851, 86% of the population lived in rural areas; by 2006, 85% lived in urban centres.<sup>25</sup> Urban areas vary greatly in size. Statistics Canada uses a measure called "city metropolitan areas" (CMA) which encompasses more than a city itself might be.<sup>26</sup> In 2006, Ontario's CMAs populations ranged from 122,000 people in Thunder Bay<sup>27</sup> to over 5.5 million in Toronto.<sup>28</sup> While people *may* feel greater privacy living in a large or even small city, they may also be more isolated. In some ways, they may have easier access to resources because there are more resources available in larger centres; at the same time, in a very large centre, it may take as long by public transportation to reach a resource as it would take someone in a rural area who must travel to a larger centre.

Ontario's population is aging. Family issues affect individuals regardless of age: older partners separate and divorce; there may be domestic violence in the relationship; there may be economic and cultural issues. For older partners there may also be specific kinds of family legal issues, such as abuse of parents by their grown children; or the obligations of children towards their elderly parents.<sup>29</sup> According to *Portrait of Seniors in Canada*, in the approximately 25 years between 1981 and 2005, the proportion of seniors in the population increased from less than 10% to over 13%. *Portrait of Seniors in Canada* predicts that the number of seniors will more than double by 2036 to nearly 10 million people or to nearly a quarter of the population.<sup>30</sup>

One of the most significant demographic developments in Ontario has been the change in immigration patterns and the resulting ethnic and religious makeup of the province, particularly in larger urban centres. Well over 60% of the country's population growth occurs through immigration.<sup>31</sup> Over half of immigrants come to Ontario,<sup>32</sup> although this may be declining.<sup>33</sup>

The Protestant and Catholic religions remain the predominant religions in Ontario, with nearly 35% of people in each category. Just over 3% of the population is Muslim and about 5% are “other Christians” or Christian Orthodox.<sup>34</sup> While popular discourse may focus on differentiating Muslims or Jews, for example, from Christian denominations, there is a significant difference among Christian adherents in their views of family life, as is the case with other religions.

Aboriginal people constitute 2% of Ontario’s population.<sup>35</sup> The 2006 census shows that the Aboriginal population is much younger than that of the non-Aboriginal population, with larger percentages of young children compared to the non-Aboriginal population. Although over half of children 14 and under live with both parents, Aboriginal children in Canada (figures are not available for Ontario alone) are more likely to live in lone-parent households, more likely with the mother, and more likely with a grandparent, but also more likely to live in multiple-family households, than are children in non-Aboriginal households.<sup>36</sup> Sixty percent of Aboriginal people in Canada live off-reserve.<sup>37</sup>

For Aboriginal peoples in Ontario the family also encompasses an extended network of grandparents, aunts, uncles and cousins.<sup>38</sup> Traditionally the family “is the all-encompassing mediator between the individual and the social, economic and political spheres of the larger society”.<sup>39</sup> Disruption of this family structure means that the individual “is set adrift”.<sup>40</sup> This disruption has occurred since colonization and continues today.<sup>41</sup>

Over 20% of Ontario’s residents may be described as “visible minorities”, to use Statistics Canada’s language, comprising over 2.7 million people; over 6% are South Asian, nearly 5% Chinese and nearly 4% are “Black”.<sup>42</sup> Approximately 46% of Toronto’s residents are members of “visible minority” communities.<sup>43</sup>

Although not entirely indicative of the use of language outside the home, data show that nearly 10 million people in Ontario speak English at home, nearly 290,000 speak French and nearly two million people speak a “non-official language” (about 240,000 speak English and a non-official language).<sup>44</sup> It should be noted, however, that in Toronto, for example, almost the entire workforce in Ontario speaks English in the workplace.<sup>45</sup> The differences in these data make it difficult to assess the cross-over from the use of English or French in the workplace and the capacity to use either official language in the family legal system.

These are some of the realities of pluralism or diversity in Ontario that need to be reflected in the family system. We recognize, however, that the system will never have the capacity to

respond to all differences; nevertheless, where differences may play major role in creating or resolving family disputes they need to be taken into account.

## **B. The Evolution of the Family**

What constitutes “the family” can depend on societal context, culture and religion, and on individual living arrangements. In Ontario’s pluralist society, persons may have very different notions of “family”.

The public face of the Ontario family is very different from that of fifty years ago and different from that of even twenty years ago. Jurisprudence has confirmed legal recognition of some of these changes, in particular the same-sex family.<sup>46</sup> Other changes in the configuration of the family have resulted from the increased pluralism of the Ontario population discussed above. For example, in certain communities the extended family has become less frequent, as grown children move across Canada away from their parents, while in some communities of more recent immigrants the extended family may be commonplace. In this section, we provide a brief overview of the diversity in current families in Canada and Ontario.

Family life in Canada and Ontario has changed and traditional role patterns of men and women have shifted. Men are no longer the main income generators.<sup>47</sup> Equal access to education has given women increased access to all segments of the work force and the ability to build a career. They are therefore financially less dependent on their spouse or partner. The increased economic participation of women, among other factors,<sup>48</sup> has resulted in a trend that family units have fewer children and have children at a later age,<sup>49</sup> so that child-raising, a career and, in some cases, the care for elderly relatives have to take place simultaneously.<sup>50</sup> The higher incidence of working mothers and the increased role that modern fathers play in parenting may lead to a gradual re-orientation of custody and access arrangements.<sup>51</sup> The mobility of family members, whether within Ontario, or across Canada, or even internationally, may also raise custody and access challenges. We should remember, however, that these general patterns may differ among particular communities that favour larger families or may expect women to focus on the home and raising of a family.

Despite shifting patterns within families, there remain some differences in the roles of men and women, in particular in families with children. For example, although many mothers work, they work part-time more often than fathers, often to care for the children. Thirty-two per cent of mothers work part-time.<sup>52</sup>



The position of children in families has also changed. Modern family life has made children more independent in some ways, but more dependent on their parents in other ways. Families spend less time together than before because of work pressures.<sup>53</sup> Modern technology has given children increased access to independent networks of friends and family, including non-residential parents after a separation and divorce, and to online services.<sup>54</sup> However, in Canada's city infrastructure children often have to rely on parents and other adults for mobility.<sup>55</sup>

According to Statistics Canada, in 2006 there were upwards of four million families in Ontario in 2006. Most of these families consist of married couples and a majority consists of couples with children.<sup>56</sup> The traditional heterosexual marriage is no longer the only or dominant way persons may form an economic or social unit, however. Common law families make up a significant number of families,<sup>57</sup> with 192,000 families without children and 144,000 families with children.<sup>58</sup> In 2006 there were 17,000 same sex couples (3,700 married couples and over 13,000 common law couples).<sup>59</sup> Additionally, reproductive technologies, adoption and remarriages after a divorce mean that children can have ties with non-biological (social) parents and biological parents or, in some cases, have very little to no contact with biological parents.<sup>60</sup>

Because of separation and divorce there is a significant number of lone-parent families.<sup>61</sup> In 2006 there were over 540,000 lone parent families in Ontario.<sup>62</sup> Most lone parents after a divorce in Canada are women, although 10 to 12% of lone parents are men.<sup>63</sup> There has been an increase in lone father families in Canada.<sup>64</sup>

Some of the changes in family life have affected legal decisions about the family on breakdown. Changes in the law, in the make-up of the family, the increasing equality of women, reproductive technologies and, added to this, the growing pluralism of Ontario society have all had their impact on claims on the family system and its capacity to address family disputes.

The system must recognize that the changes with respect to family life are not the same for all communities in Ontarian society. For example, persons with certain religious convictions, persons in smaller communities, Aboriginal persons,<sup>65</sup> and persons who emigrated from more traditional societies may perceive "the family" in a different way, compared to the "mainstream" or predominant way. Traditional notions about gender roles, extended family ties, divorce or parenting may prevail. However, families from more traditional societies may adapt different attitudes under the influence of a multi-cultural environment, in particular in urban centres.<sup>66</sup> While recognizing the diversity of family life, the legal system has an obligation to observe mainstream expectations – both norms and human rights and constitutional requirements – about matters such as sex equality.

Thus in a complex, diverse and sometimes very painful context the family justice system in Ontario will need to develop its responses to challenges arising from these changes in society and family structure, for example:

- Although economic dependencies between men and women have decreased, there still are income differentials. In certain cultures women may not have had an income generating role or developed the skills to access the labour market. This may impact the calculation of spousal and child support.
- Familial ties and even parental ties can be hard to determine when family life is diverse. Out of the diversity of family life a more pragmatic legal concept of “family” or “family life” has developed in family law in developed countries,<sup>67</sup> based on the factual situation of persons having formed close ties, economically and personally.<sup>68</sup> Where children are involved, this includes the assumed emotional ties between (biological and non-biological) parents and child, or close relatives such as grandparents and a child.<sup>69</sup> In practice this can raise complex issues.<sup>70</sup>
- Families from societies with traditional notions about family property and the position of the child may seek community dispute resolution methods outside the formal system, which could disadvantage women.
- Giving the child a voice in custody and access is compatible with the more independent role many children have in families. However, the protection of a child’s well-being can make it difficult for parents and the system to make a child part of a judicial process in which difficult choices must be made. In more traditional families the child’s voice may not be considered a factor which should be taken into account.
- Domestic violence remains a serious concern, despite many efforts to address it,<sup>71</sup> and must be taken into account in considering the responses of the legal system to the breakdown of families across the income and educational spectrums.<sup>72</sup> It can be the reason for family breakdown, while in some cases the family continues with a constant threat of domestic violence and its impact on the victim, usually women,<sup>73</sup> and children.<sup>74</sup> It can continue after the family separates.<sup>75</sup> For victims it can be extremely painful to talk about their experiences. This can be even more so in cultures with dominant patriarchal structures.

One of the biggest challenges in re-imagining the family legal system is the dissonance between the system and the reality of families in crisis. In practice, families do not only require legal solutions but also a modus for a workable relationship during separation and divorce and post-separation and divorce, especially in cases involving children. We can only summarize the research on family life and divorce and separation in Ontario and Canada more broadly; however, this background is crucial to understanding why our recommendations reflect the need for expertise other than legal expertise in responding to family breakdown.

### **C. The Impact of Family Breakdown**

It is estimated that 40% of all marriages or relationships in Canada end in a break-up.<sup>76</sup> It is hard to say how many family break-ups there are in Ontario, since the breakup of even long-term common law relationships may not be the subject of formal proceedings.<sup>77</sup> In 2006 the number of Ontarians aged 15 years or over who had gone through a formal divorce was 679,900. This is nearly 7% of the population aged 15 and over.<sup>78</sup>

Although divorce no longer carries the stigma in society that it once did and is facilitated by legal procedures, a family breakdown can be very disruptive. Currie writes that in Canada about 33% of persons in a family breakdown said this was severely disruptive for their lives, while 50% said it was somewhat disruptive.<sup>79</sup>

Research shows that divorce generally involves a period of stress, instability, loneliness and hurt feelings and often hostility. This is even more so for families with children. There is an increased risk of mental health and physical problems during a marital conflict. After a divorce and separation this is even more prevalent. Conflicts between parents also have a negative effect on children.<sup>80</sup> A divorce can affect the wider family members, for example grandparents when one of the parents prevents contact.<sup>81</sup>

While the focus tends to be on the negative effects of the separation or divorce, it must be remembered that continuing to maintain the family unit may have worse consequences. For instance, Ambert points out that divorces which end inter-parental conflict may have positive consequences for children.<sup>82</sup> However, divorces in low-conflict situations can have a strong negative effect on children.<sup>83</sup> Some relationships which were non-conflictual during a marriage can result in very acrimonious divorces which can have negative outcomes for children.<sup>84</sup> Research shows, however, that there is less likely to be high conflict on divorce than in the past.<sup>85</sup>

The long term consequences of a divorce for children are hard to predict and depend on the individual situation. For example, a custodial mother's remarriage can have a positive effect for children, because of finances and the well-being of the mother.<sup>86</sup> In general, children benefit when their non-resident father remains involved in their lives as an active parent.<sup>87</sup>

Persons undergoing divorce and separation can face many challenges not only of a legal and financial nature, but also those related to safety, health and general well-being. These challenges can be, and are often, interconnected. They can include other family law problems involving children (such as child apprehension or child abduction), financial problems, consumer debt, employment and social assistance.<sup>88</sup> The seriousness of the related civil justice problems were seen as extremely or very important to solve by 81% per cent of respondents in Currie's study.<sup>89</sup>

Many problems after a family breakdown are related to economic consequences. As Semple points out, a divorce means that the cohabitation's economies of scale are suddenly lost.<sup>90</sup> Since many Canadian families are economically vulnerable because of an increasing high ratio of household debt to income,<sup>91</sup> a family breakdown can have a severe impact. Factors such as the availability of daycare can affect the ability of the custodial parent to work outside the home.<sup>92</sup> While this may, in particular, be significant for women even when the family is intact, it becomes more so for single families which are most often headed by women.

The economic and personal consequences of a family break-up can, in general, be different for men and women. This is related to the differences between men's and women's labour participation and care for family members, including after a separation or divorce. The Vanier Institute reports that of all working persons in Canada, female lone-parents between 25 and 44 years of age work on average the longest hours: nearly 11 hours of paid and unpaid work per day over a 7-day week.<sup>93</sup> A 2011 report of Statistics Canada states that among family types, lone-parent families with children (the vast majority headed by mothers) had the highest debt-to-income ratio.<sup>94</sup> In 2002, 35% of all single-mother families in Canada lived in dire poverty.<sup>95</sup> However, the economic situation of many single parent families may have improved more recently.<sup>96</sup>

The financial situation of lone parents can have a significant impact on children. According to Ambert, many of the consequences of a divorce, in particular for children, are related to poverty rather than to the divorce. Loneliness, bullying, school avoidance and delinquency can be related to a new housing situation due to poverty after the divorce and a number of stressors for parents, which make them less available to children. Especially for young children poverty can have long term effects on cognitive and verbal development.<sup>97</sup>

Family breakdown can exacerbate vulnerability. Persons with a recent immigration background can face immigration-related problems such as a fear of being deported or pressures from the community to stay in the marriage.<sup>98</sup> Persons with a disability can face isolation and difficulties accessing services and communicating.<sup>99</sup> Among lone parent families, mothers belonging to minority groups who are racialized and disadvantaged are particularly vulnerable. They may, for example, not be able to form new or stable unions because of a shortage of available men in their community.<sup>100</sup> While for many lone parents it is increasingly difficult to find adequate housing,<sup>101</sup> some groups such as immigrant women and First Nations persons can have particular problems in this respect.<sup>102</sup>

While the family legal system cannot address all the consequences of separation and divorce, for an effective and responsive family justice system, these multiple consequences must be taken into account. For those responsible for the system to plan ahead, it is important that family life in Ontario and Canada remains documented. Unfortunately, “because of the changing nature of relationships and the complications of definitions”, Statistics Canada will no longer collect and break down numbers on annual marriage and divorce rates.<sup>103</sup> The documentation of changing family structures will thus rely on other disparate sources that do not necessarily provide a comparison over time.<sup>104</sup>

The above challenges require a family justice system that in its decisions and processes:

- Is flexible with respect to the right to family life in its many varieties, but ensures that family issues are dealt with in the context of Canadian law,<sup>105</sup> based on non-discrimination, equality before the law and the child’s best interests;
- Gives victims of domestic violence and child abuse access to safety through mechanisms for early detection and immediate, adequate responses; and
- Takes into account the interconnection between legal and other family problems.

### III. THE FAMILY LAW SYSTEM: AN OVERVIEW WITH A FOCUS ON ENTRY POINTS

#### A. Introduction

Although our project focuses on entry points to the family legal system, it is necessary to understand how these entry points relate to the rest of the system. The first part of the description of the system therefore briefly outlines the whole system, including entry points which are dealt with again in greater detail in the second part.

There are several challenges in describing and assessing Ontario's formal family justice system. There are many actors involved and there is a fragmentation of services. This fragmentation can be a result of the way legal information is organized and the way legal assistance is provided to low income persons. The organization of the courts and the multiple forms of non-judicial dispute resolution are another factor. In Ontario the diversity of community organizations linked to the system is another reason for local differences and sometimes a fragmentation of services. In addition, there are many public and private family counseling services.

Family law in Ontario is an area of specialists. For our purposes, it is sufficient and preferable to describe the system in broad strokes rather than become mired in detail that is only peripherally relevant to the focus of the project. We also highlight the positive aspects of the system and describe the challenges it faces. In the next two chapters we will propose reforms to address these challenges.

Any description of the current system must include a description of the reforms put in place over the past two years, some of them following recommendations of reports and analyses of the system. Family justice has been a main focus of the former Attorney General during this period, the Honourable Chris Bentley. The *Family Law Act*<sup>106</sup> and the *Children's Law Reform Act*<sup>107</sup> were amended, including with respect to restraining orders, more sworn or affirmed information (including about domestic violence, child protection involvement and criminal charges) when determining the best interests of the child, annual financial disclosure obligations for child support, and the division and valuation of pensions following marriage breakdown.<sup>108</sup> While these are not directly related to the focus of this project, they should be mentioned because they affect matters which are relevant to making entry points effective and responsive.

Building on several reports about the family justice system and pilot initiatives for procedural family justice reform in 2010, the Attorney-General of Ontario announced four interconnected pillars of reform:

- Pillar 1: Providing early information for separating spouses and children;
- Pillar 2: Providing opportunities to identify issues and directing parties to appropriate and proportional services;
- Pillar 3: Facilitating greater access to legal information, advice and alternative dispute resolution processes;
- Pillar 4: Developing a streamlined and focused family court process.<sup>109</sup>

With the four pillars as the starting point, the following services were expanded throughout the province in 2011:

- Family Mediation Services, including an on-site and off-site component. Onsite mediation services are available to deal with narrow issues for parties on that day's court list, and are free of charge. For parties with more complex issues or who require more than one session, off-site mediation services are available for a fee based on income and number of dependants.
- A Mandatory Information Program (MIP) that helps families learn about the effects of separation on children and adults and the options available to them to resolve their disputes.
- Information and Referral Coordinators (IRCs) at the Family Law Information Centres (FLICs) who provide information about family mediation, effects of separation and divorce on children, and make referrals to community services.

The implementation of these initiatives will be discussed in the remainder of the discussion in this Part. The first three pillars are related to some of the entry points we have identified in this project and we analyze the implementation of the pillars as they relate to the specific entry points.<sup>110</sup>

## **B. The Current System**

The following description of the family law system roughly follows the “usual” path of someone seeking to have his or her family problem addressed by the legal system: the effort to obtain initial and then more advanced information, the seeking of legal or other expert assistance, attempts to resolve the dispute(s) short of going to court and, in some cases, using the court for

a definitive resolution of the dispute or some portion of it. This way of describing the system is somewhat artificial, since people are likely to seek information throughout, may avoid non-judicial forms of dispute resolution, and may not only go to court but return to court; however, it permits us to identify the issues that need reform by placing them in a complete context.

### **1. Provision of Information and Advice**

Although people may begin by talking to their family and friends about their family problem, eventually they are likely to seek information in order to help them decide whether they want to take their problem further. At some point, those who decide to do so will be looking for information about the system itself. We explain about the range of information sources and kind of information available here. Obtaining information is likely the first “entry point” to the formal system.

Any problems relating to information do not include a shortage. There is a great deal of information available from a variety of sources, some outside the system and some within it. It is provided online, in written form and in person.

Public (legal) information can potentially play an important role in helping people make informed choices. The information needs of people change as they move through the system. Initially requiring basic information that helps them choose among options for resolving their problems, they subsequently need more in-depth information about how to navigate the option they select. At this point, the information will be more complex and can likely be “interpreted” only with the assistance of a trained professional. Public legal information is often available in brochures, and increasingly online.

The first pillar of the Attorney General’s recent reforms recognizes the importance of early information for separating spouses and children. In 2011 the first pillar reforms have expanded Family Law Information Centres to more courts and introduced a Mandatory Information Program before disputants can access the court process. These instruments will be discussed below. There are constant efforts to develop and improve early information, so that any description of all the sources can only refer to the situation at a certain moment. For example, sources of early information recommended by the *Home Court Advantage Initiative* included awareness campaigns, brochures and websites which may be developed in the near future.<sup>111</sup>

Close to their communities, individuals may be able to obtain face to face information from workers who can be described as “transitional workers” or “trusted intermediaries”. They can be based, for example, in community organizations or band offices or shelters. For individuals



who have literacy problems or are not used to dealing with a legal process, these trusted intermediaries often “translate” into everyday language the written and on-line information which is available through public legal information. The intermediaries can also assist individuals in contacting specialist providers of information and advice.

These workers face several challenges, however:

- Access to these entry points may be difficult for individuals as a result of disability, language, culture or distance and the relevant community organizations may need to invest in outreach and accommodations in order to provide the information.
- Community workers are not legal experts.
- Continuity of services is highly important, perhaps particularly for marginalized persons who are most likely to access community level services. For example, if community services are available, but a user does not have access to a lawyer who can respond to special needs, access to justice may be difficult to achieve.<sup>112</sup>

Online information is available from many sources. The information varies from basic information to more detailed information such as “online forms assistants”, which allow users to fill out Ontario Court Forms with an explanation of legal concepts.<sup>113</sup> Although a number of publications on the federal and Ontario government websites were not developed for online users, more recent information has been explicitly designed for interactive use on the internet. In early 2011 the Law Commission of Ontario counted nearly 700 pages of public information in Ontario which were available through more than ten internet sites.<sup>114</sup> Most of the publications can now be accessed through the website of Community Legal Education Ontario (CLEO).<sup>115</sup>

The main Government of Ontario website functions as a first source of online information. It has a “life events” bundle of information about separation and divorce. These bundles of information act as a front door to information within the provincial government about a topic.<sup>116</sup>

The Ministry of the Attorney General’s website functions as a main hub for public legal information on Ontario family law. It consists of two sections on family law. The first part of Justice Ontario contains a list of questions and answers on family law.<sup>117</sup> The second part is entitled “Separation and Divorce” and contains more general information. As mentioned, the Ministry of the Attorney General has also developed the Ontario Forms Assistant which allows users to complete the most frequently used family law forms. Once a user selects a form, the program leads users through a series of plain language questions. The Forms Assistant uses the answers to populate the court form. The forms can be printed and saved.<sup>118</sup>

The Attorney General's website also contains lengthier publications, such as *"What you should know about family law"* which was first published in 1999 and updated since.<sup>119</sup> Other material includes *"Helping Children and Youth Live with Separation and Divorce"*. There are also federal materials, which can be accessed online, such as *"Divorce law - questions and answers"*, first published in 1986 and updated in February 2006.<sup>120</sup> Furthermore the Department of Justice's *Supporting Families Initiative* offers information for parents and children.<sup>121</sup> Canada Benefits has a section on Divorce or Separation with an application kit.<sup>122</sup>

Legal Aid Ontario launched a Family Law Information Program (FLIP) in March 2011. FLIP is available on Legal Aid Ontario's website, and uses both audio and text. The goal of this online program is to help users make more informed decisions about the legal and emotional issues resulting from the breakdown of a relationship.<sup>123</sup> FLIP provides information on legal and practical issues related to separation and divorce, the court process and resolution methods. It also suggests that although using methods of resolution other than courts is desirable, sometimes going to court is the only realistic option.<sup>124</sup> In addition to legal issues, the site also discusses personal and interpersonal issues that adults and children may experience when relationships break down and describes resources and strategies that may provide assistance.<sup>125</sup> The program takes people through the various steps and issues in "bite-size" segments that show diversity in families. At the end of the program, users can print a certificate of completion directly from their computer. The website indicates that clients of Legal Aid Ontario may be required to produce the certificate to show that they have completed the program. The content of the FLIP is very similar to the content of the Ministry of the Attorney General's Mandatory Information program.

Other organizations have developed concise plain language information with public funding. CLEO<sup>126</sup> and Family Law Education for Women (FLEW)<sup>127</sup> post plain language publications on family law, offered in several languages and formats. In addition they have specific information for victims of domestic violence or situations of child abuse. FLEW offers family law information designed for immigrant, refugee and non-status women, Aboriginal women, Francophone women, immigrant women who undertake domestic work and are caregivers, Jewish women, Muslim women, women of Christian faiths, women with disabilities and Deaf women (in audio, ASL, braille and large print).<sup>128</sup>

Basic information provided by community organizations and through written and online information needs to be followed up by more in-depth (summary) advice. Many sources of early information advise people to seek a lawyer's advice.<sup>129</sup> For example, FLEW advises: "When your relationship ends, you should have a lawyer who knows family law to help you. If you do

not get legal advice, you may give up some important rights that you do not know you have.”<sup>130</sup> FLIP also states that “[i]t is important to get legal advice about your separation or divorce”.<sup>131</sup>

In practice many users will receive their main point of entry information and summary advice from legal workers, including private lawyers. Although paralegals in Ontario formally do not offer family legal services, as will be discussed below, in practice individuals may seek a paralegal’s advice, in particular for simpler, uncontested cases.

Independent legal advice may be necessary at different stages of the process, initially as a source of information and subsequently as a source of advice and/or representation, regardless of the form of dispute resolution selected. There is a practical but also a legal difference between general legal information and independent legal advice in a concrete case. A legal adviser can normally not give independent legal advice to both parties in a legal dispute, because of a potential conflict of interest.<sup>132</sup> In some cases this means that, for example, legal workers in legal clinics can only give advice to one person in a family dispute and would have to refer the other person to other providers of legal services, if available. However, we note that the 77 legal clinics funded by LAO,<sup>133</sup> which offer services closer to the communities, do not, in general, offer services in the area of family law, as family law is often too specialized, complex and time-consuming. In practice, legal clinics can play a referral role in the area of family justice.

For those who are able to afford it, retaining a lawyer will be the most effective way to obtain information and advice about complex matters. It is also possible to obtain summary information or legal consultation at an early stage by telephone. For example, the Law Society of Upper Canada offers a lawyer referral service for a 30-minute free consultation, during which parties can explain about their legal issues and hear about their options.<sup>134</sup> There is no financial eligibility criterion for this service.

Legal Aid Ontario offers a telephone-based Client Service Centre, in which eligible clients may speak with a lawyer for up to 20 minutes of summary legal advice and information. In April 2011 the eligibility criteria were based on income and family size, which ranged between an annual gross income of \$18,000 for a single person to \$43,000 for a family of five or more.<sup>135</sup>

The provision of other subsidized legal information, summary advice and legal advice in family cases in Ontario is mostly offered through the court house. We observe that there is an increasing focus on the family court house as the entry point for information and summary advice for users.

At the court house individuals can obtain general point of entry information and non-legal summary advice services through an Information and Referral Coordinator (IRC) at the Family Law Information Centre (FLIC). The IRC's services can be accessed on a voluntary basis and are free of cost. The IRC provides information on alternative dispute resolution options, issues related to separation and divorce and community resources and referrals to court-annexed mediation services and to the free Mandatory Information Program for parents who want to access the court process. The role of IRCs has been strengthened and these services have been expanded to more court locations as part of the recent reforms. Bala points out that that the extended use of IRCs (at the FLICs) can have value for unrepresented individuals, but expresses his concerns about the qualifications and resources of IRC's, and considers it, at this stage, not appropriate to make a meeting with an IRC mandatory.<sup>136</sup>

The Mamo Report extensively described the FLICs over the period 2003-2006. The authors were concerned about a lack of consistency and sometimes a lack of essential facilities in the FLICs. For example, opening hours and physical space varied significantly at the time of their research. Most FLICs did not have a child-friendly area. The staff worked part-time and there was limited cooperation with community organizations. There were not always computer terminals.<sup>137</sup>

The LCO's consultations in 2010 also showed that there were still important differences among FLICs and the participants' experiences were mixed.<sup>138</sup> For example, one FLIC had a social worker on site, had an extensive network with community organizations to which it could refer users, had a quality control mechanism and could assist about 48 users per day. Other FLICs, however, had very limited opening hours and no meaningful legal services connected to them. It was also mentioned that one FLIC focused more on the court process than on collaborative procedures.<sup>139</sup> French language capacity also varied.<sup>140</sup>

Jacobs and Jacobs noted concerns of professionals that the FLICs are intimidating for some users. Professionals also contend that a referral to a FLIC is part of an adversarial approach and others were not convinced about the usefulness of the services provided by a FLIC for the particular needs of a client.<sup>141</sup> People in smaller cities reported unease about the public visibility of going into the courthouse, where FLICs are located.<sup>142</sup> The LCO's respondents noted similar concerns about privacy when they visited the FLICs.<sup>143</sup>

Family court locations that still do not have separate FLICs after their expansion to more sites, do have other sources of information, including publications about separation, divorce and child protection issues (for example, "*What You Should Know About Family Law in Ontario*" in nine languages; the Ministry's Guide to Family Procedures; information about legal services, the

court process and court forms); and at certain times a Legal Aid Ontario Advice Lawyer is available.<sup>144</sup>

As of 2011, if either spouse/parent has started a family court case, both spouses/parents must attend the Mandatory Information Program (MIP) available at family court locations across Ontario as the first step in the case. There are a few exceptions to the mandatory attendance requirement, including when parties are proceeding on consent or when the only claims made are for a divorce, cost, or an order incorporating the terms of an agreement or prior court order.<sup>145</sup> Like Legal Aid's Family Law Information Program, the MIP provides individuals with information about separation/divorce and the legal process, alternatives to litigation, family law issues, the Family Court process and local resources and programs for families facing separation and/or divorce. The information goes beyond "the law" and covers issues such as constructive communication between parents, a parenting plan and overview of resources for creating and implementing a parenting plan. The program is given by a volunteer lawyer and a volunteer social worker. They can give general information, but there is little room for individual advice.

Low income individuals can access legal information and advice services provided by legal aid advice lawyers and duty counsel at the courts. The advice lawyer's and duty counsel's advice can prepare individuals for concrete steps in the court process, as will be discussed later, but in the earlier stages of a dispute the information also allows individuals to make choices about the methods for dispute resolution, including non-judicial dispute resolution.

Thus there is, as shown above, a great deal of information which is available in different formats. It is not entirely clear how effective each of the formats is, however.

The workers who were interviewed for the Mamo Report expressed doubts about the effects of the written information which was available at the courts' FLICs. Although the quality of the materials was not questioned and some publications were popular with users, "[t]he utility and possible effectiveness of pamphlets/brochures compared to the cost of producing such materials should be reviewed to ensure that resources are being used effectively".<sup>146</sup> We agree with the need to review, at regular intervals, the effectiveness of the public written information in light of the various user groups.

The written sources of early information may contain some duplications and some public information may be lengthy or in need of a more modern format. However, publications can have multiple user groups and be effective in several ways. Some materials, for example those developed by CLEO, may not only be used by individuals, but also by community legal workers

or *pro bono* students, in order to assess legal problems and to give general information to their clients. The materials developed by FLEW give specific information for women belonging to various communities and may address the specific information needs of these women. We note, however, that there are not similar materials developed for men.

While the individual sources of written (audio and other format) information may address the needs of specific user groups, when they are offered online they become part of a vast amount of information that can be hard to access without a clear entry point. The LCO's own review of the various websites with family law on-line information revealed that it was often complex and detailed and, in the case of the Ministry of the Attorney General's website, at least, highly reliant on legal language. For example, a user who accessed the section about "family law" on the Ministry of the Attorney General's Justice site would see as the first question "I want a divorce. What do I do?" The answer immediately directs the user to complex information on court procedures which consists of nine guides. In total, there are about 50 pages with complex information.<sup>147</sup>

The challenges in Ontario's provision of public on-line information are not unusual. The 2010 Organization for Economic Cooperation and Development (OECD) report, *The Future of the Family to 2030*, describes the "failure of e-government" for families: "Most e-government websites have a lot of information – the shop window – perhaps even too much information online".<sup>148</sup>

*Listening to Ontarians* found that most respondents were unaware of public online resources.<sup>149</sup> Until March 2011, when Legal Aid Ontario launched FLIP, only very few users accessed the written information provided or funded by the government or LAO. Only one in eight of the persons surveyed had heard of any of the government sites mentioned. During the LCO consultations, it was nevertheless mentioned that, in comparison with other sources of information, provincial and federal government websites were the best known. It was recommended that web pages should not be overburdened and should have clear links corresponding to people's needs,<sup>150</sup> which may be an indication that the information did not meet users' expectations in this respect.

## **2. Access to Legal Services**

### **Availability and Cost**

The costs of legal services are a main factor in determining whether parties access legal assistance and for what purpose. The average legal fee for a contested divorce in Ontario is

about \$12,000 per party.<sup>151</sup> The average legal fee for a case which results in a trial in Ontario is even much higher: over \$45,000 per party.<sup>152</sup> Retaining other private sector professionals, such as mediators or assessors, may add to the cost in Ontario divorce and separation cases.<sup>153</sup>

For disputants for whom legal fees are (very) high, there can be significant pressures that can affect the outcome of a family law process. For example, the relationship between users and their lawyers can be negatively influenced by financial aspects. Users have anxieties about legal fees, while lawyers cannot entirely predict costs.<sup>154</sup> This is an extra complication in a communication process which can already be complex. The LCO's 2010 document on its consultations states, "The cost of legal and other professional services constantly came up during consultations."<sup>155</sup>

The costs of the legal process can be off-set by legal aid, administered by LAO. Section 1 of the *Legal Aid Services Act, 1998* states that the purpose of the Act "is to promote access to justice throughout Ontario for low-income individuals".<sup>156</sup> Among other aspects of providing legal aid, the statute identifies flexibility and innovation as desirable, and that "the foundation" for legal services in criminal and family law is the private bar and "clinics [are] the foundation for the provision of legal aid services in the area of clinic law". For the most part "clinic law" currently does not include family law cases. The Act also refers to "identifying, assessing and recognizing the diverse legal needs of low-income individuals and of disadvantaged communities in Ontario".

Legal aid for representation by a lawyer is available only for persons with very low incomes. A single person with a gross income of over \$12,500 or a lone parent family with two children and a gross income of over \$26,220 are currently unlikely to qualify for a legal aid certificate.<sup>157</sup> This excludes a large proportion of low- and middle income Ontarians from subsidized legal representation by a lawyer. For low-income persons who are financially eligible for full representation, legal aid will cover certain matters, but not others. For example, a certificate can be obtained for family matters such as custody, child access and child support and property division, but not for spousal support.<sup>158</sup>

*Listening to Ontarians* identifies family law as an area of law where access to justice can be difficult to achieve.<sup>159</sup> Trebilcock wrote in 2008 that

several submissions [to his review of Legal Aid] argued that financial eligibility criteria are not reflective of current financial realities and impact particularly heavily on already vulnerable populations. A number also noted the significant lack of access to justice for the working poor and middle class, and the increasing phenomenon of unrepresented litigants. Many

submissions expressed particular concerns over the very restrictive access to legal aid assistance in family law matters.<sup>160</sup>

Family law experts also hold that “the amounts of time allowed for lawyers in legal aid certificates are clearly inadequate.”<sup>161</sup>

Trebilcock further noted that nearly 8% of people qualifying for legal aid did not manage to find a lawyer, while in 50% of the cases there was a significant delay before the legal aid certificate was acknowledged.<sup>162</sup> In part, this is because of a decreasing number of family lawyers working on a legal aid basis.<sup>163</sup> Possible reasons for a decline of the number of family lawyers are the hourly compensation for legal aid (although this has been increased since Trebilcock’s 2008 Legal Aid Review), but also the emotional toll which family cases take on lawyers, frustrations about the process and the competition with other areas of law.

It is, without further research, not clear to what extent the limited legal aid funding and high costs affect different groups of users. It is, however, clear that the high percentage of litigants who are unrepresented are, at least in part, the consequence of high costs of the legal process, which for low and middle-income disputants are not compensated by legal aid for full representation.<sup>164</sup>

The lack of (full) legal representation can in some cases jeopardize the goal of access to justice in several ways:

- Some Ontarians may not access the family justice system at all.<sup>165</sup>
- The equality before the law for disputants and the “symmetry” of the process may be at risk, if one person has access to legal assistance and another has not, or if one person has access to more extensive legal assistance than the other person.<sup>166</sup>
- Court cases in which one or both parties are unrepresented can show significant delays.<sup>167</sup>

The “asymmetry” between a represented and unrepresented litigant can also affect the person who is represented. The extra time which is often needed in such cases is reflected in extra lawyer’s fees for the represented party.<sup>168</sup> Lawyers surveyed by Bala and Birnbaum also noted that their clients believe the court favours the unrepresented party.<sup>169</sup>



The lack of legal representation can come at a human cost and at a fiscal cost:

- Self-representation is stressful and will in particular affect lone-parent families and their children who already face financial and personal stress.
- Self-representing (unrepresented) litigants put pressure on the system and its workers as they need more guidance and are more likely to make procedural errors.<sup>170</sup> Despite some guidance for judges<sup>171</sup>, in practice judges' attitudes towards unrepresented litigants can vary.<sup>172</sup> Participating judges mentioned in the LCO's consultations that they found it sometimes difficult to deal with unrepresented litigants.<sup>173</sup> Mamo, Chiodo and Jaffe describe the frustrations of judges about unrepresented litigants who have not received input from duty counsel.<sup>174</sup>
- Court staff will face extra pressures because they have to deal with unrepresented litigants who can be "impatient".<sup>175</sup>
- Lawyers reported communication pressures because of unreasonable unrepresented litigants with whom they have to deal.<sup>176</sup>
- When users have limited access to lawyers because of costs or availability other workers outside of the court system can face a burden of work. This is the case for legal support workers and transitional support workers who are not lawyers but have some legal knowledge and typically work at legal clinics or shelters for women who have been abused.<sup>177</sup>

Both unrepresented litigants and persons who pay high legal fees may perceive the system as unfair and develop negative attitudes. The 2009 Canadian study, *The Legal Problems of Everyday Life*, says that outcomes that are perceived to be unfair produce negative attitudes.<sup>178</sup> People who have received helpful assistance are more likely to have positive perceptions.<sup>179</sup>

### **Unrepresented Litigants**

The high cost and limited availability of legal services have meant that many litigants represent themselves. The subsidized services that exist to assist them can be described as legal assistance short of full representation, or "self-help".<sup>180</sup>

While low income persons may qualify for subsidized legal services short of full representation, those low and middle income persons who do not meet the (financial) eligibility criteria for these services may have to rely on limited assistance provided by private lawyers, general assistance provided by the courts with respect to court processes and forms, and/or more in-depth legal written and online information provided by the courts and the Ministry of the Attorney General.

In order to develop a consistent self-help strategy, it is important to know the needs of persons for whom self-help could be a solution.

There is some information on the profiles of self-representing or unrepresented litigants, although it does not reveal consistently significant differences between represented and unrepresented litigants, including on the basis of gender.<sup>181</sup> From research and surveys that have been conducted in Ontario and in comparable jurisdictions a general picture emerges of unrepresented litigants who, despite often higher education,<sup>182</sup> have “an overwhelming need for procedural advice”.<sup>183</sup> Such advice and support can include information about court procedures and forms and the rules of evidence.<sup>184</sup> For people in vulnerable positions because of multiple problems, research shows that they often do not know where to go for advice and that they are in need of help at entry points to the civil justice system.<sup>185</sup>

Langan’s 2005 survey among 35 unrepresented users in the Kingston Family Court, showed that users perceived “filling out forms” (60%), “knowing my legal rights” (57%) and “negotiating with/talking to lawyers” (37%) as raising the most difficulty.<sup>186</sup> Sixty-five per cent thought that self-representation increased the amount of time it took to resolve the matter. In 57% of the cases self-represented parties were not able to settle.<sup>187</sup> We do not know if parties represented by a lawyer would be more inclined to settle, although there are indications that this may be the case.<sup>188</sup>

The 2008 *Study on the Experiences of Abused Women*, commissioned by Luke’s Place, showed that 48% of the women sampled found that there were not enough services and resources in the family justice system, although the survey showed they had accessed many legal services and were very satisfied with these.<sup>189</sup> The women had difficulties with paperwork, understanding the procedure, court/staff responses, knowing what evidence to submit and how to act in court, and dealing with their ex-partner and/or his lawyer.<sup>190</sup>

A 2011 survey among 325 family lawyers, conducted by Bala and Birnbaum, found that, according to lawyers who responded, unrepresented litigants routinely turn to the lawyer representing the other disputant for information and advice. Unrepresented litigants were also said to “have no clue what evidence will help them”. The lawyers indicated that reaching an out-of-court settlement is more difficult when one of the disputants in a family dispute is unrepresented. This is, according to lawyers, because unrepresented parties tend to have unrealistic expectations.<sup>191</sup> Bala and Birnbaum intend to conduct a survey among unrepresented litigants themselves.<sup>192</sup>

These reports all show that, despite very different situations for users, across the system there are significant concerns about access to justice for unrepresented litigants.<sup>193</sup>

### **3. Legal Assistance, Short of Full Representation by a Lawyer**

#### **Unbundled Legal Services (“Limited Scope Retainer”)**

One response to the cost of legal services has been to “unbundle” a lawyer’s services. With unbundled legal services (or “limited scope retainers”), litigants who cannot afford full representation would be able to obtain assistance from a private lawyer on a specific aspect of his or her case and pay only for that limited help. For example, a lawyer may be hired for the limited purpose of giving initial legal advice or drafting an agreement or assisting with the preparation of materials or appearing in court, while the client fills in forms or attends mediation without legal assistance.

There is no question that unbundled services will be provided to clients at an increasing rate and should be considered a form of legal representation. There are some caveats. The Supreme Court of Canada case *R. v. Neil*<sup>194</sup> suggests that “once a lawyer assumes any role in representing a client, she has carriage of all aspects of the client’s case”<sup>195</sup> and until recently, the Law Society of Upper Canada’s Rules of Professional Conduct<sup>196</sup> provided the same. Nevertheless, unbundled legal services have become more common, and the Law Society has amended the Rules of Professional Conduct to address the concerns raised by unbundled services, including competence, quality and communication.<sup>197</sup> Convocation also amended the Rules with respect to limited scope retainers regarding paralegals<sup>198</sup>; however, paralegals are currently not allowed to provide family law services.<sup>199</sup>

One concern about the unbundling of legal services is that individuals may not be able to make sound decisions about which services to obtain on a piecemeal basis.<sup>200</sup> Other concerns are that limitation periods will be missed and critical litigation elements will be overlooked by the lawyer and the client.<sup>201</sup> Unbundling is, therefore, most likely to benefit persons in less complex or lower conflict cases, and persons with the legal literacy and the confidence to manage their file. For example, one family lawyer mentioned that clients need background information so that the advice is “contextualized”.<sup>202</sup>

We note that unbundling can take different forms: a client may seek out more than one lawyer for different aspects of the case or a client would not have access to the lawyer throughout the case, but might nevertheless return to the same lawyer when needing assistance. Where continuity of a lawyer’s services is possible, this alleviates some of the problems associated with

unbundling. Where this is not possible, unbundling could mean that disputants have to tell their story over and over to various service providers. Furthermore, different lawyers might have different views on how to handle various aspects of the case. A divided responsibility for parts of the file would thus reinforce the sense that no one person really has the whole picture.

LAWPRO, Ontario's legal profession insurer has recognized that unbundling occurs and will continue to occur, but expresses concern that it has led to instances of malpractice: "the root causes of the most common malpractice errors that LAWPRO sees are at least equally, if not more likely, to occur during the provision of unbundled legal services."<sup>203</sup> LAWPRO explains,

*One of LAWPRO's biggest concerns is that lawyers who limit the scope of their representation may nonetheless be held accountable for failing to warn the client of material legal issues or claims, even though they were not part of the limited scope representation agreement. Courts in the U.S. have held lawyers liable for malpractice in this circumstance.<sup>204</sup> (emphasis in original)*

### **Paralegals**

In certain areas of law other than family law, paralegals may be an effective and less costly alternative to a lawyer. Paralegals and other non-lawyers offering legal services are not allowed to represent parties in family matters, however. In 2007, the *Law Society Act* made the Law Society of Upper Canada the regulator of paralegals in Ontario.<sup>205</sup> At that time, paralegals were prevented from acting in certain areas of law in which they had acted before they were regulated. A Law Society report in 2000 explained that family law is too "complex" and that there is a high level of risk to family disputants.<sup>206</sup> A subsequent report suggested that paralegals could engage in some family law issues and that instead of accepting that family law was "complex", efforts should be made to make it less complex.<sup>207</sup> The by-laws enacted by the Law Society specify the scope of paralegal activities and currently exclude family law matters.<sup>208</sup>

### **Legal Aid Services**

Basic legal information and summary advice to low income persons is provided by Legal Aid Ontario's advice lawyers who are based at the Family Law Information Centers at the family courts. Duty counsel can also provide summary advice. Court locations where separate Family Law Service Centres or Duty Counsel Offices (DCOs)<sup>209</sup> are established, can offer advice and assistance through staff lawyers and, where demand warrants this, administrative and paralegal support.<sup>210</sup>

Eligibility criteria for advice lawyers and duty counsels range between an annual gross income of \$18,000 for a single person to \$43,000 for a family of five or more, the same criteria as for Legal Aid's Client Service Centre's telephone advice.<sup>211</sup>

Duty counsel provided through Legal Aid Ontario can provide (limited) advice with respect to a disputant's legal rights and obligations; prepare or review consents and minutes of settlement; review court documents and assist in preparing court documents such as motions, affidavits and financial statements; make referrals to other sources of assistance, such as on-site or off-site mediation, Legal Aid or a privately retained counsel.<sup>212</sup> Duty counsel can further help negotiate and settle and can "provide assistance in the courtroom with child protection hearings, garnishment and support hearings, requesting adjournments, arguing motions and hearings for issues such as custody, access, or support where the issues are not complicated".<sup>213</sup> Duty counsel cannot, however, provide representation in trials.

Duty counsel services in relation to access, custody and support are limited to services which are likely to take less than 20 minutes to complete:

- Representation and advocacy in negotiations to determine if a consent resolution is possible;
- Preparation and/or review of minutes of settlement with the client, along with the presentation of the minutes to the court;
- Representation on a motion, a case conference or settlement conference<sup>214</sup>

Because of these limitations "[i]n complex and hotly disputed matters it should be clear in the client's mind that duty counsel or the advice lawyer cannot replace the client's own counsel."<sup>215</sup>

It should be noted that Legal Aid, albeit with limited funding, has made efforts to invest in the provision of legal services in the area of family law. This is done under the third pillar of the 2010-2011 family law reforms, "facilitating greater access to legal information, advice and alternative dispute resolution processes". The efforts include increased access to duty counsel in the Ontario Courts of Justice and the Superior Courts of Justice. There are six new Family Law Service Centers (FLSCs) in Toronto, North York, Brampton, Newmarket, Chatham and Sarnia. The FLSCs are a "one stop shop", which help with documents, referrals to advice counsel, full representation, referral to a private lawyer who does legal aid work, mediation and settlement conferences and referrals to social service agencies. Mediation is available at several locations, and is available if at least one of the disputants is eligible for legal aid. Furthermore, there are pilots in Milton and Brampton involving a triage system to match eligible clients' needs.<sup>216</sup>

The FLSCs are located at the courts as are the FLICs. The FLSC offers services for persons who are financially eligible for Legal Aid Ontario's services, while the FLICs offer services for all users. In practice the FLICs will be the point of entry for Legal Aid services, and will refer clients to the FLSC.

In some locations in Ontario there are multi-disciplinary "one stop shop" services which consist of teams of workers who each bring their own expertise in family matters. Users may access these services directly or they may be referred to these (specialized) services by other entry points.<sup>217</sup> Where multi-disciplinary services exist, this greatly facilitates the referrals of other entry points. The services can combine the various entry points of the wider family justice system, for example through medical and community family services. The services may also include legal services or have close connections with family legal service providers. At the entry point of these multi-disciplinary centres a family situation will be assessed and users will be triaged to the services within the "one stop shop" or directed to services which are not available here.

#### **4. Multi-disciplinary Centres**

Multi-disciplinary services often assist persons with serious multiple problems, including domestic violence, substance abuse and mental health problems. As mentioned above, family breakdown is a main trigger for many other problems.<sup>218</sup> In addition, there are emotional problems which may need extra services,<sup>219</sup> often simultaneous to the formal dispute resolution process. Some commentators and workers consider that holistic and integrated approaches can solve problems for families with multiple challenges in a better way and can prevent problems from escalating. Currie recommends assistance as early as possible for family problems and a holistic approach to address multiple legal aid and support needs.<sup>220</sup> During the LCO's consultations, participants commented that holistic service models were more attractive than single focus services. One advantage was that a one-stop-shop approach was suggested in order to avoid victims of domestic violence having to tell their stories more than once.<sup>221</sup>

Jacobs and Jacobs describe some local and regional practices of multi-disciplinary services in Ontario. The services can focus on different aspects of people's problems: a domestic violence focus,<sup>222</sup> a mental health focus,<sup>223</sup> a health focus<sup>224</sup> and a family focus.<sup>225</sup> Multi-disciplinary approaches are most common for victims of domestic violence, such as the Family Violence Project of Waterloo Region,<sup>226</sup> the Durham Region's Intimate-Relationship Violence Empowerment Network (DRIVEN)<sup>227</sup> and the Barbra Schlifer Commemorative Clinic.<sup>228</sup> Recently, a multi-disciplinary Family Justice Centre opened in the Peel Region.<sup>229</sup> The organizations have

different approaches, but share a more multi-disciplinary approach and cooperation with other organizations, including community organizations.

Apart from being a “one stop shop”, reducing the number of referrals, multi-disciplinary services can be a liaison in contact with other organizations and the formal family justice system, and a (regional) centre of expertise, public education and awareness. For example, the Barbra Schlifer Commemorative Clinic is funded for specialized legal services, offers counseling services in several languages, interpreter services for non-English speaking immigrant and refugee women, and is a liaison with shelters, community centres, health services, legal services and housing services. The Clinic offers legal services in family, immigration and criminal law and offers public education and professional development workshops.<sup>230</sup>

The “one stop shop” can offer various degrees of legal services. Jacobs and Jacobs noted that the integration of (low-level) legal services in the multi-disciplinary centres for families in Ontario varied. For example, the Hincks-Dellcrest Centre, which assists 8,000 children and their families on mental health issues, mostly refers to community legal clinics. This centre indicated that legal services should not be integrated in their services, because of the adversarial nature of the legal process.<sup>231</sup> Although the legal services in the other centres in the study by Jacobs and Jacobs were limited, it was clear that the legal services were in high demand.

There are some challenges with respect to multi-disciplinary service delivery teams. Jacobs and Jacobs describe such teams as consisting of different professionals with distinct skill sets which provide services holistically, and in one physical location, whilst respecting professional boundaries and roles.<sup>232</sup> The teams can consist of physicians, nurses, teachers, social workers, lawyers, early childhood educators and family mediators who work collaboratively in teams focus on multidimensional needs.<sup>233</sup>

A very practical challenge of a multi-disciplinary team is related to continuity of funding, as services can be funded under different programs and by different levels of government or different organizations.<sup>234</sup> Other challenges can be related to professional attitudes. There are for example differences in “legal cultures versus caring professions”.<sup>235</sup> Jacobs and Jacobs mention the differing perspectives and priorities of professionals in general<sup>236</sup> and stereotyping among professionals.<sup>237</sup>

Holistic service models bring together professions with different professional rules of conduct and codes of ethics.<sup>238</sup> Within the limits of the rules pertaining to the profession, workers need to agree on methods and exchange of information. In some cases this can be done through consent forms. Jacobs and Jacobs point out that there are few rules about working in a multi-

disciplinary team providing family services.<sup>239</sup> The Law Society of Upper Canada, while acknowledging the potential value of multi-disciplinary clinics that provide legal, social and health services under one roof,<sup>240</sup> has required that “[a] lawyer in a multi-discipline practice shall ensure that non-licensure partners and associates comply with these Rules [the Rules of Professional Conduct] and all ethical principles that govern a lawyer in the discharge of his or her professional obligations”.<sup>241</sup> With regard to confidentiality, privacy and the duty to report there is “a complex web of obligations”.<sup>242</sup> We add that legal services in multi-disciplinary teams must avoid a conflict of interest in family disputes and that this can mean that only one person can receive independent legal advice or legal representation, while the other disputant may have to be referred to other legal service providers.<sup>243</sup>

There are also challenges with respect to the continuity of services, privacy and anonymity of community based solutions. For example, parents, youths and children who were involved in the establishment of the Dutch multi-disciplinary municipal entry points of family services, the “Centres for Youth and Family”, indicated in one location that they wanted a low threshold organization, access to one trusted person and an office which could also answer small questions. In another location youths between 14 and 17 indicated that they wanted anonymity when entering the building, no waiting rooms (so that they would not be seen by others) and strict confidentiality of the information they gave.<sup>244</sup>

### ***5. How Levels of Conflict, Domestic Violence and “Complexity” Affect Moving Through the System***

While early information, financial factors and local availability of services can play an important role in how people enter the family justice system and the choices they can make, a person’s pathway in the family justice system is often influenced by the level of conflict, risks of domestic violence and the complexity of the issue. Here the “choice” of the individual with respect to a dispute resolution method is met with the system’s limited availability of resources and the need to give access to “appropriate” and “proportional” services in order to achieve access to justice for all users. It is important that entry points can provide opportunities to identify issues and direct parties to appropriate and proportional services, as is the objective of the second pillar of the 2010-2011 family justice reforms.

#### **Triage and Referrals**

Triage, the medical term used to describe the process of assessing patients for the severity of their injuries or illnesses and the availability of treatment and other resources and the prioritizing of patients on the basis of the two, has migrated to the legal context. In the legal



context, it means assessing the needs of different families and prioritizing their access to the legal system or determining the approaches that would best respond to their needs. For example, high conflict cases – defined as couples who are unable to reach agreement or where there is domestic violence – will be given priority. Assessments and triage can occur at very early stages of the process and can occur throughout the process to ensure that disputants who have the greatest need to access resources or a particular approach to resolving their problems are able to do so. Within the court system itself, triage may be referred to as “case management”.

A main focus of the 2010-2011 family justice reforms is to direct users in a lower conflict to non-judicial dispute resolution. This dispute resolution is considered less adversarial, more affordable and speedier.<sup>245</sup> A result of this focus would be that specialist resources, mostly at the courts, are freed for high conflict families and other complex cases.

Other than case management at the courts, which we describe later, the Ontario family justice system currently does not contain a clear triage function which directs users to the most appropriate method of resolving their disputes, whether the courts or otherwise, or to multi-disciplinary services that might help resolve non-legal problems. There are, however, some triage functions:

- In LAO’s, “a legal aid triage” function is performed by staff lawyers. This function may be further developed.
- The strengthened advice function of the IRC at the FLIC can be seen as a form of voluntary triage.

In the absence of a clear triage function before users access the court process, the Ontario family justice system leaves disputants a choice with respect to the general method to resolve their dispute. However, by not facilitating and subsidizing certain approaches which require a more extensive involvement of professionals such as mediators, mental health experts and (legal aid) lawyers the choices of many low and middle income users are limited. Within the formal family justice system the most affordable pathways for many users are eight hours of subsidized mediation and the court process with self-representation.<sup>246</sup> For many low and middle income persons in higher conflict the latter may be the only option within the formal system.

In practice, workers in the system must constantly assess the level of conflict and, based on their experience and expertise, decide between de-escalating conflict and promoting co-operation or using more coercive measures. For example, experienced family lawyers who

participated in the Law Commission of Ontario's consultations indicated that they performed a "triage" with respect to the level of conflict to respond to cases which could be particularly demanding or needed urgent action.<sup>247</sup>

We note that private lawyers can play an important advisory role for their clients. Those who contact lawyers are generally satisfied by the information and advice given by lawyers.<sup>248</sup> Workers in the family justice system, however, fear that lawyers as a point of entry may direct users to a more legal and adversarial approach. They may thus focus on legal solutions and be less inclined to refer to mediation<sup>249</sup> or other family services.<sup>250</sup> This will of course depend on the lawyer<sup>251</sup> and also on the effectiveness of the information and general advice from organizations providing information and advice at earlier stages of the process. When cases are highly disputed, it is likely that lawyers will rely on the court process rather than non-judicial dispute resolution<sup>252</sup>

At some point, whether with adequate information or not, an individual in a high conflict situation, a victim of domestic violence or an individual with problems of a more general legal character may require more specific assistance from experts outside the family law system. There may, however, be insufficient interaction between lawyers and other professionals who may be able to address or at least appreciate the role of non-legal problems facing family disputants. During the LCO's consultations, one organization commented that "legal professionals do not perceive information dissemination and referrals as part of their job".<sup>253</sup> Experiences in the UK confirm that lawyers as a point of entry do not necessarily direct parties to wider support services, and "few referrals were made to services other than mediation or services offering help relating to domestic violence".<sup>254</sup>

In the current family justice system there are some specific functions and instruments for referrals to wider family services. Information and Referral Coordinators at the Family Law Information Centres have a specific mandate to refer individuals to community services. Experienced staff lawyers at LAO's new FLSCs are also expected to refer individuals to social services. While these referrals will often take place at entry points and in the early stages of a family dispute, an individual's need to access social services or counseling may also be established at a later stage. For example, in the court process judges can order an individual to seek counseling.

While the formal family justice system does have mechanisms for referrals to legal and non-legal family services, the continuity of services nevertheless often suffers from "silos" and the fragmentation of services:

- Because of the division of subsidized family legal services at the court house and other legal services provided by legal clinics and *pro bono* services, individuals may have to access various offices for legal advice.<sup>255</sup>
- Wider family services in Ontario are often fragmented and can be hard to access.<sup>256</sup>
- People with mental health issues or addiction problems often have to deal with a myriad of services.<sup>257</sup>

This can lead to numerous referrals to specialist institutions or to a silo approach, which can leave many problems unresolved.<sup>258</sup>

### **Persons in lower conflict**

Although there are few data available, it is likely that many separating couples try to seek an agreement without using a third party such as a mediator or a judge to resolve issues. Research in the UK, for example, shows that 55% of parents reached a parenting agreement out of court. Only around one in ten children had a contact arrangement ordered by the courts. However, about 30% of couples did not seek an agreement or resolution at all, including parents who walked away.<sup>259</sup> One study indicated that the out of court settlements were largely (between 75% and 85%) arranged informally. Only for about one in fifteen children agreements were negotiated by mediators or lawyers.<sup>260</sup> We do not know if these figures would apply in Ontario. One 2007 study stated that 60% of child support payments in Canada were based on an agreement.<sup>261</sup> It is not clear how these agreements were concluded.

### **High Conflict Cases**

It is likely that many persons in a higher conflict or in situations where legal aspects are disputed, seek a lawyer's advice. While lawyers are probably the main brokers and advisors for negotiated agreements between individuals, it is less clear how lawyers advise their clients who cannot immediately agree on matters.

Although a relatively small group, high conflict families can "take up a disproportionate amount of professional and court time".<sup>262</sup> It is not always clear how the term "high conflict" is being used. Bala and Birnbaum point out that high conflict is an umbrella term, which encompasses situations in which there are:

- high rates of litigation and re-litigation;
- high degrees of anger and distrust, and difficulties with communicating about the children;

- serious domestic violence issues; and/or
- an alienation of the child as a result of the conduct or attitude of one parent.<sup>263</sup>

There is no clear-cut response for high conflict cases. Bala and Birnbaum conclude from social science literature that high conflict needs and responses need to be more clearly differentiated. “Conflict that is driven by a genuine desire by both parents to continue a significant and regular parent-child relationship post separation, versus conflict that is characterized by physical and other controlling strategies, can lead to very different custody and access interventions and parenting recommendations/decisions.”<sup>264</sup>

In high conflict cases it is often one or both of the parents who behave in an unreasonable and antagonistic way. Abusive behavior and personality disorders can play a role.<sup>265</sup> Some commentators believe that clients generally listen to lawyers and that lawyers can play an important educative role and curtail harmful parental conduct.<sup>266</sup> In more serious situations early cooperation between lawyers and mental health professionals may sometimes avoid judicial intervention completely, to every one’s benefit.<sup>267</sup> It is likely that some lawyers play an educative role in a case and try to de-escalate conflict and manage their client’s expectations. This is, however, complex in every day practice.<sup>268</sup> A UK study mentions that solicitors appear to accord little importance to discussing issues with their clients such as counseling, health/mental health services and supporting children.<sup>269</sup>

We note that not all situations in which there is a conflict or legal dispute, is there a high conflict as described by Bala and Birnbaum. An important question is if, and to what extent, cases of “higher conflict” need the intervention of judges and other professionals in a court process, and what can be done, either in or outside the court process, to prevent these disputes from becoming very high conflicts.

As explained above, family law disputants will normally receive information on non-judicial forms of dispute resolution, often from various sources. These will explain about the disadvantages of the court system for those who can be expected to settle out of court.<sup>270</sup> For example, according to Legal Aid Ontario’s Family Law Information Program the court process is “time-consuming, expensive, stressful and emotionally draining” and parties have “a limited control over the outcome”.<sup>271</sup> However, public sources will also point out that non-judicial dispute resolution is not the most suitable method in situations of high conflict, domestic violence and in situations in which one partner is more dominant.<sup>272</sup> This does not mean that all private sources convey the same message. One Ontario website said that research shows that victims of spousal violence felt better able to stand up for themselves in mediation.<sup>273</sup>

With or without a lawyer's advice, disputants who cannot agree on matters can decide to seek non-judicial dispute resolution or to access the court system. Empirical research on disputants' reasons for choosing a particular form of dispute resolution is lacking, particularly for disputants selecting a method other than the court process (that is, *selecting voluntarily* court-annexed or off-site mediation or methods outside the court system entirely, including negotiation and "collaborative law", for example). Choices may be influenced by (expected) lower costs compared to the court system. Public information sources, whether on-line, written or disseminated in other ways, may also influence choices. Information and Referral Coordinators at the FLICs, for example, have a mandate to refer parties to dispute resolution services available in their community, including off-site mediation. The Mamo Report, which described the Family Courts before the extension of the FLICS to more court houses, showed, however, that most persons in the sample had accessed the subsidized mediation connected to the family courts without being referred to this by court staff or judges<sup>274</sup> or by lawyers (only 20% to 40% of mediated cases followed a lawyer referral).<sup>275</sup> The majority of these mediated cases concerned access, custody and child support.

Many high conflict situations will result in a court process, although not necessarily in a trial. Because it is not entirely clear what defines a high conflict case, it is difficult to say how many of these cases are in the court system. Bala notes that a minority of all cases (between 2% to 5%) are so "high conflict" that they result in full trials.<sup>276</sup> However, the number of cases which can *become* high conflict is probably higher. For example, The Mamo Report stated that domestic violence was reported in 14% of cases before the family courts.<sup>277</sup> The percentage of people who are estimated to be victims of partner violence after a separation and divorce is 17%.<sup>278</sup> Although a high conflict situation and a situation of domestic violence are not necessarily the same, the high number of cases with allegations of violence indicates that in a significant number there are personal safety risks and the divorce and separation process can be very acrimonious.

As in other jurisdictions, the Ontario family justice system faces challenges when dealing with high conflict cases. At the court level the use of more coercive court orders and directing users to (subsidized) non-judicial methods (such as counseling) may require significant "case management" resources, additional family services and expertise. The amended family law rules make it clear that a dispute can go straight to a trial after one conference.<sup>279</sup> This may give judges the opportunity to refer high conflict families who are not likely to settle to a trial.

The court process itself can become a platform for continued conflict and may be manipulated by litigants.<sup>280</sup> During the Law Commission of Ontario's consultations it was noted that the legal process can "reinforce legal bullying by providing litigants with tools to perpetuate their

behaviour”.<sup>281</sup> Some participants found that judges did not always respond adequately to legal bullies. Judges mentioned several measures they could use, such as imposing costs, compelling compliance with orders through contempt orders or temporary orders, and issuing orders that limit further motions/conferences, shutting down vexatious litigants, enforcing time limits, and fixing trial dates that cannot be adjourned. However, one judge also mentioned the dilemma that imposing costs and striking pleadings could mean that a decision is not on the merits and the outcome possibly not in the best interests of the child or a party.<sup>282</sup>

For high conflict families in Ontario there are specific resources, such as the Office of the Children’s Lawyer and the Supervised Access programs. In some cases higher conflict families may also be successfully directed to specific multi-disciplinary out of court solutions.<sup>283</sup>

Particularly in high conflict cases legal representation by an experienced family lawyer can provide the “degree of objectivity required by advocacy in court”<sup>284</sup> and alleviate the burden on the system caused by unrepresented litigants in a very emotional context.<sup>285</sup> As noted above, however, high legal fees can be an obstacle for representation and unrepresented litigation may complicate the case management and resolution of high conflict situations. For low and middle income parents in children’s cases there are further constraints because of the costs of parenting capacity assessors and parenting coordination.<sup>286</sup>

## **Domestic Violence**

High conflict cases may be characterized by the presence of domestic violence, although this is not always the case. There are significant resources for victims of domestic violence in the Ontario family justice system. These have been strengthened by a new Court Support Workers Program in 2011.<sup>287</sup> The situation of victims of domestic violence, who do not self-identify as victims of domestic violence, remains a particular concern, however. Victims may not report domestic violence out of shame, fear or because they do not recognize that they have been subjected to domestic violence. The system has to reach out to persons, give sufficient access to resources, and have screening-mechanisms and trained staff who can recognize signs of domestic violence.

Victims and their children, if any, may need shelter services and will in many cases need advice on safety plans. In Ontario there are many shelter organizations and community organizations that offer services to victims of domestic violence.<sup>288</sup> Although services are available for men and women, there are specific services for women and a specific Men’s Project.<sup>289</sup> Despite the existence of shelter organizations it can sometimes be hard to accommodate the needs of

persons who face multiple issues: for example, women, experiencing abuse are at risk if they are isolated from support systems and services because of language and cultural barriers.<sup>290</sup>

When victims of domestic violence access the formal family justice system, it is usually through the courts. In many cases this is a criminal court. In family cases some persons may choose a dispute resolution method other than through the court system. For some users such methods may give a sustainable outcome. In general, however, more cooperative methods for dispute resolution are less suitable and the court process will be chosen by most victims. The Mamo Report showed that

Overall, references to domestic violence were recorded and documented in 14% of all files reviewed (63 cases). In 11% of these 63 cases, a request for a restraining order was made. The majority of the files with references to domestic violence were fast track files (70%). In 98% of the files related to domestic violence and restraining orders, females were the applicants with a median income of approximately \$21,000 (range \$0–62,000). Moreover, children were involved in 84% of these cases.<sup>291</sup>

This information shows that in family law proceedings involving domestic violence, women are the main group of applicants.<sup>292</sup> The use of the courts' fast track processes shows that domestic violence is a priority.

Legal Aid Ontario has also made domestic violence a priority. For example, the LAO website directs users to the Assaulted Women's Help-line, to LAO's toll-free number and to the Family Law Service Centers at six locations.<sup>293</sup> According to its website

Legal Aid Ontario services extend to all victims of domestic violence, regardless of immigration status in Canada. Free telephone interpretation services for non-English or non-French speaking applicants are also available.<sup>294</sup>

Legal Aid Ontario's coverage extends to all contested issues and changes (variations) to existing family court orders. However, Legal Aid Ontario's financial eligibility criteria continue to apply. This means that, depending on income situations, low and middle income persons who are victims of domestic violence or accused of domestic violence, may have to deal with an "asymmetrical" process in which disputants in a family dispute have access to different forms of legal representation or legal assistance short of full representation. In some cases both disputants may be unrepresented.

Most recently, in the fall of 2011, the Ministry of the Attorney General has started a Family Court Support Worker Program,<sup>295</sup> to train community organization staff to provide support

and assistance to victims of domestic violence who are going through the family court system.<sup>296</sup> The Program will operate in all judicial districts in Ontario. The Program aims to assist victims during the court process through the following services:

- Provide victims with information about the family court process;
- Document the history of abuse for the court;
- Refer victims to specialized services and supports in the community;
- Help with safety planning related to court appearances; and
- Accompany victims to court proceedings, where appropriate.<sup>297</sup>

Despite the new measures to support victims of domestic violence, the family law process can be difficult for victims of domestic violence, in particular those who cannot afford full representation and/or victims who deal with an unrepresented ex-partner or ex-spouse.

The combination of criminal procedures and family law procedures can make the process even more complex. The pilot Integrated Domestic Violence Court (IDV Court) of the Ontario Court of Justice in Toronto aims at aligning criminal and family law processes, bail conditions and access and custody issues.<sup>298</sup> It opened in June 2011 and had its first sessions in July 2011.<sup>299</sup> Disputants can fill out a consent form to bring a case before the Court. One judge presides and deals with custody, access, child and spousal support and restraining orders. In criminal cases the court will hear bail variation applications and can conduct pre-trial meetings and guilty pleas.<sup>300</sup> In family cases, the IDV Court will conduct conferences, make temporary orders where appropriate, and make final orders on consent of the parties. The Ontario Court of Justice lists a number of advantages, including the consistency between family and criminal court because one judge will hear the issues, and a reduction of delays in hearing the family and criminal matters. In addition, the IDV Court has a community resource coordinator connected with the Court to refer litigants to community support and services.<sup>301</sup>

## **6. *Forms of Dispute Resolution***

Judicial dispute resolution (that is, through the courts) will be considered in the next section. Here we briefly set out the availability of other forms of dispute resolution, particularly mediation outside the court system.



## **Non-Judicial Forms of Dispute Resolution**

Dispute resolution methods other than through the court system can take many forms from informal dispute resolution, perhaps by religious organizations,<sup>302</sup> to sophisticated methods involving experts, such as collaborative law, parenting coordination, arbitration and med/arb (mediation and arbitration).

Some family law disputants will choose negotiation or mediation rather than going to court, or as a precursor to going to court, or their own community's method of resolving disputes. These methods may be outside the formal system (and the results will be enforceable only through any agreements reached by the parties in the same way as enforcement of contracts). Disputants may also choose to resolve their dispute through formal arbitration under the *Arbitration Act, 1991*<sup>303</sup> and the *Family Law Act, 2006*.<sup>304</sup> Notably, an agreement or award in an arbitration based on specific religious practices (rather than the law of Ontario) is not enforceable.<sup>305</sup>

The costs and quality of non-judicial dispute resolution can vary and there is little research or information on either. In some cases costs can be significant, especially when several experts and lawyers are involved. Mediation which aims to have a "transformative effect" to help establish a constructive parenting arrangement can be relatively resource intensive.<sup>306</sup> This means that mediation or other forms of non-judicial dispute resolution are not necessarily a significantly cheaper alternative to the courts. This can be a disappointment for users.<sup>307</sup>

As previously mentioned, in Ontario there is free and low-cost mediation connected to the courts, expanded to all courts by summer 2011. This subsidized mediation can also be accessed before any court file begins. At the family courts on-site mediation for less complex cases is free. For off-site mediation, which occurs in the mediator's office, there are eight hours of subsidized mediation, including intake. In practice, there may be some flexibility, as long as sufficient progress is made. A fee scale applies to the off-site mediation service.<sup>308</sup> This means that parties pay for the subsidized mediation according to income and number of dependants. The client's contribution begins at \$5.00 per hour for persons with low incomes.<sup>309</sup>

The providers of subsidized mediation services connected to the courts have to comply with the professional standards for family mediation.<sup>310</sup> In Ontario there are two organizations which provide standards for mediation: the Ontario Association for Family Mediation (OAFM) and the ADR Institute of Ontario.<sup>311</sup> In addition, there is Family Mediation Canada.<sup>312</sup> Despite the professional standards required, there are concerns that the funding for subsidized court connected mediation is not sufficient to attract the most qualified mediator. The Mamo Report

found that in some cases judges did not have faith in the mediator and did not refer parties to mediation.<sup>313</sup> The LCO noted that although consultation participants mentioned that there are many competent mediators in Ontario, the expertise and qualifications of mediators were sometimes questioned. Participants thought that other regulated professions had stricter codes of conduct.<sup>314</sup>

In the broader context of North America, Salem notes concerns that court-connected mediators are often struggling with case-loads,<sup>315</sup> that cases referred to mediation have become increasingly complex,<sup>316</sup> and that mediators are pressured to reach settlements. Thus in some cases mediation does not give disputants an opportunity for airing concerns.<sup>317</sup> It is not clear whether these concerns also apply in the context of court-connected mediation in Ontario. For example, in US jurisdictions the number of subsidized hours can be two or three hours,<sup>318</sup> as opposed to the eight hours for subsidized off-site mediation in Ontario. We note that some organizations in Ontario have proposed a higher number of subsidized hours for off-site court mediation.<sup>319</sup> It is, however, likely that eight hours of mediation are sufficient for a significant number of low conflict cases to reach at least a partial agreement for specific aspects in a case. For more complex cases mediation may not be the suitable dispute resolution.

Even if the emphasis on mediation in information and advice practices is a “good thing”, the focus on mediation may have certain risks if the court process itself is considered unaffordable or intimidating. For some, the promotion of mediation in information and summary advice can be seen as an “insistence” for users not to go to the court. Chief Justice of Ontario Winkler noted, in the context of the court process, that:

The greatest service that trial courts can provide to assist parties in mediating their disputes is to ensure: first, that judges are available to try the case if the mediation fails; and second, that trials are conducted in a way that makes them as affordable as possible. No party should be forced to take an unfair settlement at mediation simply because the opponent will be able to grind him, her or it down and drag the case out.<sup>320</sup>

Community advocates in Ontario are concerned that victims of domestic violence can be coerced into mediation although this is not the appropriate method.<sup>321</sup> Some community advocates also fear that the mediator may miss the history of violence in the initial screening or may wrongly feel that he/she created enough safeguards in the mediation process.<sup>322</sup>

Practitioners of non-judicial dispute resolution are, however, expected to be vigilant with respect to abuse and other issues related to power and intimidation, and are supposed to screen cases. The Ministry of the Attorney General’s website refers to a number of screening tools for arbitrators.<sup>323</sup> It takes time and experience to identify the existence of domestic abuse

in many instances and it is therefore riskier for more junior mediators to consider these cases without assistance.<sup>324</sup> Mediators must also be sensitive to diversity issues, not only in relation to domestic violence cases, but including them.<sup>325</sup> Family arbitrators must also be trained according to the OAFM's *Policy on Abuse*, including training on the use of one of the screening tools.<sup>326</sup> They are required to abide by particular practices, such as having the parties obtain independent legal advice.<sup>327</sup>

Non-judicial dispute resolution is often led by non-lawyers. One concern is that they may fail to address legal questions, which can disadvantage the disputants. Another concern is that when important legal questions are resolved in a process that is confidential and does not create precedents, the outcomes may, in hindsight, lack transparency for parties.

### **Judicial Dispute Resolution: The Court System**

Although the court system may be more or less the first point of entry for some litigants, most will not reach the courts until they have tried other methods such as negotiation or mediation. When those methods fail, court may be the only option. There are processes at the court level that are designed to encourage settlement before a more intensive intervention by a judge or to reduce the issues that will have to be addressed by a judge. These are to be understood as part of the court system and not extraneous to it. In some cases the full authority and powers of a judge are needed to resolve a case through a trial. It should be noted that only relatively few cases result in a trial, however.

A complication of the family justice system in Ontario is that there are three different courts addressing the consequences of a family break-up: the Superior Court of Justice, the Ontario Court of Justice and the Superior Court of Justice Family Court (also known as the Unified Family Court [UFC]). Depending on the place of residence of the parties and on their legal issues, parties can access either the UFC with specific services or one or both of the other courts.

The UFCs, which started as a pilot in 1977 and were expanded in 1995 and 1999, were established to deal with family law in an integrated manner. With each expansion of UFCs, the province implemented services including on and off-site mediation, information and referral coordinators and voluntary parent information sessions at the UFC locations.<sup>328</sup> In 2011, these services were extended to all courts that hear family matters. The parent information session was replaced with the Mandatory Information Program.

There are currently 17 Unified Family Courts in Ontario. Since 1998, as the Family Court, they are a branch of the Superior Court of Justice and have jurisdiction over provincial and federal legislation. Because UFCs have not been expanded beyond the 17 locations, not all Ontarians can access these courts and their services.<sup>329</sup>

In other locations parties will have to access the Ontario Court of Justice or the Superior Court of Justice. The Ontario Court of Justice has jurisdiction over child protection, adoption, custody, access, and child and spousal support, but does not have jurisdiction over divorce or property matters. The Superior Court of Justice has jurisdiction over divorce, property, custody, access and support, but does not have jurisdiction over child protection and adoption.

The five year trends in the 2009-2010 *Annual Report of the Court Services Division* show that between 2005 and 2010 in all Ontario courts combined there were annually about 75,000 new family proceedings other than child protection proceedings.<sup>330</sup> Of all family cases in Canadian courts, about 70% are divorce and other family breakdown cases. The remaining 30% involve adoption, child protection, civil protection, guardianship and other family matters.<sup>331</sup> According to its bi-annual report 2006-2007 almost two thirds of all family matters in the Ontario Court of Justice are custody, access and support matters.<sup>332</sup>

The court process can be slow. According to *Listening to Ontarians*, four in ten people (44%) with a family relationship problem had not resolved their problem within three years.<sup>333</sup>

In Ontario, of 107,822 active divorce and other family breakdown cases in 2009/2010:

- 57,072 were in the system for one year or less;
- 33,646 between one and two years;
- 8,990 between two and three years;
- 3,763 between three and four years; and
- 4,351 four years or longer.<sup>334</sup>

This means that at least about 50% of all cases remain in the system for more than one year or (considerably) longer. This can be related to, for example, the emotional aspects of a case, but also to the capacity of the courts.

Custody, access and support are not only the most litigated matters at the Family Courts in Canada (and Ontario), they are also the matters which tend to remain longer in the family justice system. Cases involving children took more than one year.<sup>335</sup> Cases involving child access and child and/or spousal support arrangements were shown to have the highest proportion of

cases remaining in the system.<sup>336</sup> Of access and support issues, access was the most contested issue.<sup>337</sup>

Lengthy cases are likely to involve more than one or even two judges (and in some cases many judges), leading to extra costs for litigants and the family justice system,<sup>338</sup> both in money and time, and greater frustration as litigants themselves or through their lawyers explain their cases over and over again. Although by this stage parties are no longer at an “entry point”, it is appropriate to consider what might be done at the entry point to minimize financial cost, time and frustration.

The courts have initiated processes to help move cases through the system quickly. In some ways, this is the traditional “case management” process. For example, the Ottawa family case manager pilot project was initiated in response to *The Family Court in Crisis*.<sup>339</sup> It relies on the appointment of Family Case Managers; these are masters who have the jurisdiction to resolve procedural issues in the family court.<sup>340</sup> The program in Ottawa significantly reduced delays and increased the efficiency of using judicial resources.<sup>341</sup>

	2005 (pre-pilot)	2009 (after 2 yrs of pilot)
<i>Family</i>		
Case Conferences	11 weeks	4 weeks
Motions	10 weeks	4 weeks
Settlement Conferences	21 weeks	4 weeks
Trials	13 Months	6 months

Case management, whereby one judge is assigned to a case, is practised in many court locations. The case management rules were amended in 2011. They provide for an active role of judges, including the possibility of ordering parties to attend a settlement conference before a Dispute Resolution Officer, a meeting with a court-affiliated mediation service or a program offered through a community service.<sup>342</sup>

The strategic plan of the Superior Court of Justice has embraced the concept of case management or triage and contains ambitious goals. It says:

Access to justice means providing family court services and processes that are timely, efficient, effective and affordable. The purpose of these services and processes is to resolve family cases in ways that minimize conflict, safeguard the children’s best interests, protect the legal rights of all family members, and resolve the issues as early as possible.<sup>343</sup>

High conflict cases are to be identified as early as possible and managed by the same judge wherever possible.<sup>344</sup>

The Ontario Court of Justice's Family Law Vision Statement and the Superior Court of Justice's Strategic Plan contain ambitious goals to ensure effective and timely decision making. The SCJ's Strategic Plan, for example, envisages a more structural revision based on the principles of accessibility and effectiveness.<sup>345</sup> With respect to accessibility it states that appropriate judicial resources and family court services should be available at all court locations, considering factors as population and geography. Court processes should further be understandable to all litigants, including the unrepresented, and should promote early, fair and expeditious resolutions. Effectiveness should be based on the principle that "[f]ront-end family court services and court processes should be designed to ensure that each court attendance is necessary, meaningful, timely, and as comprehensive as possible."

### **C. What We Know about Disputants Who Do Not Use the Court System**

Although individuals will choose different ways of resolving their family disputes for many reasons, both wealthier and low income individuals may "opt out" of court processes, but for different reasons and with different consequences. Indeed, some commentators ask the question whether "high end" users are – increasingly – choosing to opt out of the family justice system in favour of private dispute resolution.<sup>346</sup>

Bala points out that for wealthier litigants, private mediation, arbitration and "med/arb" (a combination of mediation and arbitration) may be faster and more predictable and have the advantage of being more confidential than the court process.<sup>347</sup> One of the currently "high end" options for dispute resolution is collaborative family law, conducted by specially trained lawyers who are expected to ensure that their clients disclose all relevant information in a timely fashion, and must encourage them to settle the case.<sup>348</sup> In practice, after the initial meetings between each client and his/her respective lawyer, collaborative law generally proceeds through a series of "four-way" meetings including both clients and both lawyers.<sup>349</sup> In other cases, interdisciplinary collaborative teams may be assembled which can include mental health professionals who act as divorce coaches, a child specialist and a financial neutral.<sup>350</sup>

According to its proponents, collaborative family law provides an alternative to the adversarial model offered by litigation.<sup>351</sup> There are some concerns with respect to collaborative family law, which can be time-consuming and costly. Wieggers and Keet note that collaborative law's "emphasis on familial welfare can also pressure weaker parties, typically mothers, to abandon legitimate claims to reduce conflict and obtain closure."<sup>352</sup>

Low income users for whom the system is intimidating or not accessible may not enter the system at all, or leave the system without obtaining a decision. For example, the UK Family Justice Review indicated that a consequence of a proposal to reduce access to legal aid in the UK could be that “that some parents will simply not pursue their dispute leading to some children losing contact with a parent.”<sup>353</sup> This may be the case in Ontario, where the affordability of legal assistance is already limited. However, the lowest income Ontarians, those who are in receipt of social assistance, may have to enter the system to obtain a formal order of child support from the court as a condition of receiving assistance.

Some couples who find the system intimidating or cannot afford it, may seek community-based solutions, through religious or community organizations, for example. Although community-based solutions may provide sustainable and fair solutions, they may also be based on patriarchal traditions and perceived familial obligations. As previously mentioned, in practice this often disadvantages women.<sup>354</sup>

There are particular concerns about the effectiveness of the system for Aboriginal persons. While there are specific programs and dispute resolution methods for Aboriginal persons, they often face many obstacles in accessing the family justice system and its legal elements. Aboriginal peoples have long suffered from a disadvantaged position,<sup>355</sup> and people are overrepresented in certain areas of family law, in particular in relation to domestic violence and child welfare.<sup>356</sup>

Aboriginal persons have a specific position in family law. The *Child and Family Services Act* recognizes that a child’s culture is relevant to determining his or her best interests.<sup>357</sup> An additional purpose of the Act, in so far as it is consistent with the best interests of the child, is to recognize that:

Indian and native people should be entitled to provide, wherever possible, their own child and family services, and that all services to Indian and native children and families should be provided in a manner that recognizes their culture, heritage and traditions and the concept of the extended family.<sup>358</sup>

Specific services for Aboriginal persons include the Native Court Worker Program for assistance of Aboriginal disputants in family cases.<sup>359</sup> The Program is funded by the Ministry of the Attorney General and the Federal government.<sup>360</sup> Furthermore, there are specific legal services for Aboriginal individuals, including in remote areas.<sup>361</sup>

Nevertheless, there are a number of issues in relation to Aboriginal people and the family justice system. These include:

- The ability to physically access the system due to being located in remote areas;
- educational and informational barriers or barriers resulting from language barriers;<sup>362</sup>
- the extent to which legislation applies on reserve. For example, there is a legislation gap in relation to relationship property,<sup>363</sup> which generally disadvantages women;<sup>364</sup> and
- the extent to which legislation that does apply recognizes the Aboriginal perspective.<sup>365</sup>

#### **D. The Importance of Entry Points**

With this brief mapping of the stages and actors in the family justice system, we return to the beginning, the entry points which are the focus of this project.

In the early stages of a family breakdown there are various entry points for individuals who seek a solution for their challenges and problems. Individuals may access more than one entry point for information, advice and referrals. As mentioned earlier, there are many ways in which individuals can obtain information. Sources of information can be formal (through many public sources and paid specialist service providers) and informal (through family, friends, religious organizations and non-specialist service providers such as family doctors and teachers). Both the preference of the individual and availability of services affect the entry point used. For example, in remote and rural areas, family lawyers are sometimes not available and courts may be hard to access.

Points of entry to the family justice system can play a crucial role in assisting people in how they negotiate the system. It is at this stage that people begin to gather information about the system and to make their decisions about how to handle the dispute. Actors at these early stages may:

- Assist a person in deciding whether to proceed with a legal response to their problem or finding another avenue of redress;
- Inform a person on the legal implications of a family breakdown;
- Inform a person on the options to reach a legal solution for family law problems and family law challenges, and their advantages and disadvantages, including cost and time;
- Inform a person about other family services (such as financial advice or counseling) available to him or her;



- Make a person aware of the personal consequences of a family breakdown and of the relationship with the ex-partner – for example the level of conflict and the possibilities to establish a workable relationship in a separation or divorce;
- Make a person aware of the consequences for children of family breakdown and parental conflict;
- Make a first assessment of the family situation, including legal questions, the level of conflict and complications that can arise in a file;
- Advise a person on the approach which is most suitable in light of the specific family situation, the financial resources and the services available;
- Refer persons to the next level of services and make an intake file for service providers in the next stage of the “legal continuum” or, in multi-disciplinary services, for legal and non-legal service providers; and
- Give advice about, or triage to services or pathways based on an assessment of the case and prioritization.

The points of entry can be divided on the basis of the extent to which they are connected to the formal system and to which they can meet entry point goals listed above.

As already indicated, for many people one of the first things they do when they notice a family problem or when another family member tells them there is a problem is talk to relatives – a consultation participant talked to her sister, for example – or friends. Research and consultations show that in particular persons with low incomes often relied on family and friends for information.<sup>366</sup> These are people who usually have no connection, or no formal connection, with the legal system. They have little or no expert or broad-based knowledge about the system. Sometimes they may have had their own family problems, however, and the advice they give or the impression of the system they offer is based on their own experience. These actors can have an influence on the way individuals enter the formal system, and it is worth considering whether there is a way to link these first considerations about a person’s family problems with greater expertise.

The second type of entry point consists of persons in a professional capacity with the information necessary to be able to refer persons to family justice services. These include family doctors, family counselors, therapists, teachers, social workers, police officers, religious advisors and workers in the social assistance system. General telephone referral services, such as 211 Ontario,<sup>367</sup> can also be considered part of this group, although 211 Ontario also provides more general advice and referrals to specific community services, making it an important entry point to the inner circles of the family justice system.

A third entry point consists of a group of workers whose connection with the family legal system is more direct and frequent, consisting of “transitional” community workers, workers in band offices and workers in shelters who offer basic information and can be “a trusted intermediary” for vulnerable persons for whom the formal family justice system can be intimidating. In Ontario’s pluralist context the trusted intermediaries can play a very significant role in the access to family justice for some individuals. They can, for example, assist persons with a disability, persons who do not have access to online services or have difficulties using telephone lines, persons with literacy problems, persons facing cultural barriers and persons who suffered traumatizing experiences. The newly created Family Court Support Workers are a formal recognition of this role. They can assist victims of domestic violence, and can be a link between the non-profit agencies which operate the program and other workers in the formal system. Thus, Court Support Workers are a bridge between users and their informal networks and the formal system.

At some point, an individual with a family problem is likely to seek more in-depth information. The information services, which may also be referral services, and which can be offered in written form, audio-video form, on-line, by telephone or in-person, are a main point of entry. The many entry points that exist for early legal information, summary non-legal advice and early legal advice were described above.

There are the entry points that not only can provide basic information and referrals, but can also assist in achieving a solution. In a sense these actors and services are hybrid, both entry points and points of resolution. As described above, they include:

1. Community mediators, by which we mean non-certified persons who are asked to mediate in a family dispute. These include religious workers or community leaders;
2. Private lawyers (whether these are accessed directly, through the referral service of the Law Society of Upper Canada<sup>368</sup> or through Legal Aid Ontario);
3. Certified providers of non-judicial dispute resolution;
4. Legal Aid Ontario’s advice lawyers, duty counsels and duty counsel office staff for low income persons; and
5. Clerks and judges at the courts, in particular for couples who directly enter the court process without attending a Mandatory Information Program.

At some point in the resolution of their family dispute individuals will be in contact with one or more of these service providers. The extent to which they are entry points will often depend on the (referral) information and advice their clients have received before.

We also discussed multi-disciplinary centres as entry points. They have the capacity to address the multi-faceted nature of family problems, or have the expertise to refer family members to more specialized services.

The central question in this report is how relevant entry points can assist individuals in resolving the problems they encounter. In the next chapter we will describe how the family justice system and its entry points can respond to the challenges for its users and workers.

## **IV. Towards a More Effective and Responsive System**

### **A. Introduction**

For a number of users, Ontario's family justice system works. Lower conflict families who can reach a solution without extensive intervention may find the system responsive and effective. Those who can afford legal assistance may also find a timely solution, albeit at significant costs. Even victims of domestic violence and families with multiple problems who receive (multi-disciplinary) family services, legal services and personal support, may be able to resolve their problems effectively, although the legal system may have limited capacity to address other outstanding problems once it has completed its initial work. It should also be noted that unreasonable persons in very high conflict may even in the best resourced and designed family justice system not be satisfied with services, and this can negatively affect those participants who are reasonable.

Most proposals for reform assume that full legal representation in contested separations and divorces is, fiscally, not an option and/or is not necessary. Directing users to out-of-court solutions, where possible, is a constant theme. We are also aware that considerable infusion of funding is not likely in today's climate and we have therefore divided our recommendations into two types: those that should require little or no funding or would redirect funding from current aspects of the system to others that might be more effective ("short term" reforms) and those that we believe are necessary if the system is to be truly effective and able to respond to the diversity of family disputants ("transformational reforms").

Although it is too soon to make an assessment of the impact of the 2010-2011 reforms, we can make some general observations.

The effectiveness of the system remains a concern. Ontario's family justice system and Ontario's family programs are hard to map, complex and fragmented for many reasons: these reasons include the split jurisdiction between the federal and provincial levels, a limited legal aid budget and a court process that has not been sufficiently revised and in which its actors often appear understaffed or under-resourced.

A main premise of the 2010-2011 family justice reforms is that more individuals in lower conflict can be directed to non-judicial dispute resolution or to settlement of disputed aspects early on in the court process. The impact of early information, the Mandatory Information

Programs, the strengthened role of Information and Referral Coordinators, the role of Dispute Resolution Officers and the expansion of subsidized mediation will need to become clear in the near future. For example, lawyers familiar with the system do not think that the Mandatory Information Program will make a significant difference.<sup>369</sup>

It may be that the system lacks the leverage to direct persons in higher conflict to non-judicial dispute resolution. Disputants remain free to go to the court and, because of a lack of affordable legal representation, often will do so as unrepresented litigants. We do not know how well self-help materials work or whether the guidelines to deal with unrepresented litigants assist judges or have a beneficial effect for litigants.<sup>370</sup> The court process may thus remain slow for all users.

Responses have, understandably, been developed for the most vulnerable users in the Ontario system or have been developed to free resources for these users. Reviews by family law experts and surveys of participants nevertheless show that too many users fall through the cracks and struggle to find access to justice even with the existing resources available to them. With the exception of the Family Court Support Workers Program and the strengthened role of Information and Referral Coordinators, the 2010-2011 reforms do not specifically invest in “trusted intermediaries” which can be the bridge between low threshold community organizations and legal assistance,<sup>371</sup> nor do they expand legal aid eligibility criteria, both of concern to disadvantaged parties. We note that the strengthening of the Family Law Information Centers, court-connected mediation, duty counsel and Legal Aid provision through Family Law Service Centres are court-based and require vulnerable persons to access the court house.

For points of entry in their early information, summary advice and referral role, a lack of continuity of legal services can make it difficult to direct individuals to a certain pathway. Many proposals for reforms in the area of family law and civil law in general therefore focus on the delivery of legal services to low and middle income individuals with “unmet legal needs”.

We note that there is no exact definition of “legal aid need”, “legal need”<sup>372</sup> or “access to civil justice”. There are many factors which can cause “unmet legal needs”. “Unmet legal needs” are often referred to in the context of lower income persons who cannot afford private legal assistance and are not eligible for subsidized legal aid services. Higher income persons, however, can also have “unmet legal needs” if they cannot access legal services, for example because there are no or very few family lawyers in their region. Furthermore, “access to civil justice” is not only about affordability and/or accessibility of legal assistance, but also about access to a process which can deliver timely decisions.<sup>373</sup>

For the purpose of this report we mention the following factors which can, for example, be relevant for legal needs:

- The complexity of the case (whether with respect to the facts, the substance of the law, the process or the urgency of a timely resolution);
- The significance of the matter;
- The availability of other dispute resolution methods;
- The symmetry of the process and the extent to which this process is adversarial;
- The capacity of the individual to maneuver through the system without a lawyer's assistance or with assistance, short of full representation. In practice this capacity may be related to, for example:
  - the level of conflict and the emotional aspects of the case;
  - a person's education and legal literacy;
  - a person's communication skills and abilities;
  - a person's language and interpretation needs;
  - cultural aspects;
  - sickness, disability and mental health; and
  - time pressures because of work and the care for children or elderly relatives; and
- The costs of legal fees in relation to the person's income and possessions.

These factors should be taken into account in determining how the family justice system should respond to someone's family law needs. In light of the importance of the issues and the emotional context, legal needs in family law cases are often high, although this does not mean that the legal assistance must always be extensive and costly. The family justice system nevertheless requires constant and significant investments in order to meet family legal needs. The former Attorney General of Ontario acknowledged that despite its many strong elements, the Ontario family legal system needs significant strengthening and improvement.<sup>374</sup> He explained in November 2009, "[t]he system has for many become unaffordable, for many is too slow, for many is far too combative, a system that really does need a very significant structural change." He went on to say that the system needs less paper, fewer steps and to bring the parties to a result faster.<sup>375</sup>

Where private legal assistance, needed to resolve a case, is not affordable for lower income persons, there may be a "legal aid need". The jurisprudence of the European Court of Human Rights, which has accepted a right to legal counsel in certain civil and family law cases, can give some guidance.<sup>376</sup> Legal aid reviews also address and, to an extent, try to define the scope of legal aid needs.<sup>377</sup>

The most comprehensive study undertaken with respect to the Ontario family court system was the Mamo Report. This study was based on a review of 437 family court files which were closed between 2003 and 2005, prior to the most recent reforms.<sup>378</sup> The Report highlights many challenges for users and workers, often related to unmet legal needs.

Public consultations (again, prior to the recent reforms) confirm the analysis in the Mamo Report. Many Ontario citizens who responded to the Law Commission of Ontario's 2010 consultations on family law found themselves disempowered by the lack of transparency in all services, the complexity of legal procedures, the unequal position of legal experts and clients, the financial strains which the legal system caused, and adversarial procedures which took a direction they did not want or in which they were not sufficiently involved.<sup>379</sup> The Report *Listening to Ontarians* showed that both low and middle income Ontarians in particular have problems finding access to justice.<sup>380</sup> Popular coverage of the system stresses the difficulties family disputants face.<sup>381</sup> Judges express their own frustration with the system.<sup>382</sup>

There has been no shortage of ideas about how to improve the system. For example, the University of Toronto *Middle Income Access to Civil Justice Initiative* refers to options to improve legal aid services for middle income (and also low income) persons who at present do not qualify for legal aid services. They include changes with respect to legal services<sup>383</sup> and changes with respect to the adjudicative processes: the use of mediation, tribunals and court reform (based on proportionality, "diversion and streaming", simplification, case management and technology).

In this section, we will make recommendations which can be accomplished with little or redistributed funding and which can be build on existing structures and programs.

We are aware that the recommendations may address several organizations, including the Ministry of the Attorney General, Legal Aid Ontario, the Law Society of Upper Canada, the various courts and community organizations, each with their specific mandates and competences. Also the federal government plays an important role in the provision of access to family justice in Ontario. In some cases it is not entirely clear who should take the lead. We will often make the recommendation to the Ministry of the Attorney General, which should ensure the funding, coordination and streamlining of services under its mandate. But we recognize that other organizations can also have a responsibility or, in light of their expertise and core mandate, may even be better positioned to implement some of the recommendations.

To an extent, the fragmentation of family legal services which we describe above is a result of the various competences, mandates and budgets. For example, Legal Aid Ontario and CLEO have the mandate and specific expertise to develop informational instruments which benefit low income persons to whom the *Legal Aid Services Act, 1998* applies. These can include plain language written materials, telephone and online services. The Ministry of the Attorney General may develop similar services for all users of the family justice system. The family courts may develop plain language guides for self-representing litigants and provide assistance in filling out forms. The Law Society of Upper Canada may develop materials which assist users and lawyers, for example for unbundled legal services. *Pro Bono Law Ontario* may offer information or self-help materials which have been developed in Canada or by sister organizations in other jurisdictions. In order to avoid duplications, the delivery of these services needs to be streamlined.

Below we will discuss recommendations with respect to entry points and their specific roles with respect to:

- the provision of information and advice;
- access to legal services;
- non-judicial dispute resolution and judicial dispute resolution;
- specific needs for groups in Ontario's pluralist society;
- the need for more knowledge about disputants in the system.

## **B. Provision of Information and Advice**

### **1. Introduction**

Like any other family justice system, Ontario's faces challenges in the provision of basic legal information. However, the pluralist make-up of the province may make these challenges more complex. The users' personal situation, their level of education, income and legal questions can widely vary. Some users are represented by lawyers, others are not. Some users have easy access to legal in-person services and others, because of distance, language, culture, disability or other reasons have not. Some users qualify for subsidized mediation services and some users qualify for legal assistance short of full representation. Cost and time estimates of ways of resolving disputes are often hard to give, but are relevant factors for persons' choices. Most challenging of all, the information – both in content and format – must be suitable for those individuals who do not have the advantage of legal advice.



To be effective, an entry point must provide sufficient information to an individual to allow him or her to make an informed decision about the appropriate next stage in the process. Not only must the process be understandable, the relevance of the next stage must be clear to the individual: how well will it help him or her to resolve the problem? In order to direct users to a next stage the entry point must have some understanding of the family dispute.

Entry points may also play a referral role to wider family services, in particular for families in a situation of family breakdown who face multiple problems and require multiple services. The Australian government paper *Towards a National Blueprint for the Family Law System* said:

The family law system is a multi-disciplinary one. Various entities within the system have their own area of expertise.[...]Effective referrals are therefore essential to improving processes and outcomes for clients – they ensure clients get the services they need without having to re-tell their story.<sup>384</sup>

## **2. Obtaining Correct and Appropriate Basic Information**

As we discussed previously, people in situation of family breakdown can enter the system through various formal or informal entry points, where they seek basic information.

People usually start to deal with their family problem by talking to family and friends. Depending on a person's network these sources may not always prove to be useful. During the consultations the Law Commission of Ontario held with users, some participants found that friends and family members they had relied on were misinformed about family law and did not know where to refer their friends and relatives to receive legal advice.<sup>385</sup>

In practice, families with multiple problems may enter the family justice system via wider family services rather than the formal system. Informal entry points, such as doctors and “trusted intermediaries”, can be expected to be aware of wider family services and to refer individuals to these services. However, professional informal entry points may not be familiar with the legal entry points.

Some persons may use the legal system as the first professional entry point. As discussed previously, legal professionals often tend to focus on the legal issues. Because of this, those persons who directly access a private's lawyer's services may not access family services which are available to them. For referrals to wider family services through the family justice system a person would have to access the court house, where Information and Referral Coordinators or

Legal Aid workers (in particular experienced staff workers at the six Family Law Service Centres or Duty Counsel Offices) are expected to refer users to community services.

There are entry point services which try to bridge the gap between a person with multiple questions (that can have legal and non-legal elements) and services providers. Referral services such as 211 Ontario operate in a holistic context, which includes community services and local family law providers. The referral to legal services is, however, sometimes complex, because of the local availability, the financial eligibility criteria for legal aid services, and the limitations of telephone legal services (either through Legal Aid or the Law Society of Upper Canada), because of time constraints and an individual's ability to communicate over the phone about more complex personal and legal matters.

While some of challenges for the provision of basic information are more related to follow-up services than finding an entry point, there is a need to better link informal entry points (ranging from someone's sister to a doctor to a court interpreter) to the appropriate formal entry point of the family justice system, and to link the formal entry points to wider family services. We recognize that there are limits to this, given the diversity of the informal entry points and the diversity of formal entry points. The widespread distribution of initial basic information that outlines options about entry points or information services to access entry points may help that to some degree. The basic information provided should consist of ways to access both legal and other assistance, including in relation to domestic violence, by various means.

In order to ensure that people and their immediate networks have at least an initial access to information (primarily about how to obtain more detailed information), people require access to it where they are most likely to see it in their daily lives, such as supermarkets, shopping mall information kiosks, bus and other transportation stations, libraries, civic centres, doctors' offices, schools, YWCA/YMCAs, youth and seniors' centres, community centres, religious institutions, schools and other locations. We are aware that the distribution of basic written information through some of these places occurs to some extent.

The content of materials and their distribution could also be specifically directed at some of the most common informal entry points: to use the example of doctors, materials could be distributed not only in doctors' offices, but also in medical schools or medical conventions in order to raise awareness.

For lawyers' offices and, for example, family mediators, a very basic brochure about family services in a community could be developed. Lawyers' and mediators' offices should play an

active role by handing out the brochures to their clients and, if needed, giving an explanation and offering some assistance to their clients in accessing a central point for family services.

**The LCO recommends that:**

1. The Ministry of the Attorney General, in consultation with Leal Aid Ontario and CLEO, arrange for the preparation of plain language, colourful brochures or even single page handouts in different languages, and arrange for their distribution in locations where people worrying about their family problems are most likely to see them, such as doctors' offices, YWCA/YMCAs, libraries, community centres and supermarkets and other similar locations.
2. The Law Society of Upper Canada and mediators' organizations promote the distribution of brochures with basic information and the referral to wider service family services through lawyers, and members of the mediators' organizations, respectively.

### ***3. Strengthening the Role of "Trusted Intermediaries"***

The initial very basic information in the brochure which we recommend will do no more than allow an individual to take the next step in obtaining information about legal rights and non-legal services. This next level information must be provided in written form and in particular on the internet and in person.

While some users may seek information on the internet or in libraries, for many persons written and online information alone is not sufficient. Indeed, many persons, in particular vulnerable persons, are mainly in need of face-to-face information. Written and online information mostly supports the information that is given in person.

We previously discussed the importance of, and challenges facing, "trusted intermediaries" in community organizations. These may provide a vital first step to entering the formal system for individuals who for one reason or another lack the familiarity with the mainstream system.

In order to improve the early information and appropriate referrals by community organizations, front-line workers can benefit from specific training to identify legal and non-legal issues. Also a database would be useful for frontline workers. We are aware of such initiatives, for example through CLEO, and recommend that family breakdown be given priority

in establishing local needs and community needs, and be given appropriate funding for services where demands warrant this.

**The LCO recommends that:**

3. The Ministry of the Attorney General and other relevant ministries, including the Ministry of Community and Social Services, the Ministry of Children and Youth Services, the Ministry of Citizenship and Immigration, the Ministry of Francophone Affairs, the Ministry of Municipal Affairs and Housing, the Ministry of Northern Development and Mines, and also including the Ontario Seniors' Secretariat and the Ontario Women's Directorate, provide financial and other resources for initiatives that focus on the role of community organizations in the provision of early information, referrals and personal assistance for persons in a situation of family breakdown through needs assessments in a community; and where demands warrant this, the training and education of frontline service providers, the creation of a legal telephone information centre for frontline workers and/or the creation of a database with basic legal and referral information for frontline workers.

#### ***4. Written and Online Public Legal Information***

Our review of online information revealed at least three problems: its quantity on many websites, the difficulty in navigation or understanding by those who need it most and the apparent lack of knowledge among the public that it exists. These different challenges require different solutions.

We recommend the development of a single hub of plain language information about the legal process and options and availability of specialized services. The Legal Aid FLIP is a very good beginning for this kind of internet information. Also CLEO recently launched a website for users in November 2011. We recommend that current initiatives will be integrated. The information provided through the hub should be interactive and ease into more complex information.

The hub should be located on a "neutral" site that is clearly marked, although accessible from many other sites where people might seek information. We appreciate that different agencies may wish to provide information specific to them. To the extent possible, this should be included in the basic information or the basic information should include a relevant link to them. The existence of the information should be advertised in places people populate.

Written and online information must also be available for children. Children often feel left out of the system. The development of internet materials which are child-friendly may be a particularly appropriate way for children to learn about their rights or how to work through some of the difficult problems they might face during the breakup of their family. It cannot appear as if it is a legal document (as does the Ministry of Attorney General's Guide for children when first seen on the Ministry's website, although once the PDF is opened, it is a much more accessible document).

**The LCO recommends that:**

4. The Ministry of the Attorney General, in consultation with appropriate organizations, in particular Legal Aid Ontario and CLEO, develop a single online hub of plain language information about the legal process and options and availability of specialized services; develop a strategy to advertise the single online hub; and develop a strategy to give children of various ages specific information, including through online interactive methods.

**5. *Early Legal Information, Summary Advice and Referrals: the Role of FLICs.***

After obtaining some initial information many individuals will seek legal services including summary and more in-depth legal advice. As described above, there are many ways that individuals can obtain preliminary or basic advice about the legal system, whether through private lawyers, FLICs, the Law Society of Upper Canada or Legal Aid, for example. For many people facing family problems, the connection of all these sources with the "formal" legal system, while important and helpful, may be intimidating for a number of reasons. This may be especially the case for new immigrants, for example, but for others as well.

As discussed previously, Family Law Information Centres as entry points play a specific role in the provision of early information. Since they do not apply financial eligibility criteria, they are potentially a main entry point for all users.

Despite describing some deficiencies, the Mamo Report recommended that the FLICs become the main point of entry into the family court system, as the recent reforms provide.<sup>386</sup>

The establishment of more FLICs alone does not necessarily address the problems the Mamo report and other studies have identified. We consider that an evaluation of the roles of FLICs is needed. We are aware that newly established FLICs may need some time to establish work

processes in a specific community. However, in other locations the FLIC-model has been given time to develop. Short term evaluations can give valuable new information about their effectiveness.

**The LCO recommends that:**

5. (a) The Ministry of the Attorney General undertake a review of the Family Law Information Centres within three years in order to determine the frequency of use and how effectively they have disseminated information and advice; and  
  
(b) based on the results of the review make appropriate changes as necessary.

## **6. Summary Advice and Referral Before the Court House**

We note that although many families in lower conflict can probably agree on most issues and negotiate agreements,<sup>387</sup> the 2010-2011 family justice reforms do not particularly focus on negotiation or face to face early legal advice before individuals reach the court house. Nevertheless, the prevention of legal problems and the promotion of fair agreements can be a method to reduce the pressures on subsidized mediation, legal aid and the court system.

In practice, community organizations, telephone advice lines and online information will direct users to lawyers who may assist in negotiating an agreement. However, some couples may not access legal advice during negotiations, which could disadvantage a weaker party. One party's failure to obtain legal advice could also jeopardize the resulting agreement. Other couples, who would be able to reach an agreement with some professional assistance, may nevertheless enter the system through the court house (the Family Law Information Centre) and may enter more formal processes, including mediation, sometimes without accessing legal advice during these processes because of financial eligibility for legal aid.

In certain communities users may face particular challenges with respect to accessing court-based services or lawyer's services without some extra assistance. We note that the *Geography of Civil Legal Services in Ontario*, citing a UK study, mentions the risk of "advice deserts", where areas are inadequately serviced by legal aid lawyers or other appropriate services. These "advice deserts" may not only be limited to rural areas but can also exist also in major cities.<sup>388</sup>

Where "advice deserts" may exist in Ontario, we recommend that Legal Aid Ontario invest in low-level legal information and advice services, for example through the placement in selected

community centres of a Legal Aid lawyer, preferably reflecting the community (speaking the language or knowledge about cultural norms, for example). The establishment of new, or extra funding for existing, legal aid clinics, may also reduce pressures on local legal service providers or bridge the gap with legal service providers in other parts of Ontario, for example through internet (Skype) contacts.

We see particular value in a combination of summary legal advice in a community centre or, if funding allows for this, a legal clinic, with certificates for some hours of a lawyer's independent legal advice to assist persons in negotiating an agreement or reaching a settlement through mediation.

**The LCO recommends that:**

6. (a) Legal Aid Ontario establish basic legal information and advice services in areas or communities which are not adequately serviced by legal aid lawyers or other services, for example by placing Legal Aid lawyers in community centres or legal clinics which are funded to provide early summary legal advice in family matters;
- (b) LAO make Legal Aid certificates available to low income persons in low conflict situations so that they can negotiate an agreement.

## **C. Legal Representation Issues**

### ***1. The Need for Immediate Measures***

The major concern about legal representation is that too many people do not have it, even though they want and need it. As mentioned above, *Listening to Ontarians* found that 19% of low- and middle income persons with a family law problem did not seek any expert legal assistance, while another 24% indicated they had difficulty obtaining legal assistance.<sup>389</sup> The main reasons persons gave for not seeking advice were that they thought they did not qualify for legal aid or thought they could not afford a lawyer.<sup>390</sup>

There is broad agreement among commentators that Legal Aid Ontario's funding for civil law cases is limited and that the income threshold for legal aid services or for clinic services is very low.<sup>391</sup> One commentator writes:

When Ontario's legal Aid system was first created more than 40 years ago, the goal was to ensure justice for all Ontarians. Today, the system is unable to serve even all of the poorest in the province.<sup>392</sup>

While we believe that main access to justice challenges will need to be resolved by greater access to lawyers, including though more legal aid for a wider group of low income users, we believe that some measures with less significant fiscal consequences could help individuals, at least to an extent, in resolving their family disputes.

## **2. *Unbundled Legal Services***

As indicated above, the Law Society has recently amended the Rules of Practice to recognize the difficulties associated with limited scope retainers, while at the same time explicitly recognizing them as an acceptable form of practice. Unbundling of legal services is likely to be used more often.

The Law Society's recent amendments to the Rules of Conduct are designed to address the concerns which we identified earlier.<sup>393</sup> However, lawyers will also require training in these new rules and the particular practical risks of limited scope retainers.

In light of the concerns we have about offering unbundled services to some users, we suggest that some caution is needed with respect to unbundling in family law cases, in particular those cases which are likely to be more complex or, because of a high level of conflict, are emotional and may take longer to resolve. For example, one family lawyer has pointed out that custody matters may be too complex, while property matters or one-off pension disputes may be more suited to limited involvement.<sup>394</sup> Persons with limited legal literacy and persons who cannot fully assess the complexity of their case may be vulnerable when accessing fragmented legal services.<sup>395</sup>

Nevertheless, in less complex cases unbundling seems a reasonable response to the fact that many people facing family difficulties cannot afford the assistance of a lawyer. Samreen Beg and Lorne Sossin have noted that unbundling "creates an important halfway house between the unrepresented and the represented."<sup>396</sup> Langan also recommended unbundling of services.<sup>397</sup>

Given the concerns about unbundling and the particular nature of family law disputes, we believe that lawyers need to be aware of the potential problems and to receive assistance in recognizing and responding to them.



**The LCO recommends that:**

7. During their legal education and training during law school and through the licensing examinations, future lawyers be advised and tested about the particular risks associated with limited scope retainers and the ways to address them.
8. (a) The Law Society of Upper Canada consider whether to require lawyers to have practised family law for two years before offering limited scope retainers.  
  
(b) The Law Society of Upper Canada provide and advertise mentoring advice for lawyers offering limited scope retainers in family law.  
  
(c) The Law Society of Upper Canada, in consultation with the Courts and other relevant organizations, conduct a study of the effectiveness of, and challenges with respect to, limited scope retainers in family law with the objective of minimizing the difficulties associated with such retainers.

### ***3. Self-help for Unrepresented Litigants***

Given the Law Society's imprimatur of unbundling of legal services, more lawyers may be prepared to provide a limited scope of service. Limited assistance may be "behind the scenes", however, and the litigant may be the only person in a mediation, case conference or courtroom. Regardless of what may be put in place to increase or substitute for legal representation, there will be unrepresented litigants in the court system. There will also be litigants who choose to self-represent. There may be issues arising out of the latter that do not arise in the former case.

There may be some steps that will make it easier for unrepresented litigants to present their cases. For example, the *Strategic Plan of the Superior Court* proposes more understandable forms and processes, which can benefit unrepresented litigants. *Supporting Families to Support Their Children* also recommended the harmonization and simplification of forms, and engaging plain language experts to rewrite the Family Rules. Unrepresented litigants could be assisted by electronic platforms for the filing of court documents or by allowing them to send motions for simple procedural matters by fax. On the other hand, to promote a basic understanding of the system, *Supporting Families to Support Their Children* considers that unrepresented litigants should be required to attend a Court Preparation Program, which would also be available through DVDs at community kiosks.<sup>398</sup>

To some extent the problems of unrepresented litigants may be said to include an informational problem that could be addressed by increased material for “self-help”. In order to assist unrepresented litigants, it is also often recommended that “self help” materials be improved. Yet there is a great deal of information available, particularly online. If anything, the problem is too much information, including information that is difficult to navigate or understand. It is, furthermore, doubtful that self-help can be sufficient for many users. It is, for example, unlikely that disadvantaged people can represent themselves in a court procedure, even if they were assisted by a range of instruments short of full representation.<sup>399</sup> It is also unclear whether even persons with a higher education can successfully represent themselves. In this regard, California’s 2010 Elkins Family Task Force reported to the Judicial Council of California that:

[S]elf help programs have earned almost universal praise from litigants and the courts. But even with self-help assistance litigants find it difficult to follow rules and procedures. The lack of legal representation is clearly an enormous barrier to many who seek access to justice in the family court.<sup>400</sup>

In order to accommodate literate unrepresented litigants, more interactive online forms and face to face legal advice or long distance in-person advice could be made available. This long distance assistance could be provided by telephone lines, such as Legal Aid Ontario’s Client Service Centre, advice lawyers or legal aid clinics. We reiterate, however, that the concerns with respect to access to justice are mostly related to a lack of legal representation, rather than a lack of information and that self-help can only assist persons with significant legal literacy in less complex cases. It is also important to appreciate that private online access varies across the province, from none to slow dial-up to wireless.

**The LCO recommends that:**

9. The Ministry of the Attorney General, Legal Aid Ontario and the Law Society of Upper Canada, in consultation with other relevant organizations, study how self-help materials in combination with face to face personal assistance and/or telephone or online assistance, provided by lawyers, legal aid lawyers or court staff can achieve access to justice for low and middle income persons.
10. CLEO be funded by Legal Aid Ontario and the Law Society of Upper Canada to prepare plain language brochures explaining the options available to unrepresented litigants, including limited scope retainers, and *pro bono* services if Pro Bono Ontario is funded to facilitate *pro bono* family services (see recommendation 12).

#### **4. *Transparency in the Cost of Legal Fees***

The practice of law is private enterprise. There are no limits on the fees lawyers can charge, other than the market and the ability of a client to seek a review of the fees in a particular case through the Assessment Office.<sup>401</sup> Nor is there uniformity in the fees lawyers charge. In many instances, the high cost of retaining lawyers has less to do with their actual fees, but rather with the process required to resolve the dispute. Some lawyers may prefer to provide services *pro bono* rather than deal with legal aid and the fees under legal aid. We do not make any recommendation about lawyers' fees. However, we do note that some lawyers post their fees on their websites, as well as indicate whether they undertake legal aid work, for example.<sup>402</sup>

There are conditions for the way lawyers can advertise fees: advertised fees should be reasonably precise, include additional fees and the lawyer should adhere to the advertised fees.<sup>403</sup> We believe that posting fees and other related information would be helpful to individuals with a family dispute in trying to find a private lawyer or determine whether they could afford a private lawyer. While in itself, it will not decrease the cost of legal services, it might reduce some of the complexity for potential litigants.

**The LCO recommends that:**

11. Family lawyers post information about costs on their websites, including any initial consultation fee, retainers and hourly rates, and whether they offer free legal services or accept a legal aid certificate.

## **5. Pro Bono Services**

According to the 2011 Report *The Geography of Civil Legal Services in Ontario*, the number of lawyers providing *pro bono* services free of charge varies strongly by region in Ontario. In some regions, such as Haliburton, up to 80% of all lawyers provide services *pro bono*, while in other regions, such as Toronto, this is closer to 40%. Also the number of hours varied by region. However, more research would be needed to assess whether and how much *pro bono* legal services is reaching clients who cannot access legal aid or afford to hire a lawyer.<sup>404</sup>

*Pro Bono Law Ontario* provides a more *systematic* way for lawyers to offer their services free of charge, rather than in an *ad hoc* way.<sup>405</sup> PBLO does not deal with family law matters (apart from child protection), however. It would be helpful if family law clients had access to these coordinated services, although *pro bono* services are more likely to be provided as limited representation with the challenges and potential for problems associated with these services.

We note that other organizations also assist low income Ontarians in accessing more affordable cost lawyer's services. For example, Justicenet provides a gateway to access lawyers at a reduced tariff based on a sliding scale for persons in Ontario with an income under \$59,000, who do not qualify for legal aid.<sup>406</sup> It also operates in the area of family law. It is, however, not clear how many lawyers actively participate and how many persons find access to a lawyer.

While we believe that *pro bono* activities deserve praise and support, we also recognize that a family justice system should not be built on volunteer services, even systemic *pro bono* services. In the current system, *pro bono* activities are a valuable instrument that needs to be promoted and encouraged. We believe it is important that a system of *pro bono* activities is as transparent and consistent as possible, so that scarce resources are allocated to the cases which can benefit most from the legal assistance offered on a *pro bono* basis. This allocation could take place by a triage and local coordination through PBLO or alternatively legal clinics offering family law services, if these were to be established in the short run. It would be

important that *pro bono* services work together, in order to avoid duplication and fragmentation.

**The LCO recommends that:**

12. (a) Pro Bono Law Ontario be funded by Legal Aid Ontario and the Law Foundation of Ontario to permit it to facilitate *pro bono* services in family law.
- (b) Lawyers engaged in providing *pro bono* legal services be advised about the increased risks from limited representation and responses to address these risks prior to providing the *pro bono* services.
- (c) *Pro bono* lawyers and organizations involved in the provision of *pro bono* services establish a gateway and a transparent system for directing persons to *pro bono* lawyers, based on users' needs.

## **6. Permitting Paralegals to Perform Some Family Law Services**

We believe that representation in family law cases normally requires the expertise provided by a family lawyer. Nevertheless, in uncontested cases in particular, paralegals can make a contribution to the family legal system, either acting independently by, for example, completing forms and applications or providing basic advice about the system, or under the supervision of a lawyer representing clients in specified proceedings in Ontario courts. For example, prior to paralegals being regulated by the Law Society of Upper Canada, many paralegals assisted with uncontested simple divorces.

Langan recommends the use of “agents” (such as paralegals) where a couple has no children or significant assets,<sup>407</sup> as did Michael Trebilcock in his review of Legal Aid.<sup>408</sup> By summer 2011, the Law Society of British Columbia indicated that it was considering expanding the scope of paralegal practice.<sup>409</sup>

**The LCO recommends that:**

13. The Law Society of Upper Canada review the scope of practice for paralegals with the objective of identifying those areas of the family legal system to which paralegals can contribute to increase access to justice;
14. (a) If paralegals are allowed to offer services in the field of family justice, their education must include the necessary training to ensure that they provide legal services competently.  
  
(b) To the extent paralegals offer a limited scope retainer, the same recommendations applying to lawyers should apply to paralegals as appropriately modified (see recommendations 7 and 8).

### ***7. Increasing the Scope of Legal Aid for Family Law***

Although the government made an infusion of funding into legal aid, in part to increase assistance in family law, legal aid eligibility requirements remain high (in the sense that only people who have very low levels of income are eligible). This can mean that neither “legal aid needs” nor “legal needs” are not met.

Measures to increase access to justice through means other than a lawyer’s full representation, such as unbundling, self-help materials and a paralegal’s services can have two effects for legal aid needs. First, a person may be able to access these themselves, so that her or his legal needs may be met. Second, Legal Aid may subsidize and/or offer some of these services to low income persons, and thus meet the legal aid needs of a person.

We note, however, that it is hard to “predict” whether these and other measures that have been proposed to increase access to legal assistance and the scope of legal aid will be sufficient in an individual case. The assessment of a case and the allocation of legal services to a case can never be exact and what initially seems a straightforward case can turn out to be a more complex case, and *vice versa*.

Nevertheless, for some low income persons a solution, proportional to their needs, can probably be offered through:

- Unbundled lawyer’s assistance under the legal aid program.
- Greater legal aid for family litigants at least to receive greater assistance with self-help materials.
- An incremental use of representation by family legal aid clinics or legal aid clinics offering family law services, in addition to an advice role. Langan, for example, recommended an expansion of family law legal clinics,<sup>410</sup> as did *Home Court Advantage*, which also proposed law school clinics, operating with students, paralegals and mental health professionals under supervision of a lawyer.<sup>411</sup>
- Further expanding and improving duty counsel, paralegal and staff offices in the legal aid system, as was proposed by Trebilcock,<sup>412</sup> which has already been undertaken by Legal Aid Ontario.
- Making legal aid certificates available to provide users with a lawyer’s assistance during negotiations of apparently low conflict cases, as was recommended by the LCO above (see recommendation 6b).
- Making legal aid certificates available for mediation as was proposed by *Home Court Advantage*.<sup>413</sup> We note in this respect that Legal Aid has recruited mediators and that the new Family Law Service Centres of LAO offer mediation services.

Some of these instruments will not be suitable for all low income users, in particular users with specific needs. In his 2011 Annual Report, the Auditor General recommends that LAO make a risk assessment which would “take into consideration a variety of factors, such as a person’s having the capacity and the knowledge to manage his or her own case in the court system, language barriers, mental health issues, and computer literacy.”<sup>414</sup> The Auditor General notes that Legal Aid Ontario is taking action to address these risks.

We support the recommendation of the Auditor General. We also recommend that funding be made available for hardship cases,<sup>415</sup> where a person, due to individual circumstances, would have to incur disproportionate legal costs to meet legal needs. Such circumstances could be a disability, various learning problems (such as dyslexia) or traumas which make self-representation difficult and the communication with a lawyer more time-consuming. Older adults may not qualify for legal aid because of the ownership of a house: for them, a combination of high legal fees, a division of property and a low income could have serious financial consequences. In some cases Legal Aid Ontario can grant “discretionary increases”, for example because of special needs or the importance of the matter to the client.<sup>416</sup> However, it is not clear if and how this is used. For persons who do not meet the financial eligibility criteria for Legal Aid, there is no possibility to request legal aid services on a discretionary basis.

We are aware that, without a clear triage system, an increased capacity of legal aid services through diverse instruments may make the system even more complex and fragmented. Users may have to re-tell their stories many times. Ideally, an individual is given a limited number of services and service providers to resolve a dispute.

In order to provide services in a more streamlined way and in order to ensure that legal aid services are proportional to legal needs, an assessment and a legal aid triage performed at a central point would be needed. We will discuss this below as a long term instrument. We are aware that experienced staff workers at Legal Aid Ontario's Family Service Centres already apply a legal aid triage. In the short term, these staff workers may play an even more central role in directing users to Legal Aid services.

We finally note that a broader set of legal aid tools may also allow for more inclusion of pluralism in the provision of services, for example through directing users to paralegals, lawyers (offering unbundled services) and legal advisors with an understanding of particular issues in a community.

**The LCO endorses:**

15. The proposal by Home Court Advantage that Ontario law school clinics and legal services provide (further) assistance in family law.

**The LCO recommends that:**

16. Legal Aid Ontario explore how providing proportional legal aid services to different user groups can widen the scope of legal aid; explore how these services can be allocated to a person with a minimum of intake moments and duplications, using a triage approach; explore how the delivery of multiple legal aid services can take Ontario's pluralism into account in the legal aid assessments and triages, the referral to, and recruitment of, service providers with specific community expertise, and the development of materials and methods;
17. Legal Aid reserve funding for legal aid certificates in cases of hardship for a user who is otherwise not eligible for legal aid, in particular persons with special needs or elderly persons with a low income and a house ownership.



## **8. Legal Insurance**

Although not a subject of widespread consideration, some commentators have suggested that legal expense insurance (LEI) would be a way for individuals to pay for legal services.<sup>417</sup> LEI is common in several European countries<sup>418</sup> and in Quebec where family law information, but not litigation, is covered.<sup>419</sup> The CAW has long run a legal insurance plan for their members which includes some family law coverage,<sup>420</sup> as do a number of companies.<sup>421</sup> The Law Society of Upper Canada has approved pre-paid legal plans.<sup>422</sup> Generally speaking, however, the coverage for family law is often different or more limited in existing plans compared to the coverage for other areas of law. There does not appear to be a great deal of interest in prepaid legal plans in Ontario. In the future they might provide a private sector option to increased public funding of legal aid and a candidate for employer benefit packages. The LCO makes no recommendation on this matter at this time.

## **D. Dispute Resolution**

### **1. Non-Judicial Forms of Dispute Resolution**

In the previous chapter, we considered the role of mediation in the current system, and its advantages and disadvantages. The challenges with respect to non-judicial dispute resolution are mostly related to persons selecting non-judicial dispute resolution when this is not a suitable method for them. We note that mediation is being treated as a significant route to more effective and speedier resolution of family matters. We are not convinced that the great emphasis on mediation is necessarily warranted.

While we believe that extra training for mediators, screeners and screening tools may reduce the risks that high conflict, “legal bullying” in the mediation process, power differentials and domestic violence are not detected, we believe that a solution for the prevention of unfair settlements must also be found in better access to independent legal advice.

An important factor in a mediation process (or other forms of dispute resolution) is the involvement of lawyers. As previously discussed, mediation, particularly of non-legal issues, can be carried out by non-lawyers. Indeed, it may be that training in other disciplines might be more desirable for mediation seeking to resolve more deep-seated family matters where the issues are less legal than emotional or relational. However, parties can be assisted by lawyers in a mediation process carried out by non-lawyers. This can change the dynamics of the process:

- Research in Australia showed that the family dispute professionals were sometimes critical of lawyers.<sup>423</sup> The lawyers' advocacy role to achieve the best legal outcome for their client could conflict with the mediation's process. The Law Commission of Ontario's consultations with workers in the family justice system noted similar tensions between professionals.<sup>424</sup> We note that in practice lawyers are capable of appreciating that their role in mediations is to achieve the best outcome for their client in a different way than litigation.
- The access to independent lawyer's advice and trusted intermediaries can be an important safeguard in the mediation process. Rhoades writes, in the Australian context, that the absence of a legal advocate is a major disadvantage for women who are victims of violence. She refers to a number of studies indicating that unrepresented clients often "settle too easily, or refuse to settle at all out of suspicion of being taken for a ride".<sup>425</sup>

We recognize that the involvement of (subsidized) lawyers in non-judicial dispute resolution can make the process more complex and that cost-advantages of a (subsidized) mediation process may, in part, be lost because of legal fees. We believe, however, that it is important that low income individuals in a family dispute who seek non-judicial dispute resolution have access to, at least, several hours of subsidized legal advice, and in more complex cases can receive more intensive independent legal advice. Real access to such advice means that individuals are made aware of the importance of this advice and, where necessary, can be assisted by trusted intermediaries to access these services.

**The LCO recommends that:**

18. Legal aid certificates be made available to low income persons who use non-judicial dispute resolution, including in more "complex" cases, so that they can obtain, if needed, more extensive independent legal advice.
19. During their legal education and training during law school and through the licensing examinations, future lawyers be advised and tested about a role in non-judicial dispute resolution led by non-lawyers.

## **2. Judicial Dispute Resolution**

The process after individuals have entered the court system<sup>426</sup> is beyond the scope of this project. Nevertheless, some issues are particularly relevant to entry points.

We note that the challenges arising from the constitutionally bifurcated system have an impact on the capacity of entry points to be effective. Where Unified Family Courts have not been established, the need to select the right court is crucial. Indeed, for unrepresented litigants, even knowing whether they have a UFC available may be difficult to determine. The structure of the family court system in Ontario can add to the confusion and costs litigants face. Addressing this requires a long term investment by provincial and federal governments for the establishment of Unified Family Courts across the province. There are some court entry point challenges which can be addressed without significant fiscal consequences, however.

We understand that volunteer Dispute Resolution Officers are now at many Superior Court locations. We believe that the system cannot continue to operate standardized procedures on a volunteer basis. We are also aware that in more remote areas it may be more difficult to find experienced family lawyers to act as DROs.

The initial assessment of a family dispute at the courts can be of great importance. We are aware that there are concerns about the capacity of the system to deal with high conflict cases, including the judicial capacity needed for case management and a firmer judicial intervention,<sup>427</sup> the availability of assessors,<sup>428</sup> the ability to give assessments within a reasonable time and a speedy trial which follows,<sup>429</sup> and the recognition of the voice of the child.<sup>430</sup> However, initiatives such as the Ontario Court of Justice's Family Law Vision Statement and the Superior Court of Justice's Strategic Plan show a commitment to easing litigants' journey through the process. For them to be successful, it requires the necessary resources and an effective pre-court process.

We believe that the case management methods that are available at the courts, including the possibility to move a case to trial after one conference, justifies an investment in the assistance of judges by a person with mental health expertise. The involvement of mental health expertise early on in the process could in particular be useful to detect the nature of a (high) conflict and whether there are risks related to domestic violence and child abuse. We note that if more low conflict cases were directed to non-judicial dispute resolution or early settlement, the court process would increasingly focus on more "complex" cases, including very high conflict cases.

**The LCO recommends that:**

20. The Province fund a court-wide system of Dispute Resolution Officers.
21. (a) The Ministry of the Attorney General and the courts study the potential role of mental health experts, to assist judges in the effective management of family law cases; and,  
  
(b) if the study shows it would be helpful to have mental health expertise available in family court, to provide adequate funding for this assistance.

### **E. Responding to a Pluralist Society**

In Ontario's pluralist society challenges that, in general, exist for individuals in a family breakdown can become serious obstacles for users from certain communities.

There has been significant research on access to family and civil justice for individuals facing personal, language or physical barriers. We mention Cohl and Thomson's *Connecting across language and distance*.<sup>431</sup> Also the *Middle Income Access to Civil Justice Initiative* addresses cultural and linguistic issues.

#### **Strengthening the Early Stages for Persons with Specific Needs**

To an extent, services that we have proposed above would benefit users who have specific needs because of language, literacy, culture or disability.

It is important that these users are able to trust the services offered to them. Transparent basic information and easily accessible information hubs which take specific information needs into account, would inform users (and their immediate or wider informal networks) of their rights, choices and the services they can access. Community organizations that offer basic face to face information and act as a trusted intermediary can be an important entry point. Legal aid clinics offering family legal services closer to the communities may also offer less intimidating entry points in comparison with legal helplines or court-based services. Legal aid certificates for lawyer's assistance during negotiations and mediation may offer, in comparison with court-based procedures, more informal methods of fair dispute resolution, closer to individuals. More transparent advertising of fees would inform users of potential costs and would make them less

apprehensive about contacting a lawyer. Some families could receive more intensive services from multi-disciplinary teams for support.

Such measures could complement the instruments which have been introduced under the 2010-2011 Four Interconnected Pillars of Justice Reforms, including the Court Support Worker Program, the Mandatory Information Program, the expansion of FLICs, the strengthening of the role of Information and Referral Coordinators, the expansion of mediation, the expansion of duty counsel services and Dispute Resolution Officers.

We recommend that in the delivery of general family justice services the specific needs of persons due to language, literacy, culture, disability and other relevant factors be taken into account. In particular, it is important that for persons with specific needs access entry points, there is a smooth and expedient transition from these entry points to the specific family justice services they require and appropriate referrals to other family services. The role of FLICs for persons with specific needs and the provision of specific services need to be reviewed and, if needed, strengthened or complemented by, for example, “trusted intermediaries”, specific information in various formats and access to summary legal advice provided by legal workers with particular knowledge and understanding of persons with specific needs.

In addition to our earlier recommendations, we therefore recommend a regular evaluation across the family justice system in order to assess the system’s early responses to the needs of persons who require extra assistance in accessing its services. We are aware of initiatives to remove systemic barriers which can prevent equal access to family justice services, such as the Accessibility for People with a Disability at the courts.<sup>432</sup> While we believe that the whole chain of service delivery in the family justice system needs to be assessed at regular intervals, access to entry points and the early stages of a family dispute merit particular focus, as these can influence the pivotal access to and first stages in the system.

**The LCO recommends that:**

22. The Attorney General, Legal Aid, the Law Society of Upper Canada, mediator organizations, the courts and CLEO and FLEW and other relevant organizations

(a) evaluate at regular intervals if entry point services and early responses of the family justice services sufficiently address specific needs that exist in a community or the province, because of factors such as language, literacy, age, sexuality, culture, disability or being Deaf, deafened or hard of hearing, in particular with respect to access to basic and, where suitable, more in-depth information for persons with specific needs; and

(b) adjust or strengthen the services, if needed.

**Long Distance Service Delivery**

Individuals who do not face personal barriers but who can simply not access family justice services because of the physical distance to services in rural and remote areas face specific challenges. According to *The Geography of Civil Legal Services in Ontario* there are no clear patterns with respect to the distribution of family lawyers in the province and lawyers may be more evenly distributed than in other areas of civil law.<sup>433</sup> Young lawyers may increasingly establish practices in rural and remote areas,<sup>434</sup> but it is not clear whether this is for a shorter period early on in their career.<sup>435</sup> Access to justice or legal services obstacles rather stem from a low density of lawyers per square kilometer than lawyers per capita.<sup>436</sup>

For persons who live in more remote areas long-distance methods are obvious instruments. Cohl and Thomson refer to the Ontario government's Justice Video which is now being used for "case conferences, remote witness and expert testimony, sign language interpretation, solicitor-client hearings, training sessions, and meetings."<sup>437</sup> In order to bridge the distance between legal service providers and people in remote and rural areas, Cohl and Thomson suggest the use of telephone hotlines, the use of the internet (to deliver information and some live assistance), and the use of videoconferencing.<sup>438</sup> Websites offering legal information are recommended, as are more innovative uses of the Internet. They refer to the Nishnawbe-Aski Legal Services/Pro Bono Law Ontario "Ask a Lawyer" project. This project "allows community legal workers to consult with pro bono lawyers specializing in a wide range of areas through queries on a website."<sup>439</sup>

These can all be important instruments. However, reliance on certain technologies to deliver legal information and provide legal services is inadequate for some communities. For instance,

broadband is “still limited and spotty” in many rural areas.<sup>440</sup> Furthermore, many people do not have home computers or subscribe to Internet services, even if broadband is available. Telephone access is also not a given, nor is the ability to make long-distance phone calls.<sup>441</sup> Long distance methods also rely on literacy, computer literacy and legal literacy. Compared to people in urban areas, “rural residents tend to have lower education and literacy levels, lower incomes, fewer job opportunities and more seasonal employment, more housing in need of repair, and poorer health and access to health care.”<sup>442</sup>

Despite the challenges that exist, we think that at least a number of persons living in rural and remote areas can be assisted by long distance methods.

**The LCO recommends that:**

23. The Ministry of the Attorney General give priority to the provision of “long distance” family law services through videoconferencing, digital files and, where local demand warrants this, the promotion of mobile services.
24. Legal Aid Ontario give persons in rural and remote areas for whom there is limited access to face to face summary legal advice or independent legal advice wider access to telephone advice services, (wider) access to online advice, for example through Skype and chat services, and, if needed, the assistance of trusted intermediaries.
25. The Law Society of Upper Canada and mediator organizations promote the delivery of online services among lawyers and mediators for persons in rural and remote areas.

Earlier in this document we described challenges facing Aboriginal communities. For many Aboriginal persons it is difficult to access and participate effectively in the family justice system in Ontario. Non-judicial dispute resolution is a potential way of resolving family challenges for Aboriginal individuals in a more sustainable way. The Ministry of Children and Youth Services, for example, sets out three possible methods of dispute resolution with respect to child protection:<sup>443</sup>

- Child Protection Mediation;
- Family Group Conferencing;<sup>444</sup> and
- Aboriginal Approaches

“Aboriginal Approaches” relates to “[t]raditional methods of dispute resolution, including circle processes, which have been established by First Nations communities or Aboriginal

organizations”.<sup>445</sup> This is assisted by “impartial facilitators who have no decision-making power and who are skilled in First nation traditional methods”.<sup>446</sup> A facilitator must be recognized by the First Nations community as qualified.<sup>447</sup> This is also known as Original Dispute Resolution or ODR.<sup>448</sup>

Despite these and other efforts and initiatives, the results of which need further research, access to justice for many Aboriginal persons remains problematic and will require further investments.

**The LCO recommends that:**

26. The Ministry of the Attorney General, in consultation with band and other organizations such as the Ontario Native Women’s Association, and other relevant ministries, including the Ministry of Aboriginal Affairs and the Aboriginal Advisor to the Ministry of Children and Youth Services, and Aboriginal Affairs and Northern Development Canada, give priority to traditional methods of dispute resolution, including through adequate funding for the education of the providers of family group Conferencing and Original Dispute Resolution.

## **F. The Need for More Knowledge about Disputants and the System**

There have been many initiatives to assess access to justice in the civil justice system or the family justice system in Ontario. These studies have revealed many challenges.

While more research can be undertaken in the short run and we are aware of important studies which are currently conducted, there is a need for structural research.<sup>449</sup> We discuss this further below as a long term instrument. Unfortunately, reforms and planning for future reforms cannot wait until that research, if begun, has been completed.



## V. TRANSFORMING THE SYSTEM

### A. Introduction

In the previous chapter, we have made recommendations which could be implemented in the near future. In this chapter we propose transformational reforms that constitute a starting point when the fiscal climate and the political will combine to permit more extensive reforms to the system.

We have concluded from our research, including consultations with users and workers in the system, that Ontario's family law system requires a drastic change if it is to be truly effective and responsive. Whatever the merits of particular reforms (and in themselves they may well be meritorious), they have been layered onto an existing system. Different actors begin new information programs; others develop yet another place for users to go. The system is becoming a maze and for some persons a series of hurdles.

This is, again, not to say that that the instruments which have recently been developed or expanded are not useful. However, they are each probably only useful for a specific, sometimes relatively small, group of users: legal aid for persons who are clearly disadvantaged; case management for very high conflict families; self-help for persons with (significant) legal literacy; and education for disputants in a lower conflict who reach the court house and are not familiar with non-judicial dispute resolution. We recognize that the short term recommendations we have made will often also have a limited scope. After the 2010-2011 Family Justice Reforms and even with more investments that require little or no funding, however, main challenges will continue to exist.

We appreciate that in the short term there is unlikely to be funding to make significant changes to the family system. Nevertheless, we agree with Chief Justice Winkler, when he says

I do not believe [the changes required to the family law system] can be achieved by tinkering at the edges of the existing family law system or by grafting new procedures and services onto the existing system. The reforms I am advocating can best be achieved by undergoing a fundamental overhaul of the current system. Only in this way can we properly ensure that all elements of the family justice system work together in harmony to achieve a coherent and balanced system that is affordable, timely, easy to understand and easy [to] manoeuvre through.<sup>450</sup>

Although at entry points many of the structural challenges in the system will not be resolved, we believe that in the longer term investments in entry points can make the family justice system more responsive and efficient by reducing the pressures on persons in a family dispute and on the family justice system. We also believe that holistic approaches may have a broader societal impact.

In this respect we refer to problems which were noted in the provision of health-care, and which may be similar to those in the family justice system. In *Health-care system needs a front door*, André Picard writes that “without a clearly identified entry point, it’s much harder to coordinate efforts”.<sup>451</sup> He points out that “there is no place in the health care system where patients can routinely go to access the care they need promptly and efficiently and that tracks them throughout the health-care “journey”. The *de facto* entry point becomes the emergency room rather than a regular caregiver (family doctor). Because of this, there is no real gatekeeper for expensive services and little continuity in care. The transitions from one level of health care providers to another, is “where all the bad things happen”. He further points out that interdisciplinary teams, which include nurses, pharmacists and other health professionals, could provide continuity. This is referred to by the College of Family Physicians of Canada (CFPC) as the “Patient’s Medical Home”.<sup>452</sup> The CFPC sees continuity of care as one of the goals of the Patient’s Medical Home.<sup>453</sup>

While there are obvious differences between the provision of health-care and the provision of family justice services, for example because of the potentially much longer duration of a patient-family doctor relationship compared to a client-family lawyer relationship, the provision of family justice could be made more efficient through a “front door”, early prevention of problems and continuity of services. This front door should be created close to the clients and the communities rather than in an “emergency room”. We note that Legal Aid Ontario describes duty counsel services as the “emergency room of the court system”.<sup>454</sup>

It is obvious that entry point services rely on the resources of the system and the transition from one step to the next. Examples of good practices of entry points which are often mentioned are the UK’s Citizen’s Advice Bureaux<sup>455</sup> and the Australian Relationship Centres.<sup>456</sup> However, these systems also have weaknesses, for example related to the affordability of the court process for the UK<sup>457</sup> and the affordability of legal assistance and the position of vulnerable groups in Australia.<sup>458</sup> The lack of continuity (in other words the transition from entry point services to full legal services) is a concern.

In Canada, the continuity of services may be a particular challenge for the middle class who are neither eligible for legal aid, nor able to afford extensive legal representation. Nevertheless, it

should not be forgotten that the eligibility criteria for legal aid mean that not only the middle class or middle income earners are not eligible, but many working class people, as well.

## **B. A Blueprint**

Each family justice system operates within its specific context. Criteria for an effective family justice system, which would be useful in the Ontario context, can be found in the Australian Government's 2009 conference paper *"Towards a National Blueprint for the Family Law System"*, which emphasizes a streamlined, simple, fair, flexible, coordinated process with minimal duplication, taking the safety of all parties into account, placing a premium on the interests of children, and "strengthen[ing] cultural accessibility."<sup>459</sup>

Our long term recommendations are based on the goals of achieving a family law system that provides access to justice, measured by how well the entry points achieve the following:

- provide initial information that is accessible to people in their everyday lives;
- help an individual determine the nature of their family problem(s);
- provide initial advice that helps an individual decide whether they want the legal system to assist them with their family problem(s);
- assist individuals to find the approach to resolving their problem that is as simple and timely as possible;
- minimizes duplication of persons and institutions with whom the individual must deal;
- respond to the particular needs of the individual as much as possible, taking into account the existence of domestic violence, and factors such as cultural norms, Aboriginal status, language, disability and other major characteristics;
- do not compromise the equality and other rights of members of the family;
- address the needs of children;
- take into account the financial capacity of individuals without comprising the quality of service;
- respond to the multiple problems that accompany family problems; and
- encourage communication between different aspects of the system.

Ideally, a family justice system operates in a wider system of family services. This system has various entry points for persons facing relationship problems or facing a situation of family breakdown. At a central entry point (where persons with family challenges or problems "routinely go") the full scope of a person's family challenges and problems can be assessed. The person can reach this central entry point directly or can be directed to it through various entry

points which can be informal, “trusted intermediaries” in a community, family service providers, persons working in the area of family justice or public information. The central entry point itself can be accessed through various channels, including – ideally – experts giving face to face advice, or via telephone and online when this is meaningful for users. Once a person has entered the wider family service system, there are two basic steps. For convenience, we have listed these as if they always occur in a particular order; in practice, an individual may need to move back and forth between the steps, although if the system is effective this should only occur when it is useful and not because of a lack of adequate information or lack of coordination within the system.

*Step 1.* The central entry point should give basic information and be the gateway to a wide range of subsidized, free or low cost specialized services, in some cases for all users, in other cases for low and middle income persons or only for low income persons. The first basic triage can direct to:

1. Fast track pathways when there are immediate safety risks;
2. Urgent pathways when there is a need for immediate interventions with respect to access to children and financial and housing needs;
3. Multi-disciplinary services for persons with serious multiple problems;
4. General community and social assistance services;
5. Parenting education programs;
6. Specific (mental) health, counseling and/or legal services. Legal services may be community specific – if specialist services are available – or general services.

*Step 2.* When they reach specialized services, persons can access more in-depth information. The more specific services can be: independent legal advice for negotiations; free or low cost mediation with some hours of subsidized legal advice; or services related to the court system.

The legal aid services with respect to the court system can consist of:

1. Subsidized full representation;
2. Subsidized representation, short of full representation, for less complex matters;
3. Unbundled services if more complex legal issues are limited to one or several issues;
4. A paralegal’s representation in simple, uncontested, cases.

The services in the second step are directed at resolving the problem and will be subsidized for those who are eligible, based on fair eligibility criteria. They are provided by legal specialists, certified providers of non-judicial dispute resolution or specialist court staff who will have to

decide which pathway is the most suitable to resolve a dispute. If they conclude that the assessment in step 1 was not correct or that the person should have been assessed in step 1 they could refer the case back to the triage in step 1 or, in the case of subsidized legal aid provided by lawyers, argue that a certificate for more extensive legal aid should be provided.

The system must be flexible, so that users of the system can access the system through the service providers in step 1 and 2. For example, persons who can agree on matters must be able to access the court system directly for a simple divorce. In order to qualify for subsidized legal aid services a person may be required to enter step 2 for an assessment. In order to access the court system a persons may be required to attend a mandatory information program or to be assessed by a case assessment coordinator or court master with respect to the level of conflict.

The effectiveness and responsiveness of this wider system remain dependent on the resources in the chain of services. For example, the extent to which persons have unmet legal needs in a court process can be influenced by a number of, often interconnected, factors:

- The quality of early assessments and “legal needs” triage, and the quality of early information and referrals;
- The quality and availability of low cost legal advice to solve issues early on;
- The quality and availability of (affordable) providers of non-judicial dispute resolution;
- The complexity of the court process, the timeliness of decisions and the resulting needs for legal assistance. Relevant factors include transparent Family Rules, the availability of judges and court staff, case management and, possibly, self-help tools that work; and
- The availability of (affordable) family lawyers, legal aid lawyers, paralegals (in some cases) for the court process.

### **C. Transforming the Current System**

Our long term recommendations follow the blueprint we have identified above with respect to comprehensive, multi-disciplinary entry points; the provision of initial information and advice; the provision of legal services and specialized family services; and methods of dispute resolution. As we have said before, while it is somewhat arbitrary to treat these as discrete issues relating to consecutive steps, it is probably the clearest way to explain and frame the recommendations.

## **1. Comprehensive Entry Points: Multi-disciplinary multi-function centres**

We believe that “multi-disciplinary, multi-function centres” should be the foundation of the future family justice system. Individuals with family problems and challenges would first go here with their questions. These comprehensive entry points would allow a smooth transition for individuals from initial information gathering to, where necessary, the courts. This is the kind of reform that in our view would transform the system, making it both more efficient and more responsive to individuals’ needs.

At the centres, couples and individuals in a situation of family breakdown can be directed to local legal services, including mediation when appropriate, and get assistance in accessing online court services or online dispute resolution.<sup>460</sup> We believe that the centres should be easily accessible and non-intimidating for users. Comprehensive entry points may be able to take advantage of community locations, particularly for those groups with a strong community affiliation.

How these multi-disciplinary multi-function centres should be structured depends on the ways in which family services, early legal information and advice and court services are delivered. Some initiatives for family law reform have proposed more extensive, holistic services at the courthouse. In other jurisdictions efforts are made to integrate legal services into wider family services, in particular for persons in a situation of family breakdown. There are also examples of more holistic, integrated services for early legal information and summary advice that include family law. We briefly describe these, but recommend that the multi-disciplinary multi-function centres be freestanding.

### **A Comprehensive Entry Point at the Court House**

The Mamo Report suggested that the Family Law Information Centre should be “literally and figuratively an entry point to the family justice system”. FLICs must be holistic, comprehensive, and recognize and respond to the diversity of clients and issues.<sup>461</sup> Also, *Supporting Families to Support Their Children* envisioned a central role for FLICs and recommended that the FLICs be multi-functional and in some respects multi-disciplinary.<sup>462</sup> Although we appreciate the value in locating truly multi-disciplinary FLICs at courthouses, we have some concerns that the location does not provide the opportunity for services and dispute resolution before individuals are ready to consider the court process. The Mamo Report, for example, showed that almost as many individuals accessing a FLIC had already started a court action as had not.<sup>463</sup>

## **A Comprehensive Entry Point Integrated into Local Family Services**

In some jurisdictions efforts are made to integrate legal advice services into the wider system of family services.

Organizations in the UK who responded to a 2011 consultation on parental responsibility indicated that “child maintenance is often just one issue that separating parents may need to resolve, and that there may be other practical and emotional issues to work through before parents can work together.”<sup>464</sup> The organizations mentioned housing, financial matters and legal advice, as well as family therapy services for parents in high conflict. A related theme in the responses from the organizations was how, in practice, their existing services could be integrated. The organizations suggested this could be done through already existing local hubs such as the UK’s Home-Start and Sure Start Centres. In its response the UK Government said it was committed to working across government and to developing a “gateway service”. The government further indicated it would need to gain a greater understanding of what types of support are most effective in helping families work together.<sup>465</sup>

A recent model for an integrated gateway for family services is that of the centres for Youth and Family Services that in 2011 are being established in all Dutch municipalities.<sup>466</sup> These centres are the points of entry for all municipal family services (for families with children up to 23 years), including for families in a situation of family breakdown. Although the focus of the centres is on family and youth services, the centres can bring local family services and local family lawyers together.<sup>467</sup> They are an intermediary with the local or regional providers of early legal information and the local or regional providers of shelters for victims of domestic violence. The role and effectiveness of the Centres will be evaluated in the near future.

Ontario has made efforts to create Best Start Child and Family Centres (Best Start Centres). The centres are designed to bring community services together “in a comprehensive, flexible, integrated and seamless way.”<sup>468</sup> The centres focus on children up to 12 years of age and their families, and include childcare, family resource and early intervention services. The centres are to be linked to libraries, recreation and community centres, health services, family counseling, employment training, settlement services and housing.<sup>469</sup> These centres would make multi-disciplinary approaches easier to achieve than in the current, more fragmented context where family services have their own eligibility criteria, intake processes, funding streams and governance approaches.<sup>470</sup> Jacobs and Jacobs consider that community family legal services can be added to the package of the Ontario Best Start Child and Family Centres.<sup>471</sup>

We believe that a freestanding entry point for persons facing a family breakdown would provide a clearer front door than an entry point service that is linked to the courts or that is designed to address youth or children.

### **A Freestanding Multi-Disciplinary Multi-Function Centre**

Multi-disciplinary multi-function centres should, in our view, be connected to holistic legal services. They should be able to give basic legal information and summary advice on a number of family law issues and other issues that can arise in a situation of family breakdown, including financial matters and housing.

The centres should work in a similar way to that envisioned by *Supporting Families to Support Their Children* with respect to the entry point to the family justice system (albeit that *Supporting Families* envisaged this entry point at the court house).<sup>472</sup> *Supporting Families* proposed entry point services that include a Case Assessment Coordinator (CAC) who would be an experienced mediator and expert in mental health, as well as an advice counsel, a clerk and an on-site part-time or full-time mediator. The entry point service would provide information through pamphlets, videos, family information sessions, the internet, telephone, resource packages and community based information kiosks. An additional proposal by *Supporting Families* is to have a Supervised Access and Exchange Center connected to the entry point. We add that access to financial specialists could also benefit persons in a situation of family breakdown.

We note that the Report of the Legal Aid Review 2008 recommended reconceptualizing the mandate of Ontario's legal aid clinics, so that:

clinics would routinely conduct a global needs assessment of their clients. Once a client's needs are evaluated, an organized referral system could be relied on to assist in resolving the client's existing needs, with an aim to prevent further problems from developing. Clinics would also be a resource for the public to go for summary legal advice and assistance that is not means-tested or is means-tested against more generous criteria than currently prevail. This more fully integrated response to individuals' problems would also help to prevent the occurrence of "referral fatigue".<sup>473</sup>

We would particularly welcome a system of "holistic" legal advice services offering family law services across the province, taking into account local and community needs. The advice services should not only focus on legal aspects. Family legal problems rarely exist in isolation and addressing them often requires obtaining other assistance.



The provision of broader services can lower the threshold for individuals who may otherwise be apprehensive about contacting family services that are associated with having serious family problems. In larger urban areas or areas where specific communities are more predominant the centres can offer more specialized services, while in other areas they could offer more generalist services within the community. A broader scope of the centres could also lower the threshold for “mobile centres” for families in smaller communities and more remote areas. These mobile centres could be patterned to the extent possible on the permanent centres and visit smaller or remote communities on a regular basis. We recognize, however, that privacy in mobile centres is more complex to achieve, and that for some users the provision of more in-depth services must be given through long-distance methods or, for example, through private lawyers in the privacy of their office.

We believe that the centres need to use several points of access and should not rely on only one. For persons with specific needs including older adults, Deaf, deafened people and hard of hearing people, people with learning difficulties, minority ethnic groups and people for whom English or French is not their first language, the main gateway should normally be through face-to-face services and not primarily be through a telephone or internet service.<sup>474</sup> This means that face-to-face services should be accessible and have sufficient capacity.

Frontline advice lawyers can offer face-to-face services, but could also be involved in frontline telephone services and interactive online services or e-services. Thus the advice services would become part of a province-wide, integrated system of early legal information and summary advice services.

For example, the Netherlands has a holistic entry point termed “the legal services counter” (Juridisch Loket).<sup>475</sup> It provides free basic legal information and summary legal advice on civil law, family law, consumer issues, housing issues and social assistance<sup>476</sup> through a website, a national telephone service, an on-line chat service and 30 offices throughout the country, staffed by 300 legal advisers.<sup>477</sup> It can mediate in minor disputes and can give summary legal advice that does not exceed one hour. It can direct users, via a basic assessment and triage to negotiation tools, mediation, a lawyer’s advice or a lawyer for legal aid representation. It does not apply financial eligibility criteria.<sup>478</sup>

The main strength of the Dutch system seems to be that all individuals in the early stages of the family dispute are eligible to receive summary to legal advice through a low-threshold organization that operates outside of a more formal context of private lawyers and courts. Most couples are encouraged, and in part required, to negotiate (parenting) agreements rather than go to litigation<sup>479</sup> or even mediation.<sup>480</sup> Because of accessible basic legal information and

advice, affordable mediation and legal representation, the risk that people feel coerced to reach an agreement and fail to seek legal advice is significantly reduced. A further strength of the Dutch family justice system is that all interventions (from point of entry to the court) involve actors who can assist in reaching a solution. The legal services follow each other in one, streamlined legal aid system. This is also true for the supporting websites and information that contain interactive tools and practical procedural and referral information.

We are aware that advice lawyers offering holistic legal services should normally be family law specialist. The advice lawyers should have easy access to experts such as financial experts, social workers and lawyers in areas other than family law that might be relevant to a family dispute, such as employment or consumer lawyers. They should be supported by a helpline of family law experts. The helpline can provide telephone advice and a database with legislation and case law.

When designing an integrated system of multi-disciplinary multi-function centres with summary legal information and advice services, it is important to consider the accessibility of face-to-face services. For example, the Dutch system operates 30 Legal Counter offices across the country. This may not be sufficient for a province the size of Ontario. The UK system, which in 2011 operated 394 Citizens Advice Bureaux,<sup>481</sup> may fiscally be hard to establish. Legal Aid Ontario currently funds and oversees 77 independent community legal clinics, with nearly 550 staff who assist low income people.<sup>482</sup> For a system based on face-to-face services, relevant factors, such as the number of people served and specific community needs, would have to be identified.

We note that the streamlined provision of early (family) legal services can have several cost-benefits. For example, the current services provided by legal clinics, FLICs, LAO's Client Service Centre, advice lawyers and other legal information and advice services, including Dispute Resolution Officers would, to a large extent, be offered in one integrated system, avoiding duplication of services and multiple referrals. In the current context, these services are fragmented. There may also be significant cost-benefits for the wider family justice system including court services. Although the Dutch system is one of the more costly civil law jurisdictions in Europe (and may rely more on court fees in the near future<sup>483</sup>), it may be that the Dutch system's focus on early solutions for all users contributes to a less adversarial approach and a more efficient use of legal aid lawyers', judges' and users' time. For example, about 90% of Dutch divorce and separation court cases are dealt with within one year and 60% of all divorce and separation cases, most uncontested cases, within two months.<sup>484</sup> A 2011 survey showed that 74% of professional workers and 82% of users in the survey were satisfied with the family court system.<sup>485</sup>

If persons are, for example, in need of counseling, family therapy or more extensive debt counseling, the multi-disciplinary multi-function centres should direct persons to specialized services and their entry points. The linking of freestanding “multi-disciplinary multi-function services” to the system of wider family services would require cooperation between several ministries and other main providers of family services. The incorporation of legal services would require the involvement of the Ministry of the Attorney General. Other relevant ministries include the Ministry of Community and Social Services, the Ministry of Children and Youth Services, the Ministry of Citizenship and Immigration, the Ministry of Education, the Ministry of Francophone Affairs, the Ministry of Health and Long Term Care, the Ministry of Municipal Affairs and Housing and the Ministry of Northern Development and Mines. The Ontario Seniors’ Secretariat and the Ontario Women’s Directorate should also be included. In order to coordinate the process a Steering Group could be established. We refer, for example, to the Members of the Ministerial Steering Committee on Violence Against Women, which is comprised of 15 ministries.<sup>486</sup>

**The LCO recommends that:**

27. The Ministry of the Attorney General and Legal Aid Ontario undertake a study with the objective of establishing a comprehensive system of “multi-disciplinary multi-function centres”, located in the community, possibly connected to community centres that can serve as the initial source of information and guidance in family law matters and related matters. These should
- a. be staffed by paralegal, a mental health specialist and one (family law) lawyer;
  - b. have easy access to experts such as financial experts and social workers, and lawyers in areas other than family law that might be relevant to a family dispute;
  - c. where possible, be staffed by workers who are reflective of the demographic makeup of the surrounding community; and
  - d. be supported by family law experts and a database on family law.
28. The relevant ministries dealing with family services in Ontario’s pluralist context, establish a Steering Committee in order to develop a consistent strategy for the delivery of family service for persons facing a situation of family breakdown, including persons who can be particularly vulnerable because of language, literacy, age, sexuality, culture, disability or being Deaf, deafened or hard of hearing.

In particular we recommend that the Steering Committee explore:

- a. how legal and non-legal family services in large and mid-size centres in Ontario can be connected, and provide diversity of resources or easy access to resources to individuals with diverse family problems; and
- b. how legal and non-legal family services can be delivered in rural and remote areas, including:
  - i. the services that could be provided through mobile services;
  - ii. the involvement of community workers as appropriate for the locations visited; and
  - iii. the use of technology to supplement in-person resources.

## ***2. Elements of the Multi-Disciplinary Multi-Function Centres***

### **Provision of Initial Information**

The “multi-function multi-disciplinary centres” which would be the foundation for family justice services and related family services, need to be supported by a comprehensive website.

Above we described that there may be too much written and online information in too many places without insufficient help to translate it from legalese to plain English and other languages.

In the long term we envision the creation of a site, which is the main reference for all persons facing family challenges and problems. The site would have a legal and a non-legal component. It could be designed to give information on all aspects of family issues or be the portal to specific websites of legal information services, *pro bono services*, the family court services and family services.

The site should be developed in a way that this is the main entry point for information on family problems in Ontario at the initial stages of a family breakdown, and also continues to be the point of reference for separating and divorcing individuals. The site must be neutral and well advertised. We have to recognize that people will not immediately think of accessing the Ministry of the Attorney General's or the Law Society's websites when they are thinking of resolving their family problems. Furthermore, they do not remember information learned some time before when they actually need it, and therefore it needs to be available where people may come across it "by chance" at a time that addressing a family dispute is in their mind.

The site should meet the information needs of various user groups, but also the information needs of organizations assisting persons as "trusted intermediaries". In practice, these organizations assist persons with specific communication needs, such as persons with a disability, the Deaf, deafened and hard of hearing persons, persons with language and literacy problems, the elderly, members of First Nations communities and Aboriginal persons in urban settings, and persons with a particular cultural background. The information on the site should take this into account.

Furthermore, the site needs to address specific legal needs which can exist for individuals, such as LGBTI persons, persons with an immigration background, the elderly and grandparents, and biological and non-biological parents in certain family situations.

The site needs to address the various stages involved in a dispute resolution method, whether judicial or non-judicial, and take into account the different situations of access to legal advice and representation and the different personal situations, including parental conflict and domestic violence and child protection issues.

It is important that the site does not just give legal information, but also general family advice and referral information. The information should be practical and, where possible, interactive,

so that users, with the assistance provided by legal advisers and community workers, can use these for reaching agreements, the early resolution of a dispute or the court process. While court-related tools, such as the Court Forms Assistant, have already been developed, other tools for early dispute resolution can consist of a “legal aid needs assessment tool”, a “parenting agreement tool” and “a separation or divorce agreement tool” which can clarify legal questions and facilitate the negotiations between individuals and their legal advisers<sup>487</sup> or similar instruments that have been developed in Canada and other jurisdictions.

Finally, the site should have a local and regional component so that users can find the services nearest to them.

We note that Legal Aid Ontario has established FLIP, which can be the basis for a more extensive site. We further note that the Law Society of Upper Canada approved an online family law platform in December 2011. The online platform would overlay the existing resources available online and provide a “first stop” for users. The platform will be built in stages.<sup>488</sup> We commend these initiatives, and recommend that, in addition to legal information, the site will also include wider family services and become (part of) “the portal” for family information in Ontario and integrated legal information and other services. We encourage the melding of diverse sites to reduce duplication or the creation of a portal that is easily accessible that provides links to specialized sites.

**The LCO recommends that:**

29. The Ministry of the Attorney General take the lead in an inter-ministerial and cross-sectoral initiative to develop an online portal for families in Ontario which, by itself or in combination with specific websites, gives access to information on a broad range of family issues, including legal issues. The portal should function as the main entry point for all family services, and with related sites it needs to give information to a wide group of users, including those belonging to communities with specific information needs and challenges, and community service providers assisting these users. The information should address all stages of a family breakdown and the resolution of a family dispute. The information should include information on local and regional service providers.
30. The Ministry of the Attorney General, in consultation with CLEO, expand and develop online tools for parenting and separation or divorce agreements which include calculation models, formats for agreements and an explanation of legal concepts in order to assist couples and their legal advisors in reaching an early resolution for family legal challenges and disputes. These can be offered through the main portal or a specific website with legal information.

## **Selecting a Pathway and Basic Triage**

A main function of the multi-function multi-disciplinary centres would be an early triage function. We believe that, in addition to a triage at the court house (for example through a CAC at the courts), a basic triage, before a couple reaches the court, can make the provision of services more efficient and responsive.

In our view an “early assessment and legal needs triage” would be the most effective if performed in the “one stop shop” of a multi-disciplinary multi-function centre. This triage should be based on a number of factors: the level of conflict, the existence of power differentials, domestic violence, children’s issues, legal issues which are disputed or not disputed, the individuals’ individual circumstances and the capacity to use various tools. We note that “legal needs” which we described above can have many aspects. But beyond the scope of legal needs, also the suitability of and need for wider family services can be related to specific factors:

- cultural norms or religious beliefs that affect the family relationship, or raise issues about whether family members will be treated equally;
- the existence of an extended family where other family members have played a significant role in caring for the children;
- the presence of a significant disability; or
- significant financial difficulties.

These are just examples that add to the complexity of a family situation. Triage would allow appropriate specialist resources to be provided to assist the parties in reaching a long term resolution whether by non-judicial means or by the courts.

Based on the initial assessment, persons can be directed (triaged) to subsidized community legal advice services (legal clinics or specialized family law clinics), a legal aid lawyer, a private lawyer, a paralegal, online information or tools, (mandatory) information and education programs, services at the court house, as well as community family services, financial advice services, counseling services and (mental) health services. Ideally, many of these family services are offered at, or close to, the central location where the triage is performed. Where this is not possible, the services should be easily accessible.

The persons who perform the triage should be mental health professionals, family mediators or a family law lawyer or some combination. They would have to be aware of specific community needs. For the training standards input from various cultural and ethnic groups should be obtained.<sup>489</sup> The legal needs triage can combine an assessment, summary legal advice and a triage to specific legal services. The provision of summary legal advice requires a lawyer's expertise. However, where there is a shortage of family lawyers, a basic triage could also be performed by, for example, a paralegal or a generalist lawyer.

The triage can be used to prioritize cases and to allocate time for legal advice or legal assistance. It should be supported by a database that contains updated information on lawyers' and paralegals' specializations and availability, and the availability of other services including their availability for legal aid.

A database to track clients and the creation of a client's electronic file could make the system more streamlined. However, this may raise confidentiality issues. We recommend that an intake assessment cannot be passed on to other services, for example legal aid services at the courts, unless with the individual's explicit consent and where the Rules of Professional Conduct of the Law Society of Upper Canada<sup>490</sup> and codes of conduct of other professions involved in multi-disciplinary practices allow this.

For a streamlined system it is important that the early triage does not become a source of distrust, a cause of delay or an obstacle to efficient, responsive resolution of disputes. The early triage should be a mandatory step in order to access legal aid services. Alternatively, a person who chooses to enter the system through the triage function may be offered subsidized legal services.

**The LCO recommends that:**

31. The Ministry of the Attorney General establish a triage system to be implemented at the multi-disciplinary multi-function centre preliminary to families entering the court system in order to address particular needs of families and direct these families to the most appropriate form of dispute resolution. The person(s) performing the triage should have expertise in family matters in addition to legal expertise and assess many factors, such as the role of extended family members and the complexity of a legal or family dispute, including other problems such as financial or psychological, in addition to domestic violence or other forms of "high conflict".



## **Early Resolution**

A function at the multi-disciplinary multi-function centres akin to that of Dispute Resolution Officers at the Superior Court locations could assist the parties in achieving the early resolution of some or all of the issues in a dispute.

### **The LCO recommends that:**

32. The Ministry of the Attorney General fund a function akin to Dispute Resolution Officers in the Superior Court who can assist the parties in achieving the early resolution of some or all of the issues in a dispute.

## **Comprehensive Specialist Family Services**

The multi-disciplinary multi-function centres should be a gateway to specialist family services. As previously mentioned, the accumulation of problems can make some families very vulnerable. Situations of high conflict and/or domestic violence combined with other problems, such as traumas, a low income and the care for children can deeply impact a family.<sup>491</sup> In very difficult cases, violence against children, domestic violence against a partner, substance abuse, criminal behaviour and socio-economic problems can affect a single family. Some families have a history of marginalization in Ontario and may face many legal challenges and barriers. Aboriginal communities, which face intergenerational damage, may be at risk.<sup>492</sup>

Some families are, therefore, in need of specialist, multi-disciplinary family services. These could be provided in organizations that also consist of “multi-disciplinary multi-function centres” or by separate centres. Families with serious family problems may be most in need of longer term family services, and legal pathways and family services’ strategies should be, as much as possible, aligned.

Although there are challenges to multi-disciplinary approaches, we believe that multi-disciplinary organizations teams can have great value for families and individuals facing multiple problems in a situation of family breakdown. An expansion of multi-disciplinary services across the province could give more individuals access to these services. We are also aware that there are limitations to the comprehensiveness of interdisciplinary services, for example because of distance outside urban settings.<sup>493</sup> For many individuals in small communities, including those in rural and remote areas, privacy and anonymity with respect to family issues are very important. This limits the use of, for example, mobile services visiting such communities.

In the establishment of local and regional multi-disciplinary teams, local contexts and community contexts must be taken into account. We believe that for certain communities the involvement of representatives of their community can increase the credibility of the services and can lower the threshold for individuals. While multi-disciplinary organizations need to be established in a community itself and require local workers who are willing to work together, the provincial government can promote and facilitate multi-disciplinary practices through incentives and information.

**The LCO recommends that:**

33. The Steering Group (see recommendation 28) explore ways in which to:
- a. Strengthen existing multi-disciplinary services and promote the creation of new multi-disciplinary services, where local demand warrants this, by allocating funding, facilitating the exchange of information within these services, by promoting good practices and by raising awareness among users and workers in the respective family services so that users find these services.
  - b. Promote the incorporation of pluralism in the local delivery of multi-disciplinary services by involving representatives of communities that are served by the centres.

### ***3. Provision of Legal Aid Services***

Access to legal services cannot be separated from the availability of legal aid. While changing the eligibility criteria to allow greater access is a common and easy recommendation<sup>494</sup> (and one we also make, acknowledging the cost), we recognize that there are other ways to deliver legal aid services. An increase of legal aid budgets could also be used for legal assistance, short of full representation, rather than legal aid certificates for full representation by a lawyer. *Home Court Advantage* recommended the adjustment of the financial eligibility criteria for legal aid to increase access to independent legal advice.<sup>495</sup> We support this recommendation.

There are, nevertheless, concerns about LAO's eligibility criteria for full representation by a lawyer. In his 2011 Annual Report the Auditor General pointed out that

the financial eligibility cut-offs for qualifying [for legal aid] have not changed since 1996 and 1993, respectively. This, combined with an escalation in the average legal billing for each certificate issued, has meant fewer people over the last couple of years have been

provided with certificates and more clients have been required to rely on duty counsel, legal advice, and information from Legal Aid Ontario's website for legal services.<sup>496</sup>

About 80% of approved applicants have an annual income of \$10,000 or less and the majority are on social assistance or have no reported income.<sup>497</sup> The eligibility cut-off for a single person (\$10,800 a year) is "so low that someone working full time at the minimum hourly wage would earn twice as much."<sup>498</sup>

Legal aid in the Netherlands, which is generally considered a good practice,<sup>499</sup> is more extensive than in Ontario. It is estimated that 40% of the Dutch population would qualify for legal assistance under the financial eligibility criteria, although – in addition to court fees – a legal aid contribution may be required, depending on income. Legal Aid includes, depending on the nature of the case and the choice of disputants, legal aid certificates for mediation and for online mediation (ODR) offered through legal aid; legal advice provided by lawyers for three hours; and legal aid certificates for full representation on all family and related civil legal issues, based on caps.<sup>500</sup>

Although the number of contacts with legal assistance or legal advice in the Netherlands, which has a population of over 16 million people, was slightly lower than in Ontario in 2006-2007, the Netherlands granted a considerably higher number of legal aid certificates in comparison to other legal services than Ontario.<sup>501</sup> It should also be noted that the Dutch legal aid system has had a significantly higher compensation per hour for lawyers.<sup>502</sup> Accordingly, the Dutch Legal Aid services have not had problems attracting family legal aid lawyers,<sup>503</sup> whereas Ontario's Legal Aid system has.<sup>504</sup>

We recognize that the total budget for legal aid in Ontario and for the court systems<sup>505</sup> would need to be significantly increased to match the Dutch budgets, in particular in the area of civil law: in the Netherlands the per capita cost of legal aid in 2008 was €27 (about \$37)<sup>506</sup> as opposed to \$27 in Ontario in 2006.<sup>507</sup> In 2010, the per capita cost of legal aid in Ontario was even reduced to just under \$15,<sup>508</sup> but the family law justice system was given extra funding.<sup>509</sup>

A comparison of Ontario's legal aid system with that of other provinces in Canada also shows that LAO applies higher eligibility criteria (that is, it is harder to qualify for legal aid certificates for full representation in Ontario), but that Ontario offers almost three times more duty counsel assists per capita than the provincial average.<sup>510</sup> In part, this explains a higher legal aid budget in Ontario, compared to other provinces. In his 2011 Annual Report the Auditor General recommends that LAO, in collaboration with the Attorney General, study the impact on low-income individuals of its current financial eligibility threshold since 1996, and its shift to using less costly legal aid support services. He further recommends that legal aid programs in other

provinces be assessed to identify the factors and best practices contributing to their lower costs. In its response to the Auditor General, LAO says it is concerned about access to legal aid services. It holds that cost comparisons are difficult to make precisely, and that cost per service is another meaningful measure, however.<sup>511</sup>

We believe that the financial eligibility cut-offs need to be adjusted across Ontario's legal aid program, so that this program can respond to a user's legal needs. Through a legal aid triage, a user could be directed to a particular legal aid service "proportional" to his or her legal needs, including some hours for advice, mediation, duty counsel, unbundled services or full representation. The eligibility cut-offs should take the cost of living and the cost of legal fees in an area or the province into account. In the application of the criteria, a person's specific needs which can lead to higher legal costs may need to be taken into account, either on an individual basis or on the basis of objectively established multiplication factors.

**The LCO recommends that:**

34. The Ministry of the Attorney General provide funding to Legal Aid Ontario to give greater access to legal aid services in individual cases, based on a persons' legal needs, both in the area of family law and other areas of law which affect families.
35. Legal Aid Ontario, in cooperation with the Attorney General, the Law Society of Upper Canada, and the Courts set annual eligibility cut-offs, based on cost of living and cost of legal fees, and caps for legal aid, which are adequate to give access to proportional legal aid services.
36. Legal Aid Ontario, in cooperation with Family Courts, the Law Society of Upper Canada, community legal clinics and community organizations, develop criteria for a legal aid triage to "proportional" legal aid services for persons in a situation of family breakdown.

#### ***4. Dispute Resolution***

##### **Non-Judicial Dispute Resolution**

Regardless of efforts to improve the legal system, the resolution of family disputes, in particular in the court process will remain stressful. The view that "most litigants cannot afford the financial and emotional toll of navigating a cumbersome process that leads from separation to the final dissolution of a marriage", is shared by users and workers.<sup>512</sup>

*The Mamo Report* concluded that changes should not be primarily directed to the court process but to a paradigm shift from a culture of litigation to that of cooperative dispute resolution: “The court should be the last option for the few cases that require the formal authority and coercive power of the court.”<sup>513</sup> This is consistent with most subsequent commentators and the most recent reforms initiated by the Attorney General. For example, *Supporting Families to Support Their Children* reinforces the Mamo Report’s major recommendations.

A main premise of the organizations’ recommendations is that the court procedure should be the default and not the standard process. Only a small percentage (less than 5%) of high conflict cases would require a family court system with specialized resources, consisting of specialized judges. Judges should be allowed to order a parenting coordinator (or “Special Master”) to high conflict “revolving door” litigants to assist in the implementation of minor conflicts, such as parenting schedules. Unnecessary and abusive litigation should be discouraged by awarding costs.<sup>514</sup>

We agree with this premise, and believe that more users can be directed to less adversarial dispute resolution. We also believe that experienced judges and court staff can provide the authority to do so. However, we emphasize that non-judicial resolution must be affordable and ensure that the parties are being treated fairly and responsively to their particular needs. Furthermore, even though the parties may not be in court, it does not mean that they do not require legal assistance in order to satisfy these objectives.

A number of commentators believe that making mediation mandatory in separation and divorce cases would make a significant difference to the family law process by encouraging the parties to settle their dispute earlier. Mamo, Chiodo and Jaffe wrote that “the suggestions to have the Family Court Rules changed to provide for mandatory mediation in family law matters was raised repeatedly at a number of sites and needs very serious consideration. A requirement in the Rules that certain cases be referred to mediation as part of the case management process would assist immensely in changing the culture of litigation in the family justice system”.<sup>515</sup> Chief Justice Winkler also proposed to introduce a concept of “presumptive mediation”.<sup>516</sup>

Although we endorse the premise that the court should not be the standard procedure, we do not, at this stage or in the longer term, see significant benefits in making an attempt to mediate mandatory before individuals can enter the court process. We believe that the family justice system already places significant, perhaps too much, emphasis on mediation. Probably many persons in a lower conflict already negotiate an agreement or choose another non-judicial resolution method. For persons in higher conflict mediation is more complex. In particular for

these situations mediation requires high quality mediators, legal advice, assessments whether mediation is suitable in light of power differentials and assessments whether an individual has made a genuine attempt to mediate. Perhaps most importantly, mandatory mediation does not seem compatible with the key principle of voluntariness in mediation. In cases of higher conflict the will to reach a compromise often does not exist, at least initially.

### **Judicial Dispute Resolution**

Earlier we indicated that the Superior Court has instituted a new case management system. We described how case management at the courts could be strengthened by a mental health specialist who can assist judges.

In the long run, more comprehensive triage mechanisms may be developed at the court houses. *Home Court Advantage* recommended that a Case Assessment Coordinator (CAC) would perform the triage. CACs at the courts would screen for domestic violence and level of conflict and refer parties to appropriate resources. Thus CACs would “ensure that each court attendance is necessary and appropriate”.<sup>517</sup> Cases of an urgent nature would be fast-tracked to the court. Such cases may involve custody issues with domestic violence, failure to pay child support or spousal support, failure to abide by a parenting plan or terms of a separation agreement. If parties wish to litigate but the CAC believes alternative dispute resolution would be more appropriate, this could be noted on file.

In relation to the development of a CAC-function we note that Bala and Birnbaum recommend an empirically validated instrument that identifies different levels of conflict. This would assist mental health professionals in targeting specific interventions, thereby reducing the stress on children and families. This would also assist the courts in early case management.<sup>518</sup> The eventual introduction of a case assessment coordinator (CAC) at the courts could contribute to such an early detection.<sup>519</sup>

We support the further development of triage functions at the court. We believe that when triage earlier in the family justice process are able to direct users to fair and affordable mechanisms for the prevention of legal disputes and non-judicial dispute resolution, court services can more effectively focus on complex cases, involving high conflict, allegations of or actual domestic violence and other complex or urgent legal matters.

Our own project is focused on entry points. However, we want to be clear that while we have focused on entry points because we believe that when they are effective and responsive, it can avoid many subsequent problems, there needs to be continuity in the rest of the system. For

the effectiveness and responsiveness of entry points to continue to have effect, the next stages of the process must also be reformed.<sup>520</sup> We acknowledge the courts' own efforts to make their process more effective and particularly endorse a triage process that further differentiates cases that have reached the courts, with a view to diverting those with the potential for effective mediation, for example. However, we make two general recommendations in relation to the courts, adding our voice to those who support the creation of more Unified Family Courts and the principle of "one family, one judge".

**The LCO recommends that:**

37. The Province continue to work with the federal government to establish Unified Family Courts throughout Ontario.
38. The courts make every effort to ensure that, after a settlement conference, if any, one judge is responsible for adjudicating a family's litigation.

#### **D. The Need for More Knowledge about Disputants and the System**

As we explained above, we lack sufficient information about the family legal system and the effect of various reforms. As a long term vision we propose a research centre that supports the courts, Legal Aid Ontario and practitioners by conducting specific research, user surveys and developing innovative (online or other) instruments.

**The LCO recommends that:**

39. The Ministry of the Attorney General, the Law Society of Upper Canada and Legal Aid Ontario, and other organizations with particular relevant expertise, undertake a study of the family legal system with the objective of developing reforms that will respond the needs of users by systematically collecting data about
  - a. the Family Law Information Centres with respect to users, services and outcomes for users;
  - b. court users, process and outcomes;
  - c. the effectiveness of subsidized mediation;
  - d. the use of self-help materials; and
  - e. the experience with limited scope retainers in family law.

## VI. NEXT STEPS

This Interim Report has been posted on the LCO website and has been distributed widely. We encourage your feedback. The LCO will consider all comments we receive and we may alter or amend our recommendations based on the feedback we receive. Our final recommendations will appear in our Final Report which we anticipate releasing later in 2012. The Final report with recommendations is subject to approval by the LCO's Board of Governors.

There are many ways to express your views or help us hear from those affected by this project:

- Send us your comments in writing, by fax, in an email or in our online comment box.
- Call us to arrange a time to talk about your experiences, ideas and comments in person or on the telephone.
- You may have other suggestions for how you can best express your views or help others tell us their experiences.

You can mail, fax, or e-mail your comments by **April 30, 2012** to:

Law Commission of Ontario  
Attention: Family Law Project  
2032 Ignat Kaneff Building, Osgoode Hall Law School, York University  
4700 Keele Street, Toronto ON M3J 1P3  
Fax: (416)650-8418  
E-mail: [LawCommission@lco-cdo.org](mailto:LawCommission@lco-cdo.org)

You may also post comments online at <http://www.lco-cdo.org/en/content/get-touch>.



## VII. RECOMMENDATIONS

### The LCO recommends that:

1. The Ministry of the Attorney General, in consultation with Legal Aid Ontario and CLEO, arrange for the preparation of plain language, colourful brochures or even single page handouts in different languages, and arrange for their distribution in locations where people worrying about their family problems are most likely to see them, such as doctors' offices, YWCA/YMCAs, libraries, community centres and supermarkets and other similar locations.
2. The Law Society of Upper Canada and mediators' organizations promote the distribution of brochures with basic information and the referral to wider service family services through lawyers and members of the mediators' organizations respectively.
3. The Ministry of the Attorney General and other relevant ministries, including the Ministry of Community and Social Services, the Ministry of Children and Youth Services, the Ministry of Citizenship and Immigration, the Ministry of Francophone Affairs, the Ministry of Municipal Affairs and Housing, the Ministry of Northern Development and Mines, and also including the Ontario Seniors' Secretariat and the Ontario Women's Directorate, provide financial and other resources for initiatives that focus on the role of community organizations in the provision of early information, referrals and personal assistance for persons in a situation of family breakdown through needs assessments in a community; and where demands warrant this, the training and education of frontline service providers, the creation of a legal telephone information centre for frontline workers and/or the creation of a database with basic legal and referral information for frontline workers.
4. The Ministry of the Attorney General, in consultation with appropriate organizations, in particular Legal Aid Ontario and CLEO, develop a single online hub of plain language information about the legal process and options and availability of specialized services; develop a strategy to advertise the single online hub; and develop a strategy to give children of various ages specific information, including through online interactive methods.

5. (a) The Ministry of the Attorney General undertake a review of the Family Law Information Centres within three years in order to determine the frequency of use and how effectively they have disseminated information and advice; and  
  
(b) based on the results of the review make appropriate changes as necessary.
6. (a) Legal Aid Ontario establish basic legal information and advice services in areas or communities which are not adequately serviced by legal aid lawyers or other services, for example by placing Legal Aid lawyers in community centres or legal clinics which are funded to provide early summary legal advice in family matters;  
  
(b) LAO make Legal Aid certificates available to low income persons in low conflict situations so that they can negotiate an agreement.
7. During their legal education and training during law school and through the licensing examinations, future lawyers be advised and tested about the particular risks associated with limited scope retainers and the ways to address them.
8. (a) The Law Society of Upper Canada consider whether to require lawyers to have practised family law for two years before offering limited scope retainers.  
  
(b) The Law Society of Upper Canada provide and advertise mentoring advice for lawyers offering limited scope retainers in family law.  
  
(c) The Law Society of Upper Canada, in consultation with the Courts and other relevant organizations, conduct a study of the effectiveness of, and challenges with respect to, limited scope retainers in family law with the objective of minimizing the difficulties associated with such retainers.
9. The Ministry of the Attorney General, Legal Aid Ontario and the Law Society of Upper Canada, in consultation with other relevant organizations, study how self-help materials in combination with face to face personal assistance and/or telephone or online assistance, provided by lawyers, legal aid lawyers or court staff can achieve access to justice for low and middle income persons.
10. CLEO be funded by Legal Aid Ontario and the Law Society of Upper Canada to prepare plain language brochures explaining the options available to unrepresented litigants,

including limited scope retainers, and *pro bono* services if Pro Bono Ontario is funded to facilitate *pro bono* family services (see recommendation 12).

11. Family lawyers post information about costs on their websites, including any initial consultation fee, retainers and hourly rates, and whether they offer free legal services or accept a legal aid certificate.

12. (a) Pro Bono Law Ontario be funded by Legal Aid Ontario and the Law Foundation of Ontario to permit it to facilitate *pro bono* services in family law.

(b) Lawyers engaged in providing *pro bono* legal services be advised about the increased risks from limited representation and responses to address these risks prior to providing the *pro bono* services.

(c) *Pro bono* lawyers and organizations involved in the provision of *pro bono* services establish a gateway and a transparent system for directing persons to *pro bono* lawyers, based on users' needs.

13. The Law Society of Upper Canada review the scope of practice for paralegals with the objective of identifying those areas of the family legal system to which paralegals can contribute to increase access to justice;

14. (a) If paralegals are allowed to offer services in the field of family justice, their education must include the necessary training to ensure that they provide legal services competently.

(b) To the extent paralegals offer a limited scope retainer, the same recommendations applying to lawyers, should apply to paralegals as appropriately modified (see recommendations 7 and 8).

**The LCO endorses:**

15. The proposal by Home Court Advantage that Ontario law school clinics and legal services provide (further) assistance in family law.

**The LCO recommends that:**

16. Legal Aid Ontario explore how providing proportional legal aid services to different user groups can widen the scope of legal aid; explore how these services can be allocated to a person with a minimum of intake moments and duplications, using a triage approach; explore how the delivery of multiple legal aid services can take Ontario's pluralism into account in the legal aid assessments and triages, the referral to, and recruitment of, service providers with specific community expertise, and the development of materials and methods;
17. Legal Aid reserve funding for legal aid certificates in cases of hardship for a user who is otherwise not eligible for legal aid, in particular persons with special needs or elderly persons with a low income and a house ownership.
18. Legal aid certificates be made available to low income persons who use non-judicial dispute resolution, including in more "complex" cases, so that they can obtain, if needed, more extensive independent legal advice.
19. During their legal education and training during law school and through the licensing examinations, future lawyers be advised and tested about a role in non-judicial dispute resolution led by non-lawyers.
20. The Province fund a court-wide system of Dispute Resolution Officers.
21. (a) The Ministry of the Attorney General and the courts study the potential role of mental health experts, to assist judges in the effective management of family law cases; and,  
  
(b) if the study shows it would be helpful to have mental health expertise available in family court, to provide adequate funding for this assistance.
22. The Attorney General, Legal Aid, the Law Society of Upper Canada, mediator organizations, the courts and CLEO and FLEW and other relevant organizations:
  - a. evaluate at regular intervals if entry point services and early responses of the family justice services sufficiently address specific needs that exist in a community or the province, because of factors such as language, literacy, age,

sexuality, culture, disability or being Deaf, deafened or hard of hearing, in particular with respect to access to basic and, where suitable, more in-depth information for persons with specific needs; and

- b. adjust or strengthen the services, if needed.
23. The Ministry of the Attorney General give priority to the provision of “long distance” family law services through videoconferencing, digital files and, where local demand warrants this, the promotion of mobile services.
  24. Legal Aid Ontario give persons in rural and remote areas for whom there is limited access to face to face summary legal advice or independent legal advice wider access to telephone advice services, (wider) access to online advice, for example through Skype and chat services, and, if needed, the assistance of trusted intermediaries.
  25. The Law Society of Upper Canada and mediator organizations promote the delivery of online services among lawyers and mediators for persons in rural and remote areas.
  26. The Ministry of the Attorney General, in consultation with band and other organizations such as the Ontario Native Women’s Association, and other relevant ministries, including the Ministry of Aboriginal Affairs and the Aboriginal Advisor to the Ministry of Children and Youth Services, and Aboriginal Affairs and Northern Development Canada, give priority to traditional methods of dispute resolution, including through adequate funding for the education of the providers of family group Conferencing and Original Dispute Resolution.
  27. The Ministry of the Attorney General and Legal Aid Ontario undertake a study with the objective of establishing a comprehensive system of “multi-disciplinary multi-function centres”, located in the community, and possibly connected to community centres, that can serve as the initial source of information and guidance in family law matters and related matters. These should
    - a. be staffed by paralegal, a mental health specialist and one (family law) lawyer;
    - b. have easy access to experts such as financial experts and social workers, and lawyers in areas other than family law that might be relevant to a family dispute;
    - c. where possible, be staffed by workers who are reflective of the demographic makeup of the surrounding community; and
    - d. be supported by family law experts and a database on family law.

28. The relevant ministries dealing with family services in Ontario's pluralist context, establish a Steering Committee in order to develop a consistent strategy for the delivery of family service for persons facing a situation of family breakdown, including persons who can be particularly vulnerable because of language, literacy, age, sexuality, culture, disability or being Deaf, deafened or hard of hearing.

In particular we recommend that the Steering Committee explore:

- a. how legal and non-legal family services in large and mid-size centres in Ontario can be connected, and provide diversity of resources or easy access to resources to individuals with diverse family problems; and
  - b. how legal and non-legal family services can be delivered in rural and remote areas, including:
    - i. the services that could be provided through mobile services;
    - ii. the involvement of community workers as appropriate for the locations visited; and
    - iii. the use of technology to supplement in-person resources.
29. The Ministry of the Attorney General take the lead in an inter-ministerial and cross-sectoral initiative to develop an online portal for families in Ontario which, by itself or in combination with specific websites, gives access to information on a broad range of family issues, including legal issues. The portal should function as the main entry point for all family services, and with related sites it needs to give information to a wide group of users, including those belonging to communities with specific information needs and challenges, and community service providers assisting these users. The information should address all stages of a family breakdown and the resolution of a family dispute. The information should include information on local and regional service providers.
30. The Ministry of the Attorney General, in consultation with CLEO, and Legal Aid Ontario expand and develop online tools for parenting and separation or divorce agreements which include calculation models, formats for agreements and an explanation of legal concepts in order to assist couples and their legal advisors in reaching an early resolution for family legal challenges and disputes. These can be offered through the main portal or a specific website with legal information.
31. The Ministry of the Attorney General establish a triage system to be implemented at the multi-disciplinary multi-function centre preliminary to families entering the court system in order to address particular needs of families and direct these families to the most

appropriate form of dispute resolution. The person(s) performing the triage should have expertise in family matters in addition to legal expertise and assess many factors, such as the role of extended family members and the complexity of a legal or family dispute, including other problems such as financial or psychological, in addition to domestic violence or other forms of “high conflict”.

32. The Ministry of the Attorney General fund a function akin to Dispute Resolution Officers in the Superior Court who can assist the parties in achieving the early resolution of some or all of the issues in a dispute.
33. The Steering Group (see recommendation 28) explore ways in which to:
  - a. Strengthen existing multi-disciplinary services and promote the creation of new multi-disciplinary services, where local demand warrants this, by allocating funding, facilitating the exchange of information within these services, by promoting good practices and by raising awareness among users and workers in the respective family services so that users find these services.
  - b. Promote the incorporation of pluralism in the local delivery of multi-disciplinary services by involving representatives of communities that are served by the centres.
34. The Ministry of the Attorney General provide funding to Legal Aid Ontario to give greater access to legal aid services in individual cases, based on a persons’ legal needs, both in the area of family law and other areas of law which affect families.
35. Legal Aid Ontario, in cooperation with the Attorney General, the Law Society of Upper Canada, and the Courts set annual eligibility cut-offs, based on cost of living and cost of legal fees, and caps for legal aid, which are adequate to give access to proportional legal aid services.
36. Legal Aid Ontario, in cooperation with Family Courts, the Law Society of Upper Canada, community legal clinics and community organizations, develop criteria for a legal aid triage to “proportional” legal aid services for persons in a situation of family breakdown.
37. The Province continue to work with the federal government to establish Unified Family Courts throughout Ontario.

38. The courts make every effort to ensure that, after a settlement conference, if any, one judge is responsible for adjudicating a family's litigation.
39. The Ministry of the Attorney General, the Law Society of Upper Canada and Legal Aid Ontario, and other organizations with particular relevant expertise, undertake a study of the family legal system with the objective of developing reforms that will respond the needs of users by systematically collecting data about:
- a. the Family Law Information Centres with respect to users, services and outcomes for users;
  - b. court users, process and outcomes;
  - c. the effectiveness of subsidized mediation;
  - d. the use of self-help materials; and
  - e. the experience with limited scope retainers in family law.



## **APPENDIX A: ORGANIZATIONS AND INDIVIDUALS PROVIDING INPUT**

- Aboriginal Legal Services of Toronto
- Action ontarienne contre la violence faite aux femmes
- ADR Institute of Ontario
- The Advocates' Society
- ARCH Disability Law Centre
- Association for Better Care of Children
- Association of Family and Conciliation Courts
- Rachel Birnbaum, University of Western Ontario
- Burlington Counselling & Family Services
- Canadian Equal Parenting Council
- Centre for Addiction & Mental Health Sudbury
- Centre Francophone de Toronto
- Children's Aid Society of the County of Simcoe
- Community Legal Education Ontario
- Employee of the City of Greater Sudbury
- Clinique juridique du Grand-Nord
- Community Advocacy and Legal Centre
- Family Law Service Centre – Toronto North
- Downtown Legal Services
- Equal Parenting for Canadians
- Ernestine's Women's Shelter
- Family Services Ottawa
- Family Services Toronto
- Fédération de la jeunesse franco-ontarienne
- Findhelp Information Services/211 Central – Toronto
- Jewish Family and Child Service of Toronto
- Keewaytinok Native Legal Services
- Legal Aid Ontario
- Luke's Place
- Manitoulin Legal Clinic
- The Mediation Centre of Simcoe County
- Metro Toronto Chinese & Southeast Asian Legal Clinic
- Office of the Children's Lawyer
- Officials of the Ministry of the Attorney General
- Mouvement des Intervenant.e.s en Communication Radio de l'Ontario (MICRO)
- Multilingual Community Interpreter Services
- LGBTQ Parenting Network

- Mississauga Community Legal Services
- Ontario Bar Association
- Ontario Collaborative Law Federation
- Ontario Court of Justice
- Ontario Native Women's Association
- Ontario Works Sudbury
- Pro Bono Law Ontario
- Rod Strain, Legal Aid Ontario
- Justice Craig Perkins, Superior Court of Justice of Ontario
- Superior Court of Justice of Ontario
- Toronto Police Service
- Toronto-based group of transitional and housing support workers
- Corry Van Zeeland, Tilburg Institute for Interdisciplinary Studies of Civil Law and Conflict Resolution Systems
- Vanier Community Service Centre
- Women's Community House

## **APPENDIX B: RESEARCH PAPERS COMMISSIONED BY THE LCO**

The LCO issues a call for the preparation of research papers in particular subjects relevant to a project. It relies on these papers in the same way as any research. The papers do not necessarily reflect the LCO's views.

Professors Brenda and Lesley Jacobs, *Interdisciplinarity and the Legal Profession*. Summer 2010. Available online at <<http://www.lco-cdo.org/en/family-law-process-call-for-papers-jacobs>>

Noel Semple, *Cost-Benefit Analysis of Family Service Delivery: Disease, Prevention and Treatment*. Summer 2010. Available online at <<http://www.lco-cdo.org/en/family-law-process-call-for-papers-semble>>

## ENDNOTES

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<sup>1</sup> *Charter of the United Nations*, 26 June 1945, Can TS 1945 No 7 16.

<sup>2</sup> The *Family Reform Act, 1978*, SO 1978, c2 abolished the marital unity of legal personality. According to the Preamble of the *Family Law Act*, “it is necessary to recognize the equal position of spouses as individuals within marriage and to recognize marriage as a form of partnership”: *Family Law Act*, R.S.O. 1990, c. F.3 Preamble and s 64 (1). See, for example, Judge Rosalie Silberman Abella, *Family Law in Ontario, Changing Assumptions*, (1981) 13 *Ottawa Law Review* 1, 8.

<sup>3</sup> The legal marriage between two partners of the same sex has been recognized by the *Civil Marriage Act*, SC 2005, c 33.

<sup>4</sup> *Divorce Act*, RSC 1985 (2<sup>nd</sup> Supp), c 3. The *Divorce Act, 1968*, c 24 (Can) introduced the concept of marriage breakdown as a ground for divorce.

<sup>5</sup> Family Law Information Centres (or FLICs) are located at courthouses to provide information and other assistance. They are discussed in greater detail below.

<sup>6</sup> See, for example, Ontario Work’s Directive 5.5: *Family Support* (July 2010), 2: “As a condition of eligibility applicants and recipients are with certain exceptions, required to make reasonable efforts to pursue child or spousal support to which he or she, or a dependent, may be entitled.” Online: <http://www.mcsc.gov.on.ca/documents/en/mcsc/social/directives/ow/0505.pdf>.

<sup>7</sup> See, for example, Ontario Disability Support Program’s policy: “The Director must be satisfied that a person is taking action, where appropriate, to obtain support payments.” Online: [http://www.mcsc.gov.on.ca/en/mcsc/programs/social/directives/directives/ODSPDirectives/income\\_support/5\\_1\\_5\\_ODSP\\_ISDirectives.aspx](http://www.mcsc.gov.on.ca/en/mcsc/programs/social/directives/directives/ODSPDirectives/income_support/5_1_5_ODSP_ISDirectives.aspx).

<sup>8</sup> See, for example, the website of Passport Canada, *In the case of custody, separation or divorce*. Online: <http://www.ppt.gc.ca/cdn/16-.aspx?lang=eng>.

<sup>9</sup> See Art. 12 of the *Convention on the Rights of the Child* (Can TS 1992, No 3), which gives the child capable of forming his or her own views the right to express these views in a legal proceeding.

<sup>10</sup> Law Commission of Ontario, *Research Priorities Report (Sossin Report)*. (April 2007). Online: <http://www.lco-cdo.org/themes/lcotheme/SossinResearchReport.pdf>. Professor Sossin (now Dean of Osgoode Hall Law School) was asked by the LCO Board of Governors to recommend potential projects for the new Law Commission of Ontario.

<sup>11</sup> Law Commission of Ontario, *Division of Pensions Upon Marriage Breakdown Final Report*. Online: <http://www.lco-cdo.org/en/pensions-final-report>.

<sup>12</sup> Law Commission of Ontario, “LCO Sees Recommendations Enacted”. Online: <http://www.lco-cdo.org/content/lco-sees-recommendations-enacted>. See Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 39<sup>th</sup> Parl., 1<sup>st</sup> Sess, No 111, 19 February 2009, 0920 (Hon Christopher Bentley).

<sup>13</sup> Law Commission of Ontario, *Family Law [Project] Options Consultation Paper* (January 2009). Online: <http://www.lco-cdo.org/en/family-law-options-consultation-paper>.

<sup>14</sup> Law Commission of Ontario, *Best Practices at Family Justice Entry Points: Needs of Users and Response of Workers in the Justice System*. (September 2009) Online: <http://www.lco-cdo.org/family-law/Family%20Law%20Process%20Consultation%20Paper%20-%20September%202009.pdf>.

<sup>15</sup> Law Commission of Ontario, *Voices From a Broken Family Justice System: Sharing Consultation Results, [Voices From a Broken Family Justice System]* (September 2010). Online: <http://www.lco-cdo.org/en/family-law-process-consultation-results>.

<sup>16</sup> Brenda Jacobs and Lesley Jacobs, *Multidisciplinary Paths to Family Justice, Professional Challenges and Promise Practices* (June 2010), research paper commissioned by the LCO. Online: <http://www.lco-cdo.org/family-law-process-call-for-papers-jacobs.pdf> and Noel Semple, *Cost-Benefit Analysis of Family-Service Delivery: Disease, Prevention and Treatment* (June 2010), research paper commissioned by the LCO. Online: <http://www.lco-cdo.org/family-law-process-call-for-papers-semble.pdf>.

<sup>17</sup> Alfred A. Mamo, Peter G. Jaffe, Debbie G. Chiodo, *Recapturing and Renewing the Vision of the Family Court* (2007). (*The Mamo Report*) Online: <http://www.crvawc.ca/documents/Family%20Court%20Study%202007.pdf>.

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- <sup>18</sup> Barbara Landau, Tom Dart, Heather Schwartz, Joyce Young, *Creating a Family Law Process That Works: Final Report and Recommendations from the Home Court Advantage Summit* (December 12, 2009). Online: [http://www.oba.org/En/publicaffairs\\_en/PDF/Interim\\_Report\\_Home\\_Court\\_Advantage\\_FINAL\\_12dec09.pdf](http://www.oba.org/En/publicaffairs_en/PDF/Interim_Report_Home_Court_Advantage_FINAL_12dec09.pdf)
- <sup>19</sup> Ontario Superior Court of Justice, *Family Strategic Plan*. Online: <http://www.ontariocourts.on.ca/scj/en/famct/familylawstrategicplan.htm>.
- <sup>20</sup> Ontario Court of Justice, *Biennial Report 2006-2007*. Online: <http://www.ontariocourts.on.ca/ocj/en/reports/annualreport/06-07.pdf>.
- <sup>21</sup> *The Middle Income Access to Justice Initiative*. Online: [http://www.law.utoronto.ca/visitors\\_content.asp?itemPath=5/5/0/0&contentId=2113](http://www.law.utoronto.ca/visitors_content.asp?itemPath=5/5/0/0&contentId=2113).
- <sup>22</sup> Law Commission of Ontario, *Towards a More Efficient and Responsive Family Law System: Interim Report*. Online: <http://www.lco-cdo.org/en/family-law-reform-interim-report>.
- <sup>23</sup> *Human Rights Code*, RSO 2009, c 33, Sch 2, s 35.
- <sup>24</sup> *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11, s 7.
- <sup>25</sup> Statistics Canada, *Rural and Urban population changes since 1851 for Ontario*. Online: <http://www40.statcan.ca/l01/cst01/demo62g-eng.htm>.
- <sup>26</sup> Statistics Canada, 2006 Community Profiles, 2006 Census Statistics. Canada Catalogue no. 92-591-XWE (Ottawa, March 13, 2007). Online: <http://www12.statcan.ca/english/census06/data/profiles/community/index.cfm?Lang=E>.
- <sup>27</sup> Statistics Canada, 2006 Community Profiles. Online: <http://www12.statcan.ca/census-recensement/2006/dp-pd/prof/92-591/details/page.cfm?Lang=E&Geo1=CMA&Code1=595&Geo2=PR&Code2=35&Data=Count&SearchText=Thunder Bay&SearchType=Begins&SearchPR=01&B1=All&&GeoLevel=PR&GeoCode=535>.
- <sup>28</sup> Statistics Canada, 2006 Community Profiles, 2006 Census Statistics. Online: <http://www12.statcan.ca/census-recensement/2006/dp-pd/prof/92-591/details/page.cfm?Lang=E&Geo1=CMA&Code1=535&Geo2=PR&Code2=35&Data=Count&SearchText=Toronto&SearchType=Begins&SearchPR=01&B1=All&GeoLevel=PR&GeoCode=535>.
- <sup>29</sup> Some of these issues are discussed in the Interim Report in the LCO's project on developing a framework for the law as it affects older adults: Law Commission of Ontario, *The Law As It Affects Older Adults: Interim Report* (June 2011). Online: <http://www.lco-cdo.org/en/older-adults-interim-report>.
- <sup>30</sup> Statistics Canada, *Portrait of Seniors in Canada*, Catalogue No. 98-519 XIE at 12. Online: <http://www.statcan.gc.ca/pub/89-519-x/89-519-x2006001-eng.pdf>.
- <sup>31</sup> Statistics Canada, *Report on the Demographic Situation in Canada: 2005 and 2006 Edition* (Ottawa: Statistics Canada, 2008), Catalogue no. 91-209-X. Online: <http://www.statcan.ca/english/freepub/91-209-XIE/91-209-XIE2004000.pdf>.
- <sup>32</sup> Tina Chui, Kelly Tran and H  l  ne Maheux, *Statistics Canada, 2006 Census: Immigration in Canada: A Portrait of the Foreign-born Population, 2006 Census: Findings*. Online: <http://www12.statcan.ca/census-recensement/2006/as-sa/97-557/index-eng.cfm>.
- <sup>33</sup> Anne Milan, *Migration: International 2009*, Statistics Canada, (July 2011), 4 and 5. Online: <http://www.statcan.gc.ca/pub/91-209-x/2011001/article/11526-eng.pdf>.
- <sup>34</sup> Statistics Canada, *Population by religion, by province and territory (2001 Census) (Quebec, Ontario, Manitoba, Saskatchewan)*. Online: <http://www40.statcan.gc.ca/l01/cst01/demo30b-eng.htm>.
- <sup>35</sup> Statistics Canada, *Percentage of Aboriginal people in the population, Canada, provinces and territories, 2006*. (2006 Census). Online: <http://www12.statcan.ca/census-recensement/2006/as-sa/97-558/figures/c1-eng.cfm>.
- <sup>36</sup> Statistics Canada, *2006 Census: Aboriginal Peoples in Canada in 2006: Inuit, M  tis and First Nations, 2006 Census*. Online: <http://www12.statcan.ca/census-recensement/2006/as-sa/97-558/p4-eng.cfm>. Also see, Statistics Canada, *Living arrangements of Aboriginal and non-Aboriginal children aged 14 years and under, Canada, 2006*. Online: <http://www12.statcan.ca/census-recensement/2006/as-sa/97-558/table/t4-eng.cfm>.
- <sup>37</sup> Statistics Canada, *2006 Census: Aboriginal Peoples in Canada in 2006*. Online: <http://www12.statcan.ca/census-recensement/2006/as-sa/97-558/p16-eng.cfm>.
- <sup>38</sup> *Report of the Royal Commission on Aboriginal Peoples, vol 3, ch 2, para 1.2*. Online [www.ainc-inac.gc.ca/ap/rrc-eng.asp](http://www.ainc-inac.gc.ca/ap/rrc-eng.asp).

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- <sup>39</sup> Note 38, para 1.3.
- <sup>40</sup> Note 38, para 1.3.
- <sup>41</sup> Note 38, para 1.3.
- <sup>42</sup> Statistics Canada, *Visible minorities groups percentage distribution, for Canada, provinces and territories*. Online: <http://www12.statcan.ca/census-recensement/2006/dp-pd/hlt/97-562/pages/page.cfm?Lang=E&Geo=PR&Code=01&Table=1&Data=Dist&StartRec=1&Sort=2&Display=Page>. Only British Columbia has a higher percentage of members of “visible minority groups” (nearly 25%).
- <sup>43</sup> Statistics Canada, *Visible minorities characteristics [of Toronto]*, 2006 Community Profiles (2006 Census), Canada Catalogue no. 92-591-XWE (Ottawa, March 13, 2007). Online: <http://www12.statcan.ca/english/census06/data/profiles/community/index.cfm?Lang=E>.
- <sup>44</sup> Statistics Canada, *Population by home language, by province and territory (2006 Census) (Quebec, Ontario, Manitoba, Saskatchewan)*. Online: <http://www40.statcan.ca/l01/cst01/demo61b-eng.htm>.
- <sup>45</sup> Statistics Canada, *Language used most often at work*, 2006 Community Profiles (2006 Census), Canada Catalogue no. 92-591-XWE (Ottawa, March 13, 2007). Online: <http://www12.statcan.ca/english/census06/data/profiles/community/index.cfm?Lang=E>.
- <sup>46</sup> Legal recognition of support obligation at the end of common law same sex partnerships occurred in 1999 with *M. v. H* [1999] 2 SCR 3. *Re K. and B.*, [1995] 125 DLR (4<sup>th</sup>) 653, [1995] Ont No 1425 (Prov. Ct.), recognized the right of same sex parents to adopt children.
- <sup>47</sup> See Roger Sauvé, *Family Life and Work Life: An Uneasy Balance*, (Vanier Institute of the Family, January 2009), 10. Online: [http://www.vifamily.ca/sites/default/files/worklife\\_0.pdf](http://www.vifamily.ca/sites/default/files/worklife_0.pdf).
- <sup>48</sup> OECD, *The Future of the Family to 2030* (December 2008), 10 (*The Future of the Family*). Online: <http://www.oecd.org/dataoecd/11/34/42551944.pdf>.
- <sup>49</sup> Meg Luxton, *Changing Families, New Understandings* (The Vanier Institute of the Family, June 2011), 4. Online: [http://www.vifamily.ca/media/node/876/attachments/06-29-2011\\_VIF\\_CFT\\_changingfamilies\\_ENG.pdf](http://www.vifamily.ca/media/node/876/attachments/06-29-2011_VIF_CFT_changingfamilies_ENG.pdf).
- <sup>50</sup> Note 49, 19.
- <sup>51</sup> Statistics Canada notes an increase in lone parent families headed by fathers: Statistics Canada, *Family Portrait, continuity and change in Canadian families and households* (2006 Census). (*Family Portrait*). Online: <http://www12.statcan.ca/census-recensement/2006/as-sa/97-553/p2-eng.cfm>.
- <sup>52</sup> Sauvé, note 47, 10.
- <sup>53</sup> Note 47, 15.
- <sup>54</sup> *The Future of the Family*, note 48, 22 and 23.
- <sup>55</sup> Juan Torres, *Cities and Children, Planning to Grow Together* (Vanier Institute of the Family, October 2009) 5. Online: [http://www.vifamily.ca/media/node/217/attachments/children\\_cities.pdf](http://www.vifamily.ca/media/node/217/attachments/children_cities.pdf).
- <sup>56</sup> According to Statistics Canada, in 2006 there were 1.1 million married couples without children and there were 1.6 million married couples with children. In addition there were 192,000 common law couples without children and 144,000 common law couples with children. Statistics Canada, *Families by Family Structure* (2006). Online: <http://www.statcan.gc.ca/pub/89-625-x/2007001/t/4054991-eng.htm>.
- <sup>57</sup> Luxton, note 49, 10.
- <sup>58</sup> See *Families by Family Structure*, note 56.
- <sup>59</sup> Note 56.
- <sup>60</sup> Luxton, note 49, 11.
- <sup>61</sup> Note 49, 6.
- <sup>62</sup> *Family Portrait*, note 51.
- <sup>63</sup> Anne-Marie Ambert, *One Parent Families, Characteristics, Causes, Consequences and Issues* (Vanier Institute of the Family, March 2006), 6. Online: [http://www.vifamily.ca/media/node/396/attachments/oneparent\\_families.pdf](http://www.vifamily.ca/media/node/396/attachments/oneparent_families.pdf).
- <sup>64</sup> *Family Portrait*, note 51.
- <sup>65</sup> Luxton, note 49, 5.
- <sup>66</sup> *The Future of the Family*, note 48, 21.
- <sup>67</sup> See, for example, Ursula Kilkelly, *The Right to Respect for Private and Family Life, A Guide to the Implementation of Art. 8 of the European Convention on Human Rights*, Human Rights Handbooks no. 1 (Directorate General of

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Human Rights, Council of Europe), 48-58. Online: <http://www.echr.coe.int/NR/rdonlyres/77A6BD48-CD95-4CFF-BAB4-ECB974C5BD15/0/DG2ENHRHANDO12003.pdf>.

<sup>68</sup> For example, see *Children's Law Reform Act*, RSO 1990, c C 12, s 24(2), on ties with children; *Divorce Act* RSC 1985, c 3, s 8(3), on the intention with respect to separation; *Family Law Act*, note 2, s 1(1), on the intention of a parent to treat a child as a child of his or her family; *Child and Family Services Act*, RSO 1990, c C11, s 1(3), on extended family.

<sup>69</sup> See, for example, *Children's Law Reform Act*, note 68, ss 8(1), 10(1) and 20(1).

<sup>70</sup> Luxton, note 49, 11.

<sup>71</sup> In 2009, 6% of Canadians who had a current or former partner or spouse reported being physically or sexually victimized in the 5 years preceding the survey conducted by Statistics Canada: *Family violence in Canada: a statistical profile*, 11, catalogue no. 85-224-X. (*Family Violence in Canada*). Online: <http://www.statcan.gc.ca/pub/85-224-x/85-224-x2010000-eng.pdf>.

<sup>72</sup> According to Statistics Canada, household income and education levels were found to have had little impact on experiencing spousal violence: *Family violence in Canada*, note 71. Similarly, people who identified as a visible minority were not found to be associated with increased levels of spousal violence. However, persons who self-identified as gay or lesbian were more than twice as likely as heterosexuals to report having experienced spousal violence. Aboriginal identity was another socio-demographic factor associated with spousal violence.

<sup>73</sup> Women were three times more likely to report that the violent incident had disrupted their lives: *Family Violence in Canada*, note 71, 14. Furthermore, women were also more likely to report multiple victimizations than men, at 57% and 40%, respectively: note 71.

<sup>74</sup> The link between domestic violence and child physical abuse is estimated to range between 30% to 66% of cases – the *UK Review of Child Protection Interim Report*, 26, para 2.20. Online:

<http://www.education.gov.uk/munroreview/downloads/Munrointerimreport.pdf>. The 2008 Canadian *Incidence Study of Reported Child Abuse and Neglect* noted that the most frequently noted concerns in substantiated maltreatment investigations (66,282 child investigations) were victims of domestic violence (46%), few social supports (39%), mental health issues (27%), alcohol abuse (21%) and drug or solvent abuse (17%): Public Health Agency of Canada, *Canadian Incidence Study of Reported Child Abuse and Neglect – 2008: Major Findings* (Ottawa, 2010). Online: <http://www.phac-aspc.gc.ca/ncfv-cnivf/pdfs/nfnts-cis-2008-rprt-eng.pdf>.

<sup>75</sup> In 2009, 17% of persons who had contact with an ex-spouse or ex-partner reported that they had been physically or sexually assaulted by their partner at least once during the five year period preceding the survey conducted by Statistics Canada: *Family Violence in Canada*, note 71, 9.

<sup>76</sup> Anne-Marie Ambert, *Divorce, Causes and Consequences* (Vanier Institute of the Family, November 2009), 3. Online: [http://www.vifamily.ca/sites/default/files/divorce\\_facts\\_causes\\_consequences.pdf](http://www.vifamily.ca/sites/default/files/divorce_facts_causes_consequences.pdf). See also Semple, note 16, 3.

<sup>77</sup> The annual number of divorces in Ontario is fairly stable. Between 2001 and 2005 this number increased from 26,516 to 28,805. The divorce rate in Ontario in 2004 was 35.5%. This included persons who had remarried and divorced again. Ambert, note 76, 5 and 6.

<sup>78</sup> Ontario, Ministry of Finance, 2006 Census highlights. Online:

<http://www.fin.gov.on.ca/en/economy/demographics/census/cenhi06-5.html>.

<sup>79</sup> Ab Currie, *The Legal Problems of Everyday Life: The Nature, Extent and Consequences of Justiciable Problems Experienced by Canadians* (Government of Canada, 2009), 33 and 34. Online: [http://www.justice.gc.ca/eng/pi/rs/rep-rap/2007/rr07\\_la1-rr07\\_a1/index.html](http://www.justice.gc.ca/eng/pi/rs/rep-rap/2007/rr07_la1-rr07_a1/index.html).

<sup>80</sup> Ambert points out that research results on the consequences of a divorce are not always consistent and that studies do not cover sufficiently extended periods of time. Ambert, note 76, 24.

<sup>81</sup> UK Ministry of Justice, *Family Justice Review Interim Report* (March 2011), 151, para 5.37. Online: <http://www.justice.gov.uk/downloads/publications/policy/moj/family-justice-review-interim-rep.pdf>.

<sup>82</sup> Ambert, note 76,21.

<sup>83</sup> Note 76,21.

<sup>84</sup> Note 76, 21.

<sup>85</sup> Note 76, 21.

<sup>86</sup> Note 76, 22.

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- <sup>87</sup> Note 76, 22.
- <sup>88</sup> Currie, note 79, 15.
- <sup>89</sup> Note 79, 33 and 34.
- <sup>90</sup> Semple, note 16, 19.
- <sup>91</sup> Note 16, 19.
- <sup>92</sup> Note 16, 35.
- <sup>93</sup> Sauvé, note 47, 10.
- <sup>94</sup> This was 227% compared to 170% for couple families with children: Matt Hurst, *Debt and Family Type in Canada*, (Statistics Canada, April 2011). Online: <http://www.statcan.gc.ca/pub/11-008-x/2011001/article/11430-eng.pdf> .
- <sup>95</sup> Ambert, note 76, 18. The 2008 Ontario *Study on the Experiences of Abused Women* confirms the significant loss of income. The sample reported a family income of over \$68,000 prior to separation and an average income of just over \$30,000 after separation. In 43% of the cases women had to rely on social services and in 38% of the cases on friends and family. Molly Dragiewicz and Albert Dekeseredy, *Study on the Experiences of Abused Women in the Family Courts in Eight Regions in Ontario* (Luke's Place Support and Resource Centre for Women and Children, 2008), 20 (*Experiences of Abused Women*). Online: <http://www.lukesplace.ca/pdf/Study-on-the-Experiences-of-Abused-Women.pdf>.
- <sup>96</sup> John Stapleton with Vass Bednar, *Trading Places: Single Adults Replace Lone Parents as the New Face of Social Assistance in Canada* (Mowatt Centre, 2011), 1. Online: <http://www.mowateitaskforce.ca/sites/default/files/Stapleton.pdf>
- <sup>97</sup> Ambert, note 76, 20.
- <sup>98</sup> See, for example, *Experiences of Abused Women*, note 95, 50.
- <sup>99</sup> Note 95, 51.
- <sup>100</sup> Ambert, note 76, 24. See also Currie, note 79, 16-25.
- <sup>101</sup> See, for example, Human Resources and Skills Development Canada, *Indicators of Well-being, Housing, Housing Needs*. Online: <http://www4.hrsdc.gc.ca/d.4m.1.3n@-eng.jsp?did=7> and [http://www4.hrsdc.gc.ca/.3ndic.1t.4r@-eng.jsp?iid=41#M\\_3](http://www4.hrsdc.gc.ca/.3ndic.1t.4r@-eng.jsp?iid=41#M_3). See also, *The Future of the Family*, note 48, 65.
- <sup>102</sup> *Experiences of Abused Women*, note 95, 50 and 51.
- <sup>103</sup> Tavia Grant, "State of the union: Cost cuts force Statscan to stop tracking marriage, divorce rates" (*The Globe and Mail*, July 21, 2011).
- <sup>104</sup> For example, it will not be possible to compare whether the proportion of same-sex marriages will increase over time after the enactment of the federal *Civil Marriage Act*, note 3.
- <sup>105</sup> For example, the *Arbitration Act* stipulates: "In a family arbitration, the arbitral tribunal shall apply the substantive law of Ontario, unless the parties expressly designate the substantive law of another Canadian jurisdiction, in which case that substantive law shall be applied." *Arbitration Act, 1991*, SO 1991, c 17, s 32(4).
- <sup>106</sup> *Family Law Act*, note 2, as amended by Bill 133, *An Act to amend various Acts in relation to certain family law matters and to repeal the Domestic Violence Protection Act, 2000*.
- <sup>107</sup> *Children's Law Reform Act*, note 68.
- <sup>108</sup> See note 12.
- <sup>109</sup> For a summary of the reforms from 2008 to 2010, see Ministry of the Attorney General, *Family Law Reform, Backgrounder* (December 9, 2010). Online: <http://www.attorneygeneral.jus.gov.on.ca/english/news/2010/20101209-family-bg.asp>. Also see *Home Court Advantage*, note 18, 9 and 46.
- <sup>110</sup> The Attorney General gathered a group of experts to recommend ways to implement the pillars. The resulting changes to the system reflected some of those recommendations arising from the Home Court Advantage Conference, but not all. For a report on the conference, see Nick Bala and Phil Epstein, *Family Law Process Report – Submissions for a Short Term Action Plan for the Attorney General of Ontario: Home Court Advantage: Creating a Family Law Process that Works* (November 22 & 23, 2009). Online: [http://www.oba.org/en/pdf/Home\\_Court\\_Advantage-Bala\\_Epstein\\_Summary.pdf](http://www.oba.org/en/pdf/Home_Court_Advantage-Bala_Epstein_Summary.pdf).
- <sup>111</sup> *Home Court Advantage*, note 18, 11.



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<sup>112</sup> During the consultations with the Law Commission of Ontario, an example was given of a Chinese woman who was assisted by a community organization but could not find a Chinese speaking lawyer: *Voices From a Broken Family Justice System*, note 15, 44.

<sup>113</sup> Ministry of the Attorney General, *Ontario Forms Assistant*. Online:

<https://formsassistant.ontariocourtforms.on.ca/Welcome.aspx?lang=en>.

<sup>114</sup> Information was, for example, provided by the Government of Ontario (online:

<http://www.ontario.ca/en/communities/families/index.htm>; Service Ontario (online:

[http://www.ontario.ca/en/services\\_for\\_residents/ONT04\\_020859](http://www.ontario.ca/en/services_for_residents/ONT04_020859)); the Ministry of the Attorney General (online:

<http://www.attorneygeneral.jus.gov.on.ca/english/justice-ont/> and

<http://www.attorneygeneral.jus.gov.on.ca/english/family/divorce/>); Community Legal Education Ontario (online:

<http://www.cleo.on.ca/> and <http://yourlegalrights.on.ca/>); Family Law Education for Women (online:

<http://www.onefamilylaw.ca/>); Pro Bono Law Ontario (online: <http://www.pblo.org/>); Law Help Ontario (online:

<http://www.lawhelpontario.org/>); Legal Line (online: <http://www.legalline.ca/>); Legal Aid Ontario (online:

<http://legalaid.on.ca/en/>); The Law Society of Upper Canada (online: <http://www.lsuc.on.ca/>) and its Law Society's

Lawyer Referral Service. In addition, there was web-based information such as Service Canada's information for

families (online: <http://www.servicecanada.gc.ca/eng/audiences/families/index.shtml>) and the Department of

Justice's *Supporting Families Experiencing Separation and Divorce Initiative* (online:

<http://www.justice.gc.ca/eng/pi/fcy-fea/>).

<sup>115</sup> CLEO, *Family Law*. Online: <http://www.cleonet.ca/topics/13>.

<sup>116</sup> Government of Ontario. Online: <http://www.ontario.ca/en/communities/families/index.htm>.

<sup>117</sup> In August 2008, the Attorney General launched Justice Ontario, an entry point for accessing legal resources and basic information on the most common justice-related topics in 173 languages. Online:

[http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/mag\\_annual/annual-rpt\\_2008\\_09.asp](http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/mag_annual/annual-rpt_2008_09.asp).

<sup>118</sup> Ministry of the Attorney General, *note* 113.

<sup>119</sup> Ministry of the Attorney General, *What you should know about Family Law* (1999; rev. March 2010). (The document is available in seven languages, in addition to English and French.) Online:

<http://www.attorneygeneral.jus.gov.on.ca/english/family/familyla.pdf>.

<sup>120</sup> Department of Justice, *Divorce Law: Questions and Answers* (February 2006). Online:

<http://www.justice.gc.ca/eng/pi/fcy-fea/lib-bib/pub/divorce/index.html>.

<sup>121</sup> Department of Justice, *Supporting Families*. Online: <http://www.justice.gc.ca/eng/pi/fcy-fea/>. This website has a number of publications, as well as information.

<sup>122</sup> Canada Benefits, *Divorce or Separation*. Online: [www.canadabenefits.gc.ca](http://www.canadabenefits.gc.ca). The website provides access to relevant federal programs in each province.

<sup>123</sup> Legal Aid Ontario, *Family Law Information Program* (FLIP). Online:

[http://legalaid.on.ca/data/hidden/FLIP\\_en/player.html](http://legalaid.on.ca/data/hidden/FLIP_en/player.html).

<sup>124</sup> FLIP, *note* 123.

<sup>125</sup> *Note* 123.

<sup>126</sup> CLEO. Online: <http://www.cleo.on.ca/english/pub/onpub/subject/family.htm>.

<sup>127</sup> FLEW. Online: <http://www.onefamilylaw.ca/>.

<sup>128</sup> FLEW, *note* 127.

<sup>129</sup> For example, *What you should know about Family Law*, *note* 119, 8 and 9.

<sup>130</sup> According to FLEW's website; *Family Law Education for Women* evolved from advocacy efforts of the *No Religious Arbitration Coalition* (the "Coalition"). Online: <http://www.onefamilylaw.ca/en/background/>.

<sup>131</sup> LAO, *note* 123.

<sup>132</sup> See for example, Rule 2.04 of the *Rules of Professional Conduct* of the Law Society of Upper Canada (2011). Online: <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147486159>; and the Supreme Court of Canada in *R. v. Neil*, [2002] 3 SCR 631.

<sup>133</sup> Legal Aid Ontario, 2008 Annual Report, 15. Online:

[http://www.legalaid.on.ca/en/publications/downloads/annualreport\\_2008.pdf](http://www.legalaid.on.ca/en/publications/downloads/annualreport_2008.pdf).

<sup>134</sup> Law Society of Upper Canada, *Lawyer Referral Service*. Online:

<http://www.lsuc.on.ca/faq.aspx?id=2147486372>.

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- <sup>135</sup> Legal Aid Ontario, Duty Counsel Manual, “Duty Counsel: Financial Eligibility Test” (January 1996, as rev. December 13, 1999), O Reg. 27/00, s 1 and O Reg. 293/07, s 1(2).
- <sup>136</sup> Nicholas Bala, “Reforming Family Dispute Resolution in Ontario: Systemic Changes & Cultural Shifts”, M.J. Trebilcock, T. Duggan & L. Sossin, eds. (University of Toronto Press, forthcoming), 17. This paper was originally prepared for the Middle Income Access to Civil Justice Colloquium (University of Toronto, February 11, 2011).
- <sup>137</sup> The Mamo Report, note 17, 59.
- <sup>138</sup> *Voices From a Broken Family Justice System*, note 15, 61.
- <sup>139</sup> Note 15, 50.
- <sup>140</sup> Note 15, 46-48.
- <sup>141</sup> Jacobs and Jacobs, note 16, 29 and 30.
- <sup>142</sup> Jacobs and Jacobs, note 16, 29 and 30.
- <sup>143</sup> *Voices From a Broken Family Justice System*, note 15, 50 and 51.
- <sup>144</sup> Ministry of the Attorney General, *Family Law Information Centres* (FLICs). Online: <http://www.attorneygeneral.jus.gov.on.ca/english/family/infoctr.asp>.
- <sup>145</sup> Ministry of the Attorney General, *Mandatory Information Programs* (MIPs). Online: <http://www.attorneygeneral.jus.gov.on.ca/english/family/parentinfo.asp>.
- <sup>146</sup> *The Mamo Report*, note 17, 55 and 56.
- <sup>147</sup> See, for example, Ministry of the Attorney General, *A Guide to Procedures in Family Court* (June 2010). Online: [http://www.attorneygeneral.jus.gov.on.ca/english/family/guides/fc/2010\\_family\\_court\\_guide\\_part\\_1\\_en.pdf](http://www.attorneygeneral.jus.gov.on.ca/english/family/guides/fc/2010_family_court_guide_part_1_en.pdf).
- <sup>148</sup> *The Future of the Family*, note 48, 61. In a similar vein, the Alberta Self-Represented Litigants Mapping Project noted that a lot of information offered by key organizations was, even for researchers with training related to information collection, “difficult to navigate and unravel, and incomplete regarding eligibility, access and other service details”: Canadian Forum on Civil Justice, *Alberta Self-Represented Litigants Mapping Project* (January 2007), 17 and 18. Online: <http://cfcj-fcjc.org/docs/2007/mapping-en.pdf>.
- <sup>149</sup> *Listening to Ontarians* mentions the following sources: the Ministry of the Attorney General, the Law Society of Upper Canada, the Law Society’s Lawyer Referral service, the LAO and PBLO’s Law Help Ontario: *Listening to Ontarians, Report of the Ontario Civil Legal Needs Project*, (The Ontario Civil Legal Needs Project Steering Committee, May 2010), 28 (*Listening to Ontarians*). Online: [http://www.lsuc.on.ca/media/may3110\\_oclreport\\_final.pdf](http://www.lsuc.on.ca/media/may3110_oclreport_final.pdf).
- <sup>150</sup> *Voices From a Broken Family Justice System*, note 15, 58.
- <sup>151</sup> Semple, note 16, 61.
- <sup>152</sup> Semple, note 16, 61.
- <sup>153</sup> Semple, note 16, 63.
- <sup>154</sup> *Voices from a Broken Family Justice System*, note 15, 20.
- <sup>155</sup> Note 15, 62.
- <sup>156</sup> *Legal Aid Services Act, 1998*, SO 1998, c 26.
- <sup>157</sup> Legal Aid Ontario, *Getting Legal Help: Certificate Services*. Online: <http://www.legalaid.on.ca/en/getting/certificateservices.asp>.
- <sup>158</sup> Legal Aid Ontario, *Are you trying to get spousal support?* Online: [http://www.legalaid.on.ca/en/getting/type\\_family.asp](http://www.legalaid.on.ca/en/getting/type_family.asp).
- <sup>159</sup> *Listening to Ontarians*, note 149, 18.
- <sup>160</sup> Michael Trebilcock, *Report of the Legal Aid Review* (Ministry of the Attorney General, 2008), iii. Online: [http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/trebilcock/legal\\_aid\\_report\\_2008\\_EN.pdf](http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/trebilcock/legal_aid_report_2008_EN.pdf).
- <sup>161</sup> *Home Court Advantage*, note 18, 57.
- <sup>162</sup> Trebilcock, note 160, 129.
- <sup>163</sup> In 2006-2007, the legal aid program used 4,119 lawyers, 2,109 of whom were family lawyers. This was a drop of 16% in legal aid lawyers compared to the year 1999-2000. However, in the area of family law there was a “staggering drop” of 29% in the number of family lawyers paid by Legal Aid Ontario compared to the year 1999-2000: Trebilcock, note 160, 73. Since Trebilcock’s legal aid review, the hourly compensation for lawyers has been increased and will be increased further.

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<sup>164</sup> Coulter A. Osborne, *Civil Justice Reform Report* (Ministry of the Attorney General, November 2007), 44. Online: [http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/cjrp/CJRP-Report\\_EN.pdf](http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/cjrp/CJRP-Report_EN.pdf).

<sup>165</sup> *Listening to Ontarians* reports that 19% of Ontarians with a family legal problem did not seek legal assistance and 24% (i.e., 30% of the remaining 81%) had problems accessing legal assistance: *Listening to Ontarians*, note 149, 25.

<sup>166</sup> Langan points out, “The Anglo-Canadian justice system is adversarial in nature and assumes that both parties will be assisted by competent counsel. When one party is represented and the other is not, the balance of our system is disrupted.” Anne-Marie Langan, “Threatening the Balance of the Scales of Justice”, (2005), 30 *Queen’s LJ*, 825, para 3.

<sup>167</sup> For example, Mamo, Jaffe and Chiodo found that cases in which both parties were unrepresented there was a higher number of court appearances and more judges were involved: *The Mamo Report*, note 17, 131.

<sup>168</sup> *Voices From a Broken Family Justice System*, note 15, 22.

<sup>169</sup> Tracey Tyler, “How to reduce the high cost of divorce”, (*The Toronto Star*, August 1, 2011). Online: <http://www.thestar.com/news/crime/article/1033280--how-to-reduce-the-high-cost-of-divorce-get-your-spouse-a-lawyer>.

<sup>170</sup> Mamo, Jaffe and Chiodo write, “[T]he impact of the dramatic increase in self-representing meandering through the system is felt by court staff, and by judges, in particular...”. *The Mamo Report*, note 17, 106.

<sup>171</sup> For example, the Canadian Judicial Council released principles relating to unrepresented litigants in 2006, which provides some guidance in dealing with unrepresented litigants: Canadian Judicial Council, *Statement of Principles on Self-Represented Litigants and Accused Persons* (September 2006). Online: [http://www.cjc-ccm.gc.ca/cmslib/general/news\\_pub\\_other\\_PrinciplesStatement\\_2006\\_en.pdf](http://www.cjc-ccm.gc.ca/cmslib/general/news_pub_other_PrinciplesStatement_2006_en.pdf).

<sup>172</sup> D.A. Rollie Thompson noted that court practice shows significant inconsistencies. D.A. Rollie Thompson, “No Lawyer: Institutional Coping with the Self-represented”, (2001) 19 *CFLQ* 455.

<sup>173</sup> *Voices From a Broken Family Justice System*, note 15, 41.

<sup>174</sup> *The Mamo Report*, note 17, 92.

<sup>175</sup> Mamo, Jaffe and Chiodo, for example, wrote, “The perception at each site of the staff, lawyers, and judges is that each location is under-resourced and that in successive years, staff have to do a lot more with less personnel and resources”. They also mentioned the “stress and vicarious trauma” that is associated with the client group. Note 17, 88 and 89.

<sup>176</sup> Tyler, note 169.

<sup>177</sup> *Voices From a Broken Family Justice System*, note 15, 27 and 28.

<sup>178</sup> Currie, note 79, 86.

<sup>179</sup> Note 79, at 88.

<sup>180</sup> A British Columbia report describes self help as: “All services in which a person who has the legal issue is taking responsibility for some or all the activities that are necessary to complete a legal transaction. These services can be seen as an alternative to or a modification of traditional full-service representation, where a lawyer completes all tasks in the transaction. Self-help encompasses provision of advice/information in-person in a variety of settings including clinics and courthouses; provision of information/education in person and/or via information and communication technology (ICT) that includes audio and visual media; and legal information/education in a variety of settings.” Gayla Reid and John Malcolmson, *Voices from the Field, Needs Mapping Self-help Services in Rural and Remote Communities Final Report* (Supreme Court [of BC] Self-Help Information Centre, May 2008), 14. Online: [http://www.justiceeducation.ca/themes/framework/documents/Voices\\_from\\_the\\_Field\\_Final\\_August\\_2008.pdf](http://www.justiceeducation.ca/themes/framework/documents/Voices_from_the_Field_Final_August_2008.pdf).

<sup>181</sup> Mamo, Jaffe and Chiodo’s study showed that 68% of the applicants were women with an average age of 36 years and a median income of \$22,000. In 32% of the cases men were the applicants. Their average age was 42 years and their median income was \$32,000. In the sample study 66% of all *applicants* were represented by a lawyer. Of the *respondents* 58% were self-represented and the remaining 42% were represented by counsel. Mamo, Jaffe and Chiodo concluded that “representation was relatively consistent across male and female applicants and respondents”: *The Mamo Report*, note 17, 81. Langan’s sample study at the Kingston Family Court indicated that 63% of unrepresented litigants in the were men: note 166, 825. The Alberta Self-Represented Litigants Mapping Project concluded from its own research and other research that, “although people with annual

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incomes below \$35,000 are far more likely to be SRLs, members of any social group may become SRLs once involved in a legal process.” *Alberta Self-represented Litigants Mapping Project*, note 148, 10, 17 and 18.

<sup>182</sup> Research in Nova Scotia and Alberta found that self-representing litigants generally have a higher education, but that service providers have the perception that self-represented litigants have below average literacy and comprehension levels.: *Alberta Self-represented Litigants Mapping Project*, note 148, 10. The *Alberta Mapping Project* itself did not conduct research on the actual profile of litigants, but based their conclusions on interviews with service providers. It provided six general profiles of self-represented litigants.

<sup>183</sup> *Middle Income Access to Civil Justice Initiative Steering Committee, Background Paper* (University of Toronto Faculty of Law, c.2011), 19. Online:

[http://www.law.utoronto.ca/documents/conferences2/AccessToJustice\\_LiteratureReview.pdf](http://www.law.utoronto.ca/documents/conferences2/AccessToJustice_LiteratureReview.pdf).

<sup>184</sup> Anna Patton and Yetta Withrow, *Self-Represented Litigants in Nova Scotia: Needs Assessment Study* (Department of Justice, 2004), 20. Online: <http://www.gov.ns.ca/just/srl/project.asp>.

<sup>185</sup> *Middle Income Access to Civil Justice Background Paper*, note 183, 28.

<sup>186</sup> Langan, note 166, 825.

<sup>187</sup> Note 166, 861 and 862.

<sup>188</sup> See for example, Birnbaum and Bala’s survey among lawyers, as described by Tracey Tyler, note 169.

<sup>189</sup> *Experiences of Abused Women*, note 95, 33.

<sup>190</sup> Note 95, 33.

<sup>191</sup> Tyler, note 169.

<sup>192</sup> Note 169.

<sup>193</sup> The UK Family Justice Review Interim Report, while addressing plans in the UK to limit access to legal aid, speaks of similar concerns “as to the ability of litigants in person to conduct their case effectively and as to the inevitable increased burden in terms of time and resources this will place on the court. We are also concerned that some parents will simply not pursue their dispute leading to some children losing contact with a parent.” Note 81, 155.

<sup>194</sup> *R. v. Neil*, note 132.

<sup>195</sup> *Middle Income Access to Civil Justice Background Paper*, note 183, 75.

<sup>196</sup> Law Society of Upper Canada’s *Rules of Professional Conduct*, note 132.

<sup>197</sup> Note 132. The ease with which a lawyer can develop a solicitor-client relationship is indicated by the Law Society’s practice tips on avoiding “phantom clients”: The Law Society of Upper Canada, *Practice Tips, “Establishing the Client Relationship, Avoiding Phantom Clients”* (*Ontario Reports*, January 20, 2012), lxxii-lxxvi.

<sup>198</sup> Law Society of Upper Canada, *Paralegals Code of Conduct*. Online:

<http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147486158>.

<sup>199</sup> Law Society of Upper Canada, [note](#) 197.

<sup>200</sup> Samreen Beg & Lorne Sossin, “Should Legal Services be Unbundled?”, M.J. Trebilcock, T. Duggan & L. Sossin, eds. (University of Toronto Press, forthcoming), 19. This paper was originally prepared for the Middle Income Access to Civil Justice Colloquium (University of Toronto, February 11, 2011).

<sup>201</sup> Beg & Sossin, note 200, 19.

<sup>202</sup> Family Lawyer Steven Bookman, quoted by Judy van Rhijn, “Unbundled Services, Lawyers welcome law society guidance” (*Law Times*, November 7, 2011) 5.

<sup>203</sup> Three major reasons for claims, regardless of full or limited representation, are the failure of communication between the client and the lawyer; the failure to be clear about the retainer; and the failure to investigate. These problems are even more likely to occur in limited representation: *LawPro’s Submissions on Unbundled Legal Services* (December 3, 2010), 8-10. Online:

[http://www.practicepro.ca/practice/pdf/LawPRO\\_Unbundling\\_Submission.pdf](http://www.practicepro.ca/practice/pdf/LawPRO_Unbundling_Submission.pdf). For a summary of LawPro’s comments on unbundling, see Dan Pinnington, “LawPro concerned that unbundled legal services will mean more claims” (*LawPro*, December 6, 2010). Online: <http://avoidclaim.com/?p=873>.

<sup>204</sup> *LawPro’s Submissions on Unbundled Legal Services*, note 203, 10.

<sup>205</sup> *Law Society Act*, RSO 1990, c L 8.

<sup>206</sup> Paralegal Task Force, *Paralegal Task Force Report* (Law Society of Upper Canada, 2000), 128-130.

<sup>207</sup> The Hon. Peter DeC. Cory, *A Framework for Regulating Paralegal Practice in Ontario* (Toronto: Ontario Ministry of the Attorney General, 2000), 61-62.

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- <sup>208</sup> Law Society of Upper Canada, By-laws under subsections 62 (0.1) and (1) of the *Law Society Act*, By-law 4, s 6. Online: <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147485805>.
- <sup>209</sup> Duty Counsel Offices are now the preferred model for providing duty counsel: Trebilcock, [note 160](#), 37.
- <sup>210</sup> Trebilcock, [note 160](#), 37.
- <sup>211</sup> Legal Aid Ontario, “Duty Counsel: Financial Eligibility Test,” [note 135](#).
- <sup>212</sup> Legal Aid Ontario’s *Duty Counsel Manual* (October 2002), 5. Online: [http://www.legalaid.on.ca/en/info/downloads/DC\\_Manual\\_Civil\\_Chapter.pdf](http://www.legalaid.on.ca/en/info/downloads/DC_Manual_Civil_Chapter.pdf).
- <sup>213</sup> Legal Aid Ontario, “Getting help in the courtroom”. Online: [http://www.legalaid.on.ca/en/getting/dutycounsel\\_family.asp](http://www.legalaid.on.ca/en/getting/dutycounsel_family.asp).
- <sup>214</sup> Legal Aid Ontario’s *Duty Counsel Manual*, [note 212](#).
- <sup>215</sup> See [note 212](#) at 9. We note that the shortage of family lawyers and the use of duty counsel and advice lawyers can impact low income users who seek full representation. Legal Aid Ontario’s *Duty Counsel Manual*, says: “Duty counsel or advice lawyers should not later act for a person they have assisted as duty counsel or advice lawyer because of the perceived impropriety of using the high visibility of the position of duty counsel to obtain clients. It should only occur in unusual circumstances and prior approval must be obtained from the area director, regardless of whether the retainer is private or by way of a legal aid certificate.”
- <sup>216</sup> Ministry of the Attorney General, “Family Reform in Ontario”. Online: <http://www.attorneygeneral.jus.gov.on.ca/english/news/2010/20101209-family-bg.asp>.
- <sup>217</sup> For example, the website of the Hincks-Dellcrest Centre says that individuals or families must contact the Centre’s intake centre directly for voluntary treatment services, and that referral sources can make inquiries about services. Online: <http://www.hincksdellcrest.org/Home/Services-to-Infants-Youth-and-Children/Voluntary-Treatment-Services.aspx>.
- <sup>218</sup> Ab Currie, *A National Survey of the Civil Justice Problems of Low and Moderate Income Canadians, Incidence and Patterns*, (Department of Justice, April 2005), 24, (Currie, A National Survey). Online: <http://cfcj-fcjc.org/docs/2006/currie-en.pdf>.
- <sup>219</sup> A UK report on child maintenance, for example, says, “Separating families will have a range of different needs and any offer of advice and support should take account of this and either provide, or signpost parents to, additional information and services. We believe that there is particularly scope for more fully integrating the emotional support people may need”. *Strengthening Families, Promoting Parental Responsibility: the Future of Child Maintenance* (Department of Work and Pensions, January 2011), 14. Online: <http://www.dwp.gov.uk/docs/strengthening-families.pdf>.
- <sup>220</sup> Currie, *A National Survey*, [note 218](#), 24.
- <sup>221</sup> *Voices From a Broken Family Justice System*, [note 15](#), 54 and 55.
- <sup>222</sup> Jacobs and Jacobs describe the Durham DRIVEN network and the Family Violence Project of Waterloo Region: Jacobs and Jacobs, [note 16](#), 44-46 and 31-33, respectively.
- <sup>223</sup> The Hincks-Dellcrest Centre, Jacobs and Jacobs, [note 16](#), 36-41.
- <sup>224</sup> Lamp Community Health Centre, Jacobs and Jacobs, [note 16](#), 33-35.
- <sup>225</sup> North Renfrew Family Services, Jacobs and Jacobs, [note 16](#), 41-44.
- <sup>226</sup> Family Violence Project of Waterloo Region. Online: <http://www.fvpwaterloo.ca/en/>.
- <sup>227</sup> Durham Region’s Intimate-relationship Violence Empowerment Network (DRIVEN). Online: <http://www.durhamdriven.com/>.
- <sup>228</sup> Barbra Schlifer Commemorative Clinic. Online: <http://www.schliferclinic.com/schliferClinic.html>.
- <sup>229</sup> Catholic Family Services Peel-Dufferin. Online: <http://www.cfspd.com/Annual%20Report%202011.pdf>
- <sup>230</sup> See [note 228](#).
- <sup>231</sup> Jacobs and Jacobs, [note 16](#), 41.
- <sup>232</sup> Jacobs and Jacobs, [note 16](#), 13.
- <sup>233</sup> Jacobs and Jacobs, [note 16](#), 13 and 14.
- <sup>234</sup> Jacobs and Jacobs, [note 16](#), 66.
- <sup>235</sup> Jacobs and Jacobs, [note 16](#), 57.
- <sup>236</sup> Jacobs and Jacobs, [note 16](#), 58 and 59.
- <sup>237</sup> Jacobs and Jacobs, [note 16](#), 60.



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- <sup>238</sup> Jacobs and Jacobs, note 16, 52.
- <sup>239</sup> Jacobs and Jacobs, note 16, 54 and 55.
- <sup>240</sup> Jacobs and Jacobs, note 16, 56 with reference on p.50 to the Law Society of Upper Canada's Submissions and Consultations for the Report of the Legal Aid Review 2008. See note 160.
- <sup>241</sup> Law Society of Upper Canada, *Rules of Professional Conduct*, rule 6.10, note 132.
- <sup>242</sup> Jacobs and Jacobs, note 16, 61.
- <sup>243</sup> See, for example, the Supreme Court of Canada in *R. v. Neil*, note 132.
- <sup>244</sup> Dutch Ministry for Youth and Family (Jeugd en Gezin), Handreiking, *De Onderdelen van het Centrum voor Jeugd en Gezin* (2008), 10 and 11. Online (in Dutch): [http://dsp-groep.nl/getFile.cfm?file=15alvwscjg\\_De\\_onderdelen\\_van\\_het\\_CJG.pdf&dir=rapport](http://dsp-groep.nl/getFile.cfm?file=15alvwscjg_De_onderdelen_van_het_CJG.pdf&dir=rapport).
- <sup>245</sup> See, for example, 2009 *Legal Aid Alberta Review* citing Australian research. 2009 *Legal Aid Alberta Review* (Steering Committee, November 19 2009), 297. Online: <http://www.legalaid.ab.ca/about/Documents/LAA%20Review-Final%20Report%20November%2020.pdf>.
- <sup>246</sup> Bala, *Reforming Family Dispute Resolution*, note 136, 17.
- <sup>247</sup> *Voices From a Broken Family Justice System*, note 15, 23.
- <sup>248</sup> *Listening to Ontarians*, note 149, 38.
- <sup>249</sup> *The Mamo Report*, note 17, 43.
- <sup>250</sup> The Association for Better Care of Children, as quoted in *Voices From a Broken Family Justice System*, note 15, 25.
- <sup>251</sup> One lawyer who participated in the LCO's consultations explained that she gives all options, including collaborative methods, to a client at the first meeting. This essential provision of information and advice, however, can take one hour and a half: *Voices From a Broken Family Justice System*, note 15, 25.
- <sup>252</sup> Mamo, Jaffe and Chiodo believe that "many lawyers lack the knowledge and experience, and therefore the confidence, to make recommendations to a client about an appropriate settlement without first having judicial input. This phenomenon increases litigation, prevents settlements from taking place early in the file, and leads to an avoidance of the mediation process." *The Mamo Report*, note 17, 94.
- <sup>253</sup> See note 250.
- <sup>254</sup> Jane Walker, et al, *The Family Advice and Information Service: A Changing Role for Family Lawyers in England and Wales? Final Evaluation Report* (Newcastle upon Tyne: Newcastle Centre for Family Studies, 2007), xxii. Online: [http://www.legalservices.gov.uk/docs/fains\\_and\\_mediation/FAInS\\_evaluation\\_report\\_2007\\_\(2.56mb\).pdf](http://www.legalservices.gov.uk/docs/fains_and_mediation/FAInS_evaluation_report_2007_(2.56mb).pdf).
- <sup>255</sup> Trebilcock, note 160, 108.
- <sup>256</sup> Ministry of Child and Youth Services, *Building our Future, Realizing the Vision of Ontario Best Start and Family Centres*, 5. Online: <http://www.children.gov.on.ca/htdocs/english/documents/topics/earlychildhood/bestStartUpdate2011-en.pdf>.
- <sup>257</sup> Final Report Legislative Assembly of Ontario, Select Committee on Mental Health and Addictions, *Navigating the Journey to Wellness: the comprehensive mental health and addictions action plan for Ontarians* (2<sup>nd</sup> Session, 39<sup>th</sup> Parliament). Online: [http://www.ontla.on.ca/committee-proceedings/committee-reports/files\\_pdf/Select%20Report%20ENG.pdf](http://www.ontla.on.ca/committee-proceedings/committee-reports/files_pdf/Select%20Report%20ENG.pdf).
- <sup>258</sup> Karen Cohl and George Thomson, *Connecting Across Language and Distance, Linguistic and Rural Access*, (Law Foundation of Ontario, December 2008), 48. Online: [http://www.lawfoundation.on.ca/pdf/linguistic\\_rural\\_report\\_dec2008\\_final.pdf](http://www.lawfoundation.on.ca/pdf/linguistic_rural_report_dec2008_final.pdf).
- <sup>259</sup> *Family Justice Review Interim Report*, note 81, 20 and 142.
- <sup>260</sup> The Family Justice Review Interim Report refers to the UK *Office for National Statistics Omnibus Survey Report No. 38 (Non-resident parental contact, 2007/8)*, a report on research using the National Statistics Omnibus Survey produced on behalf of the Ministry of Justice and the Department for Children, Schools and Families: note 81, 142. The Omnibus Survey Report can be found at [http://www.statistics.gov.uk/downloads/theme\\_social/parentalcontact2007-08.pdf](http://www.statistics.gov.uk/downloads/theme_social/parentalcontact2007-08.pdf).
- <sup>261</sup> Christine Skinner, et al, *Child support policy: An international perspective* (UK Department for Work and Pensions, Research Report No 405, 2007) at 104. <http://research.dwp.gov.uk/asd/asd5/rports2007-2008/rrep405.pdf>.

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<sup>262</sup> For example, *Home Court Advantage*, note 18, 27.

<sup>263</sup> Rachel Birnbaum and Nicholas Bala, "Toward the differentiation of "High Conflict" families: an analysis of social science research and Canadian case law", (2010) 48 *Family Court Review* 403, 404 Online: <http://onlinelibrary.wiley.com/doi/10.1111/j.1744-1617.2010.01319.x/pdf>.

<sup>264</sup> Birnbaum and Bala, note 263, 406.

<sup>265</sup> Bala, "Reforming Family Dispute Resolution", note 136, 8.

<sup>266</sup> Nicholas Bala, *et al*, "Alienated Children and Parental Separation, Legal responses in Canada's Family Courts". (2007), 33 *Queen's LJ* 79, para 111.

<sup>267</sup> Bala, *et al*, note 266, para 111.

<sup>268</sup> Family lawyers participating in the LCO's consultations said they felt that they need to maintain a professional distance, manage clients' emotions, assess the levels of conflict while building a relationship of trust and not judging their clients' behavior: *Voices From a Broken Family Justice System*, note 15, 23.

<sup>269</sup> Walker, *et al*, note 254.

<sup>270</sup> Legal Aid Ontario, [FLIP](#), note 123.

<sup>271</sup> See note 123.

<sup>272</sup> Legal Aid Ontario's Family Law Information Program (FLIP), for example, recommends speaking to a lawyer before choosing a dispute resolution method and to seek independent legal advice about the issues being mediated: note 123.

<sup>273</sup> Riverdale Mediation, *Top Ten Myths of Family Mediation Series: Four*. Online:

<http://www.riverdalemediation.com/2011/08/top-ten-myths-of-family-mediation-series-four/>.

<sup>274</sup> *The Mamo Report*, note 17, 26.

<sup>275</sup> Note 17, 27.

<sup>276</sup> Bala, Reforming family dispute resolution in Ontario, note 136, 8.

<sup>277</sup> *The Mamo Report*, note 17, 82.

<sup>278</sup> Statistics Canada, note 71, 9.

<sup>279</sup> *Family Law Rules*, O. Reg 383/11, Subrule 14 (4).

<sup>280</sup> Bala, *et al*, note 266, para 114.

<sup>281</sup> *From a Broken Family Justice System*, note 15, 35.

<sup>282</sup> Note 15, 40.

<sup>283</sup> Jacobs and Jacobs describe The family Violence Project in Waterloo region, the LAMP Community Health Centre in Toronto, the Hincks-Dellcrest Centre in Toronto, the North Renfrew Family Services, and the Durham DRIVEN project: Jacobs and Jacobs, note 16. Another multi-disciplinary centre will open in the Peel Region: note 229.

<sup>284</sup> *Airey vs. Ireland*, [1979] 2 E.H.R.R. 305. Online: [http://www.escribnet.org/caselaw/caselaw\\_show.htm?doc\\_id=400936](http://www.escribnet.org/caselaw/caselaw_show.htm?doc_id=400936)

<sup>285</sup> Bala, *et al*, note 266, para 110.

<sup>286</sup> According to Bala, *et al*, "it is also a sad reality that many alienated parents lack the financial or emotional resources to protect their relationships through the court process": note 266, para 119.

<sup>287</sup> Ministry of the Attorney General, "*Stronger Support for Victims of Domestic Violence*" (March 11, 2011). Online: <http://www.attorneygeneral.jus.gov.on.ca/english/news/2011/20110311-dv-nr.asp>.

<sup>288</sup> See, for example, Sheltarnet: online: <http://www.sheltarnet.ca/en/index.cfm>.

<sup>289</sup> The Men's Project: online: <http://www.themensproject.ca/index.php?ID=1&Lang=En>.

<sup>290</sup> Cohl and Thomson, note 258, 16.

<sup>291</sup> *The Mamo Report*, note 17, 82.

<sup>292</sup> Some users think there is a gender bias related to domestic violence issues. Women participating in the LCO's family law project consultations felt that their credibility was more often questioned than men's, while participating men thought they could more easily be falsely accused of domestic violence than women: *Voices From a Broken Family Justice System*, note 15, 42. Similar concerns were raised in the UK where it was said that a focus on domestic violence in legal aid programs might lead to false accusations: (*Family Justice Review Interim Report*, note 81, 154). Research cited in British Columbia's review of family law indicates that deliberately false claims are few and "most false claims result from misunderstandings, not deliberate lying": Ministry of the

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Attorney-General of BC, *Family Relations Act Review*, ch 9, 4. Online:

<http://www.ag.gov.bc.ca/legislation/pdf/Chapter9-FamilyViolence.pdf>).

<sup>293</sup> Legal Aid Ontario, *Domestic Violence*. Online:

[http://www.legalaid.on.ca/en/getting/type\\_domesticviolence.asp](http://www.legalaid.on.ca/en/getting/type_domesticviolence.asp).

<sup>294</sup> Note 293.

<sup>295</sup> Ministry of the Attorney General, Family Court Support Worker Program. Online:

[http://www.attorneygeneral.jus.gov.on.ca/english/ovss/family\\_court\\_support\\_worker\\_program/default.asp](http://www.attorneygeneral.jus.gov.on.ca/english/ovss/family_court_support_worker_program/default.asp).

<sup>296</sup> Ministry of the Attorney General, Family Court Support Worker Training Initiative. Online:

[http://www.attorneygeneral.jus.gov.on.ca/english/ovss/family\\_court\\_support\\_worker\\_program/guidelines\\_training.pdf](http://www.attorneygeneral.jus.gov.on.ca/english/ovss/family_court_support_worker_program/guidelines_training.pdf).

<sup>297</sup> Ministry of the Attorney General, “*Stronger Support for Victims of Domestic Violence*” (March 11, 2011). Online:

<http://www.attorneygeneral.jus.gov.on.ca/english/news/2011/20110311-dv-nr.asp>.

<sup>298</sup> Tamara Baluja, “A bumpy start for a new type of court”, (*The Globe and Mail*, August 2, 2011), A7.

<sup>299</sup> Note 298. The Court is based on the Integrated Domestic Violence Courts in New York State where disputants can be ordered to access these courts. By January 2011, the (over 45) courts had handled over 113,500 cases of 22,000 families since their inception in 2003: New York State Unified Court System, online:

[http://www.nycourts.gov/courts/problem\\_solving/idv/home.shtml](http://www.nycourts.gov/courts/problem_solving/idv/home.shtml). The courts have a link with community services and are a part of “problem-solving” courts, which also include Mental Health Courts, Drug Treatment Courts and Sex Offence Courts: *New York State Problem Solving Courts*, online:

[http://www.nycourts.gov/courts/problem\\_solving/PSC-FLYER4Fold.pdf](http://www.nycourts.gov/courts/problem_solving/PSC-FLYER4Fold.pdf).

<sup>300</sup> Ontario Court of Justice, Integrated Domestic Violence Court (IDV Court). Online:

<http://www.ontariocourts.on.ca/ocj/en/idvc/brochure.htm>.

<sup>301</sup> IDV Court, note 300.

<sup>302</sup> *The Mamo Report*, note 17, 125.

<sup>303</sup> *Arbitration Act, 1991*, note 105.

<sup>304</sup> *Family Law Act, 2006*, SO 2006, c1, s 1(2).

<sup>305</sup> The family law arbitration process is explained on the Ministry of the Attorney General’s website:

<http://www.attorneygeneral.jus.gov.on.ca/english/family/arbitration/>.

<sup>306</sup> Bala, “Reforming Family Dispute Resolution in Ontario”, note 136, 9 and 18.

<sup>307</sup> Austin Lawrence, *et al*, *Effectiveness of using Mediation in Selected Civil Law Disputes, A Meta-Analysis for the Department of Justice*, (Government of Canada, 2008), 25 and 26) This study concludes that the meta-analysis of the studies showed a positive impact of mediation on actual cost savings, but the perception of cost savings was not seen as positive, maybe because the costs of the mediation program were higher than expected. Online:

[http://www.justice.gc.ca/eng/pi/rs/rep-rap/2007/rr07\\_3/index.html](http://www.justice.gc.ca/eng/pi/rs/rep-rap/2007/rr07_3/index.html).

<sup>308</sup> Family Mediation Centre. Online: <http://www.mediationcentre.com/feescale.html>.

<sup>309</sup> See note 308.

<sup>310</sup> According to the website of the Ministry of the Attorney General, “All mediators that provide services at the family courts have qualifications that meet the standards of the Ontario Association for Family Mediation for Accredited Family Mediators.” Online:

[http://www.attorneygeneral.jus.gov.on.ca/english/family/divorce/mediation/locate\\_mediator.asp](http://www.attorneygeneral.jus.gov.on.ca/english/family/divorce/mediation/locate_mediator.asp).

<sup>311</sup> Ontario Association for Family Mediation and ADR Institute of Ontario. Online: <http://www.oafm.on.ca/> and <http://www.adrontario.ca/>, respectively.

<sup>312</sup> Family Mediation Canada. Online: <http://www.fmc.ca/>.

<sup>313</sup> *The Mamo Report*, note 17, 45.

<sup>314</sup> *Voices From a Broken Family Justice System*, note 15, 13 and 14.

<sup>315</sup> Peter Salem, “The Emergence of Triage in Family Court Services: the Beginning of the End for Mandatory Mediation?” (2009) 47 *Family Court Review*, 371.

<sup>316</sup> Salem, note 315, 377.

<sup>317</sup> Note 315, 380.

<sup>318</sup> For example, mediation connected to the California Courts can vary from court to court, but usually consists of a one hour session or sessions of two to three hours. Online: <http://www.courts.ca.gov/1189.htm>.



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<sup>319</sup> *Supporting Families to Support their Children* proposes 15 hours of subsidized mediation: Barbara Landau, *et al*, *Supporting Families to Support their Children* (April 7, 2009), 13 (Supporting Families). Online: [http://www.oba.org/En/homecourt/PDF/Tab%203%20-%20family\\_law\\_submission-ontario.pdf](http://www.oba.org/En/homecourt/PDF/Tab%203%20-%20family_law_submission-ontario.pdf).

<sup>320</sup> Chief Justice Warren Winkler, "Access to Justice, Mediation: Panacea or Pariah?" (2007) 16(1) *Canadian Arbitration and Mediation Journal*, 5-9. Online: <http://www.ontariocourts.on.ca/coa/en/ps/speeches/access.htm>.

<sup>321</sup> *The Mamo Report*, note 17, 127.

<sup>322</sup> Note 17, 46.

<sup>323</sup> These are: D. Ellis and N. Stuckless, *Domestic Violence Evaluation (DOVE)*(2006); Michigan Supreme Court, *Domestic Violence and Child Abuse/Neglect - Screening for Domestic Relations Mediation* (2006); Linda Girdner, *Conflict Assessment Protocol (CAP): Screening for spouse abuse in divorce mediation* (1990); Paul Charbonneau, *Maine Court Dispute Resolution Service: Screening for Domestic Violence and Abuse in Domestic Relations Mediation: Screening and Assessment Guidelines* (1997); Peter Jaffe, *Children of Domestic Violence: Special Challenges in Custody and Visitation Dispute Resolution* (1996); Stephen K. Erickson and Marilyn S. McKnight, *Mediating spousal abuse divorces*: Ministry of the Attorney General, *Training Required to be a Family Arbitrator*. Online: <http://www.attorneygeneral.jus.gov.on.ca/english/family/arbitration/training.asp>.

<sup>324</sup> OAFM's Policy on Abuse. Online: <http://www.oafm.on.ca/mediators/abusepolicy.html>.

<sup>325</sup> OAFM's Policy on Abuse, note 324. Screening should continue throughout the mediation process. The issue of voluntariness is critical when it comes to creating a safe place for couples to meet and negotiate. Inquiries about abuse should be made during the separate orientation sessions, before mediation is offered as an option. Training must include Sensitivity to cultural, racial and ethnic differences that can impact the mediation process that may be relevant to domestic violence.

<sup>326</sup> According to the regulations under the *Arbitration Act, 1991*, the Attorney General can prescribe training requirements of arbitrators: O Reg 134/07, s 3. Online: [http://www.e-laws.gov.on.ca/html/regs/english/elaws\\_regs\\_070134\\_e.htm](http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_070134_e.htm).

<sup>327</sup> [Note 326](#), s 2(4).

<sup>328</sup> See, for example, the Annual Report of the Superior Court of Justice, 12. Online:

<http://www.ontariocourts.on.ca/scj/en/reports/annualreport/07-08.pdf>; and *The Mamo Report*, note 17, 12-17.

<sup>329</sup> The Attorney General, the Honourable John Gerritsen, has announced that the introduction of Unified Family Courts is the ultimate goal: Judy van Rijn, "Family Lawyers Hail Bentley's Record" (*Law Times*, November 7, 2011), 9. Online: <http://lawtimes.clbmedia.dgtlpub.com/2011/2011-11-07/home.php>

<sup>330</sup> Court Services Division Annual Report 2009-2010, 31-33. Online:

[http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/courts\\_annual\\_09/Court\\_Services\\_Annual\\_Report\\_CHAP3\\_EN.pdf](http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/courts_annual_09/Court_Services_Annual_Report_CHAP3_EN.pdf). The report also mentions that there were between almost 14,000 child protection proceedings in 2005 and almost 11,000 proceedings in 2009. There was a steady decrease in child protection proceedings. Changes to the *Child and Family Services Act* in 2006 may have resulted in less complex cases leaving the system and the more complex cases taking more time.

<sup>331</sup> Mary Bess Kelly, *Family Court cases involving custody, access and support arrangements 2009/2010*, Juristat, (March 29, 2011), 8. Online: <http://www.statcan.gc.ca/pub/85-002-x/2011001/article/11423-eng.pdf>.

<sup>332</sup> Ontario Court of Justice, Bi-Annual Report, 2006-2007. Online:

<http://www.ontariocourts.on.ca/ocj/en/reports/annualreport/06-07.pdf>.

Another 30% of cases are related to the *Child and Family Services Act* (involving child protection, adoption and children with mental disorders). The trend that family courts mainly focus on children's issues (custody, access and support) can be seen throughout Canada. See Kelly, note 331, 8.

<sup>333</sup> *Listening to Ontarians*, note 149, 57.

<sup>334</sup> Kelly, note 331, 15.

<sup>335</sup> Note 331, 9.

<sup>336</sup> Note 331, 9.

<sup>337</sup> Note 331, 10.

<sup>338</sup> Mamo, Jaffe and Chiodo write that in 126 of 437 files the median number of weeks to process a case was 55 weeks and three or more judges had been involved. *The Mamo Report*, note 17, 82.

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<sup>339</sup> *Evaluation of the Ottawa Family Case manager Pilot project (Ottawa Report)*, Online: [http://www.ccla-abcc.ca/uploadedFiles/Year\\_Two\\_Evaluation.pdf](http://www.ccla-abcc.ca/uploadedFiles/Year_Two_Evaluation.pdf).

<sup>340</sup> Masters must have been a member of the bar of a province or territory for 10 years: O Reg. 535/96, Case Management Masters — Qualifications.

<sup>341</sup> See *Ottawa Report*, note 339, 8-9.

<sup>342</sup> *Family Law Rules*, O Reg 383/11, s 17(8).

<sup>343</sup> Superior Court of Justice, Family Law Strategic Plan. Online: <http://www.ontariocourts.on.ca/scj/en/famct/familylawstrategicplan.htm>.

<sup>344</sup> See note 343.

<sup>345</sup> See note 343.

<sup>346</sup> Michael McKierman, “Family law reforms fall short, Winkler says” (Law Times, June 27, 2011), 5. Online: <http://lawtimes.clbmedia.dgtlpub.com/2011/2011-06-27/home.php>.

<sup>347</sup> Bala, “Reforming Family Dispute Resolution”, note 136, 43.

<sup>348</sup> Note 136, 31.

<sup>349</sup> Barbara Landau, Lorne Wolfson & Niki Landau, *Family Mediation, Arbitration and Collaborative Practice Handbook*, 5th ed. (Markham: LexisNexis Canada, 2009), 99-100.

<sup>350</sup> Gary L. Voegelé, Linda K. Wray & Ronald D. Ousky, “Collaborative Family Law: A Useful Tool for the Family Law Practitioner to Promote Better Outcomes” (2007) 33 Wm. Mitchell L. Rev. 971, 976-977; Pauline H. Tesler, “Collaborative Family Law” (2004) 4 Pepperdine Dispute Resolution Law Journal 317, 319.

<sup>351</sup> Tesler, note 350, 323.

<sup>352</sup> Wanda Wiegers & Michaela Keet, “Collaborative Family Law and Gender Inequalities: Balancing Risks and Opportunities” (2008) 46 Osgoode Hall L.J. 733, 746.

<sup>353</sup> *Family Justice Review Interim Report*, note 81, 155.

<sup>354</sup> With respect to immigrant women, see, for example, Cohl and Thomson, note 258, 16.

<sup>355</sup> Currie, note 79, 23.

<sup>356</sup> See, for example, Public Health Agency of Canada, *Canadian Incidence Study of reported Child Abuse and Neglect – 2008: Major Findings* (Ottawa: Public Health Agency of Canada, 2010), 39. Online: <http://www.phac-aspc.gc.ca/ncfv-cnivf/pdfs/nfnts-cis-2008-rprt-eng.pdf>.

<sup>357</sup> *Child and Family Services Act*, RSO 1990, c C.11, s 1.

<sup>358</sup> Note 357, s 1(2).

<sup>359</sup> See, for example, the website of the Court Worker Program in Sudbury. Online:

<http://www.nfcsudbury.org/Brochures/Lorena.pdf>.

<sup>360</sup> *Ministry* of the Attorney General, *Aboriginal Justice Strategy*, Aboriginal Court Workers. Online:

[http://www.attorneygeneral.jus.gov.on.ca/english/aboriginal\\_justice\\_strategy/increase\\_access.asp](http://www.attorneygeneral.jus.gov.on.ca/english/aboriginal_justice_strategy/increase_access.asp)

<sup>361</sup> Organizations that provide assistance in relation to legal matters for Aboriginal people include Aboriginal Legal Services in Toronto (online: <http://www.aboriginallegal.ca/>); Nishnawbe Aski Legal Services (online: <http://www.nanlegal.on.ca/>); and the Keewaytinok Native Legal Services, (online: <http://keew.org>).

<sup>362</sup> According to a 2007 study, over 16,000 Ontarians spoke an Aboriginal language (Ojibway, Oji-Cree and Cree) at home with about 6,000 speaking only that language: Fosburys Experts-Conseil, *Community Interpreting in Canada* (Industry Canada, 2007), 14. Online: <http://www.imiaweb.org/uploads/pages/471.pdf>.

<sup>363</sup> The *Indian Act*, RSC, 1985, c I-5, does not provide for the division of relationship property. Section 88 of the *Indian Act* provides that provincial laws of general application apply to Indians living in the province except to the extent the law conflicts with or is covered by the *Indian Act*, the *First Nations Fiscal and Statistical Management Act*, or with any order, rule, regulation or law of a band made under those Acts. However, the Supreme Court of Canada has held that section 88 and therefore provincial statutes relating to marital property do not apply to reserve lands. See, for example, *Derrickson v. Derrickson*, [1986] 1 S.C.R. 285; *Paul v. Paul*, [1986] 1 S.C.R. 306. To amend this situation Bill C-8, *Family Homes on Reserves and Matrimonial Interests or Rights Act*, was introduced into Parliament in 2009, but did not pass into law. Online:

<http://www.parl.gc.ca/LegisInfo/BillDetails.aspx?Language=E&Mode=1&billId=3635116>.

<sup>364</sup> Ashley Smith, “Bill C-47: The Answer or the Continuance of Inequity for the First Nations of Canada?” (2010) 29 CFLQ 47.

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<sup>365</sup> This is evident in the *Child and Family Services Act*, which relates to child welfare: note 357. Under this Act, “Indian” has the same meaning as under the *Indian Act*. A native person is defined as a person of a native community but is not a member of a band. A community may be designated a native community by the Minister under section 209 of the *Child and Family Services Act*. This has the effect of excluding aboriginal children who are not part of a community that is a designated native community.

<sup>366</sup> *Listening to Ontarians*, note 149, 25.

<sup>367</sup> 211 Ontario. Online: <http://www.211ontario.ca/#>.

<sup>368</sup> The Law Society of Upper Canada, *Lawyer Referral Service*. Online: <http://www.lsuc.on.ca/faq.aspx?id=1146>.

<sup>369</sup> Tyler, note 169.

<sup>370</sup> The Canadian Judicial Council has released guidelines for judges in relation to unrepresented litigants: note 171.

<sup>371</sup> Cohl and Thomson, note 258, 44.

<sup>372</sup> See for example the Middle Income Access to Civil Justice Background Paper, note 183, 12 on “expressed need or demand”, “felt need or demand” and “normative need or demand”.

<sup>373</sup> For example, article 6 (1) of the European Convention on Human Rights stipulates the right to a decision (“fair and public hearing”) within a reasonable time in civil law cases: *Convention for the Protection of Human Rights and Fundamental Freedoms*, 4 November 1950, 213 UNTS 221, 223

<sup>374</sup> *Home Court Advantage*, note 18, 45.

<sup>375</sup> Note 18, 47.

<sup>376</sup> In *the Case of Airey vs. Ireland*, the European Court of Human Rights established a right to legal counsel under art. 6 and 8 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms*: note 284. The following factors played a role: Airey’s level of education, the complexity of the Irish divorce proceedings, Airey’s income situation, the high costs of the procedure, the situation of conflict and the significance of the matter. The Court held: “What is more, marital disputes often entail an emotional involvement that is scarcely compatible with the degree of objectivity required by advocacy in court.” However, the Court added that legal aid schemes are not the only solution, but also, for example, a simplification of the procedure.

<sup>377</sup> John McCamus, *Report of the Ontario Legal Aid Review 1996: a Blueprint for Publicly funded Legal Services* (Ministry of the Attorney General, 1997), ch. 4. Online: <http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/olar/>. UK Ministry of Justice, *Reform of Legal Aid in England and Wales, the Government Response* (June 2011), 11 and 12, para 6. Online: <http://www.justice.gov.uk/downloads/consultations/legal-aid-reform-government-response.pdf>. Also see 2009 *Legal Aid Alberta Review* (November 19 2009), 16. Online: <http://www.legalaid.ab.ca/about/Documents/LAA%20Review-Final%20Report%20November%2020.pdf> and Trebilcock, *Legal Aid Review 2008*, also citing the 1997 Legal Aid Review: note 160, 8.

<sup>378</sup> *The Mamo Report*, note 17, 81.

<sup>379</sup> *Voices From a Broken Family Justice System*, note 15, x.

<sup>380</sup> *Listening to Ontarians*, note 149.

<sup>381</sup> Kirk Makin, *Divorce...the Canadian way* (*The Globe and Mail*, March 26, 2011).

<sup>382</sup> Kirk Makin, *A reformer’s program*, (*The Globe and Mail*, March 26, 2011).

<sup>383</sup> These proposals include front-end prevention of legal problems, self-help services, public legal education and information (hotlines, websites, advice from non-lawyers and non-paralegals, paralegals), summary advice, duty counsel, full representation and holistic services. It will further look into cost-aspects, legal insurance plans, contingency fees (“no win, no fee”), class actions, *pro bono* services, funding for small and sole practitioners, services for people in remote and rural areas, services for cultural and linguistic issues, billing alternatives and unbundled legal services: Middle Income Access to Civil Justice Background Paper, note 183.

<sup>384</sup> Australian Government, *Towards a National Blueprint for the Family Law System* (Attorney General’s Department, February 2009), 9 and 10. Online: [http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/\(084A3429FD57AC0744737F8EA134BACB\)~FINAL+Conferenc+e+Paper++Towards+a+National+Blueprint+for+the+Family+Law+System.PDF/\\$file/FINAL+Conference+Paper++Towards+a+National+Blueprint+for+the+Family+Law+System.PDF](http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(084A3429FD57AC0744737F8EA134BACB)~FINAL+Conferenc+e+Paper++Towards+a+National+Blueprint+for+the+Family+Law+System.PDF/$file/FINAL+Conference+Paper++Towards+a+National+Blueprint+for+the+Family+Law+System.PDF).

<sup>385</sup> *Voices From a Broken Family Justice System*, note 15, 12.

<sup>386</sup> *The Mamo Report*, note 17, 114.

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- <sup>387</sup> Bala, “Reforming family dispute resolution in Ontario”, note 136, 9..
- <sup>388</sup> Jamie Baxter and Albert Yoon, *The Geography of Civil Legal Services in Ontario, Report of the Mapping Phase of the Ontario Civil Legal Aid Needs Project* (The Ontario Civil Legal Need Project Steering Committee, November 2011), 69-71. Online: <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147486236> .
- <sup>389</sup> *Listening to Ontarians*, note 149, 25.
- <sup>390</sup> Note 149, 32.
- <sup>391</sup> Middle Income Access to Civil Justice Background Paper, note 183.
- <sup>392</sup> Note 183, 6.
- <sup>393</sup> Law Society of Upper Canada, *Rules of Professional Conduct*, [note](#) 132.
- <sup>394</sup> Family Lawyer Tom Dart, who was quoted by Judy van Rhijn, *Unbundled Services, Lawyers welcome law society guidance* (*Law Times*, November 7, 2011), 5. On the appropriateness of “unbundling” in family law, see Thompson, note 172, 470-472.
- <sup>395</sup> See note 394.
- <sup>396</sup> Beg & Sossin, note 200, 6.
- <sup>397</sup> Langan, note 166, 851.
- <sup>398</sup> *Supporting Families*, note 319, 14.
- <sup>399</sup> Evaluations in Queensland, Australia found that in order to make effective use of self-help services, clients require a high level of literacy and comprehension, they need to want to help themselves and must have the confidence to do so. “When clients face multiple barriers (such as literacy and language issues, or mental health or intellectual disability issues) self-help materials are not suitable”: Reid and Malcolmson, note 180, 31 and 32.
- <sup>400</sup> Judicial Council of California, *Report of the Elkins Family Law Task Force* (April 2010), 12. Online: <http://www.courtinfo.ca.gov/jc/documents/reports/20100423itemj.pdf>.
- <sup>401</sup> See the Law Society of Upper Canada, *Your Lawyer Bill – Too High?* Online: <http://www.lsuc.on.ca/with.aspx?id=640>; PBL0, Law Help Ontario, *How Do I Get a Lawyer’s Bill Reviewed?* Online: <http://www.lawhelpontario.org/search/item.221761>.
- <sup>402</sup> Stanchieri Family Law. Online: <http://www.stanchierifamilylaw.com/legal-fees.html>. The website lists the cost of an initial consultation and retainer and hourly rates. It also states that the firm does not provide free legal services or legal aid, but provides links to appropriate resources.
- <sup>403</sup> Law Society of Upper Canada, *Rules of Professional Conduct*, Rule 3.03, note 132.
- <sup>404</sup> Baxter and Yoon, note 388, 69-71.
- <sup>405</sup> Pro Bono Law Ontario, [note](#) 114.
- <sup>406</sup> *Justicenet*. Online: <http://www.justicenet.ca/who-qualifies/>.
- <sup>407</sup> Langan, note 166, 849.
- <sup>408</sup> Trebilcock, note 160, 109-113.
- <sup>409</sup> “Law Society Taking Steps to See Expanded Role for Paralegals.” (*Benchers’ Bulletin*, Summer 2011), 9. Online: [http://www.lawsociety.bc.ca/docs/bulletin/BB\\_2011-02-summer.pdf](http://www.lawsociety.bc.ca/docs/bulletin/BB_2011-02-summer.pdf).
- <sup>410</sup> Langan, note 166, 852 and 853.
- <sup>411</sup> *Home Court Advantage*, note 18, 57 and at 14.
- <sup>412</sup> Trebilcock, note 160, 113.
- <sup>413</sup> *Home Court Advantage*, note 18, 26.
- <sup>414</sup> Office of the Auditor General of Ontario, 2011 Annual Report, 204. Online: [http://www.auditor.on.ca/en/reports\\_en/en11/309en11.pdf](http://www.auditor.on.ca/en/reports_en/en11/309en11.pdf).
- <sup>415</sup> Recognition of the importance of providing services where this might not otherwise be possible is keeping with the tradition of the legal profession. See, for example, Law Society of Upper Canada, *Rules of Professional Conduct*, Commentary to Rule 2.08, which states, “It is in keeping with the best traditions of the legal profession...to reduce or to waive a fee where there is hardship or poverty or the client or prospective client would otherwise be deprived of adequate legal advice or representation.” Note 132.
- <sup>416</sup> Legal Aid Ontario, *Discretionary Increases*. Online: <http://www.legalaid.on.ca/en/info/discretionary.asp> .
- <sup>417</sup> Trebilcock, note 160, 96. Also Sujit Choudry, M.J. Trebilcock and J. Wilson, “Growing Legal Aid Ontario into the Middle Class: A Proposal for Legal Expenses Insurance”, M.J. Trebilcock, T. Duggan & L. Sossin, eds. (University of

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Toronto Press, forthcoming). This paper was originally prepared for the Middle Income Access to Civil Justice Colloquium (University of Toronto, February 11, 2011).

<sup>418</sup> For example, LEI has been available in France since the beginning of the 20th century, in Germany (where it is mandatory with auto insurance) from 1928 and in the United Kingdom since 1974. Research for this topic was completed by Cris Best, a student in the law reform course at Osgoode Hall Law School in Fall 2010: “An Analysis of Private Legal Expense Insurance to Improve Access to Justice for Ontario’s Middle-Income Individuals and Families” (on file with the Executive Director of the LCO). A main German insurance company (ARAG) provides insurance for divorces and support issues for legal fees up to 30,000 euro per case: ARAG. Online (in German): [www.arag.de](http://www.arag.de). The cost is significant for this option in service: the annual premium for LEI would increase for a family (salaried worker) from €177 to €397. In the Netherlands legal insurance, which is established in other areas of law, does not generally cover the court process in divorce cases, but it does cover one session of legal advice and, depending on the package, mediation. Online (in Dutch): [www.juridischloket.nl](http://www.juridischloket.nl). Also see, for example, DAS, online (in Dutch): <http://www.mijnrechtsbijstandverzekering.nl/rechtsbijstandverzekering.htm>.

<sup>419</sup> In Quebec, it has been promoted by the Barreau du Québec, the legal regulator: Barreau du Québec, “L’Assurance juridique”. Online: <http://www.assurancejuridique.ca/>.

<sup>420</sup> CAW Legal Benefits Plan, Benefits Schedule. Online: <http://www.cawisp.com/BENEFIT%20SCHEDULE%202008.pdf>.

<sup>421</sup> For a discussion of pre-paid legal plans in Ontario, see Oliver Bertin, “Lawyers see more work thanks for pre-paid legal plans,” (*The Lawyers Weekly*, February 4, 2005). Also see Luis Milan, “Legal Insurance” (*The Lawyers Weekly*, May 1, 2009).

<sup>422</sup> The Access to Justice Committee prepared a background paper for Convocation in June 2002, recommending further research into prepaid legal plans. Online: [http://www.lsuc.on.ca/media/convjune02\\_accjust.pdf](http://www.lsuc.on.ca/media/convjune02_accjust.pdf).

<sup>423</sup> Helen Rhoades, *et al*, *Enhancing inter-professional relationships in a changing family law systems Final Report* (University of Melbourne, May 2008). Online: [http://sydney.edu.au/law/about/staff/HilaryAstor/FamilyLaw\\_FinalReport\\_May08.pdf](http://sydney.edu.au/law/about/staff/HilaryAstor/FamilyLaw_FinalReport_May08.pdf).

<sup>424</sup> *Voices From a Broken Family Justice System*, note 15, 24.

<sup>425</sup> Helen Rhoades, “Mandatory mediation of family disputes: reflections from Australia”, (June 2010) 32 *Journal of Social Welfare & Family Law*, 190 and 191. Following the completion of the LCO’s Interim Report, a book addressing the relationship between law and mediation in the Family Law system considered a number of issues to which we refer, including power relations and particularly gendered power relations that affect the process and the importance of legal advice. The authors find that these factors affect the decision to go to mediation and the process and outcome of the mediation. See Becky Batagol and Thea Brown. *Bargaining in the Shadow of the Law: The Case of Family Mediation* (Sidney Themis Press, 2011). Our thanks to Professor Mary Jane Mossman of Osgoode Hall Law School for alerting us to this book.

<sup>426</sup> By “the court system”, we mean the court itself, since mandatory information and mediation, among other processes, are part of the “court process” broadly defined.

<sup>427</sup> The OBA Family Law Section, the ADR Institute of Ontario & the OAFM noted a need for a family court system with specialized resources, consisting of specialized judges. Judges should be allowed to order a parenting coordinator (or Special Master”) to high conflict “revolving door” litigants to assist in the implementation of minor conflicts, such as parenting schedules. Unnecessary and abusive litigation should be discouraged by awarding costs. *Supporting Families*, note 319.

<sup>428</sup> Bala, *et al*, note 266, para 110

<sup>429</sup> Note 266, para 114.

<sup>430</sup> The capacity of the Office of the Children’s Lawyer may need to be increased. See for example Judy van Rhijn, *Court’s Struggle with How to Hear Children’s Views* (*Law Times*, February 7, 2011), 14.

<sup>431</sup> Cohl and Thomson, note 258.

<sup>432</sup> See, for example, the Ministry of the Attorney General, *Our Commitment to Accessibility*. (2011) Online: [http://www.attorneygeneral.jus.gov.on.ca/english/about/commitment\\_to\\_accessibility\\_printable.pdf](http://www.attorneygeneral.jus.gov.on.ca/english/about/commitment_to_accessibility_printable.pdf).

<sup>433</sup> Baxter and Yoon, note 388, 51.

<sup>434</sup> Note 388, 41.

<sup>435</sup> Note 388, 82 and 83.



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<sup>436</sup> Note 388, 76.

<sup>437</sup> Cohl and Thomson, note 258, 40.

<sup>438</sup> Note 258, 38.

<sup>439</sup> Note 258, 39.

<sup>440</sup> Note 258, 34.

<sup>441</sup> Note 258, 35.

<sup>442</sup> Note 258, 33.

<sup>443</sup> Ministry of Children and Youth Services, *Policy Directive CW 005-06*, 2-3. Online:

[http://www.familyservicesottawa.org/documents/adr\\_brochures/Policy%20Directive.pdf](http://www.familyservicesottawa.org/documents/adr_brochures/Policy%20Directive.pdf).

<sup>444</sup> Family Group Conferencing brings together “the family (including the child where appropriate), the child’s extended family and community, child protection workers, and services providers to develop a plan that addresses the protection concerns identified”. This is facilitated by a trained and impartial coordinator. Ministry of Children and Youth Services, note 443.

Ministry of Children and Youth Services, note 443, at 3.

<sup>445</sup> Note 443, 3.

<sup>446</sup> Note 443, 3.

<sup>447</sup> Note 443, 5.

<sup>448</sup> See the Centre for Family and Children in the Justice System. Online: [http://www.lfcc.on.ca/adr-link/ADR-LINK\\_First\\_Nations.html](http://www.lfcc.on.ca/adr-link/ADR-LINK_First_Nations.html).

<sup>449</sup> Bala, for example, writes that there is “a paucity of basic statistical information about family justice in Ontario”: “Reforming Family Dispute Resolution in Ontario”, note 136, 29.

<sup>450</sup> Chief Justice Warren K. Winkler, “Family Law and Access to Justice: Time for Change”, 5<sup>th</sup> Annual Family Law Summit (June 17, 2011). Online: <http://www.ontariocourts.on.ca/coa/en/ps/speeches/2011-Family-Law-Access-Justice.htm>. Chief Justice Winkler’s focus is on mediation, however, while the LCO believes that other, admittedly more complex approaches, are required.

<sup>451</sup> André Picard, “Health-care system needs a front door” (*The Globe and Mail*, November 8, 2011).

<sup>452</sup> The College of Family Physicians of Canada (CFPC), *Family Practice The Patient’s Medical Home, A vision for Canada* (September 2011). Online:

[http://www.cfpc.ca/uploadedFiles/Resources/Resource\\_Items/PMH\\_A\\_Vision\\_for\\_Canada.pdf](http://www.cfpc.ca/uploadedFiles/Resources/Resource_Items/PMH_A_Vision_for_Canada.pdf).

<sup>453</sup> See note 452, 41.

<sup>454</sup> Legal Aid Ontario, *Fact Sheet Duty Counsel Services*. Online:

[http://www.legalaid.on.ca/en/about/downloads/factsheets/factsheet\\_dutycounsel.pdf](http://www.legalaid.on.ca/en/about/downloads/factsheets/factsheet_dutycounsel.pdf).

<sup>455</sup> For a description, see Citizens Advice Bureau. Online: <http://www.citizensadvice.org.uk>

<sup>456</sup> Relationship Australia, Family Relationship Centres. Online: <http://www.relationships.org.au/what-we-do/family-relationship-centres>.

<sup>457</sup> On the UK, see The World Justice Project, International Rule of Law Index (2011), 22. Online:

[http://worldjusticeproject.org/sites/default/files/wjproli2011\\_0.pdf](http://worldjusticeproject.org/sites/default/files/wjproli2011_0.pdf).

<sup>458</sup> On Australia, see note 457, 27.

<sup>459</sup> See note 384, 3 and 4.

<sup>460</sup> See, for example, Martin Gramatikov and Laura Klaming, *Getting Divorce Online: Procedural and Outcome Justice in Online Divorced Mediation* (Tilburg University TISCO Working Paper, 2011). Online:

<http://ssrn.com/abstract=1752903>.

<sup>461</sup> *The Mamo Report*, note 17, 61.

<sup>462</sup> *Supporting Families*, note 319, 7-9.

<sup>463</sup> *The Mamo Report*, note 17, 51.

<sup>464</sup> Department for Works and Pensions, *Government’s response to the consultation on strengthening families, promoting parental responsibility: the future of child maintenance* (July 2011), 20. Online:

<http://www.dwp.gov.uk/docs/strengthening-families-response.pdf>.

<sup>465</sup> See note 464, 20 and 21.

<sup>466</sup> Dutch Ministry for Youth and Family (Jeugd en Gezin), *Samenwerken voor de jeugd*. Online (in Dutch):

<http://www.samenwerkenvoordejeugd.nl/>.

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- <sup>467</sup> Centrum voor Jeugd en Gezin, *Scheiding en de zorg voor de kinderen*. Online: <http://www.rijksoverheid.nl/documenten-en-publicaties/brochures/2010/06/29/scheiding-en-de-zorg-voor-de-kinderen-handreiking-voor-gemeenten.html>.
- <sup>468</sup> Ministry of Children and Youth Services, *Building Our Best Future, Realizing the Vision of Ontario Best Start and Family Centres: An Update* (2011), 1. Online: <http://www.children.gov.on.ca/htdocs/english/documents/topics/earlychildhood/bestStartUpdate2011-en.pdf>.
- <sup>469</sup> Jacobs and Jacobs, note 16, 49. See also, note 468.
- <sup>470</sup> See note 468.
- <sup>471</sup> Jacobs and Jacobs, note 16, 48 and 49.
- <sup>472</sup> *Supporting Families*, note 319, 7-9.
- <sup>473</sup> Trebilcock, note 160, 108.
- <sup>474</sup> See for example *The Reform of Legal Aid in England and Wales, the Government Response*, which at Annex D discusses the mandatory use of a Community Legal Advice Telephone Helpline: note 377
- <sup>475</sup> On the Netherlands, see note 457.
- <sup>476</sup> S.L. Peters, L. Combrink-Kuiters & M. Van Gammeren-Zoetewij, *Monitor gesubsidieerde rechtsbijstand* (Raad voor Rechtsbijstand, 2009), 18. Online (in Dutch): [http://www.rvr.org/binaries/rbv-library/onderzoeken/mgr/monitor-2009\\_interactief.pdf](http://www.rvr.org/binaries/rbv-library/onderzoeken/mgr/monitor-2009_interactief.pdf).
- <sup>477</sup> The *Monitor Gesubsidieerde Rechtsbijstand 2009* reported that in 2009 the Counters dealt with over 780,000 contact: note 476, 37-46. Fifteen percent of all questions were on family law. The Counters' accessibility was found to be easy or very easy in 90% of all cases. Non-western immigrants more often accessed the services of the counter than other groups. There were no significant differences between men and women accessing the counters. Most in-person users came from cities with over 100,000 inhabitants. Most e-mail users were from cities with under 20,000 inhabitants. Users were more often single, widowed or divorced. Users often had several problems: health, debt, social, mental or other. Although the services of the Counters are free of cost for all users, it is mostly low- and middle income users who access the counter's services.
- <sup>478</sup> Dutch Legal Aid Board. Online (in Dutch): <http://kenniswijzer.rvr.org/werkinstructies-toevoegen/diagnose--triage.html>.
- <sup>479</sup> The Council of Europe's European Commission for the Efficiency of Justice (CEPEJ) noted: "The relative number of litigious divorce cases (reported to the total number of divorce cases) is rapidly decreasing in the Netherlands, due to social developments and the evolution of the divorce policy. In 1993, still 80% of the divorce cases were litigious. In 2008, the relative number decreased to only 30% of the total divorce cases. Therefore, only difficult and adversarial divorce cases are counted as 'litigious divorces'. Such complex cases have to be dealt with intensively by a judge. The average length of litigious divorce cases is then becoming longer, though the number of cases to be addressed by the court has decreased significantly." The Council of Europe's European Commission for the Efficiency of Justice (CEPEJ), *European Judicial Systems: Efficiency and Quality of Justice* (ed 2010), 170. Online: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1694098&SecMode=1&DocId=1653000&Usage=2>.
- <sup>480</sup> In 2009, there were 3,123 Counter referrals to mediation: Dutch Legal Aid Board. Online (in Dutch): [http://www.rvr.org/binaries/rbv-library/onderzoeken/mgr/monitor-2009\\_interactief.pdf](http://www.rvr.org/binaries/rbv-library/onderzoeken/mgr/monitor-2009_interactief.pdf).
- <sup>481</sup> Website UK Citizens Advice Bureaux. Online: <http://www.citizensadvice.org.uk/index/aboutus.htm>.
- <sup>482</sup> Auditor General of Ontario, 2011 Annual report, note 414, 202.
- <sup>483</sup> See in this respect CEPEJ, note 479, 64.
- <sup>484</sup> Courts Annual Report 2008 (*De Rechtspraak, Jaarverslag 2008*), 38. Online (in Dutch): <http://www.rechtspraak.nl/Organisatie/Raad-Voor-De-Rechtspraak/Documents/jaarverslag-rechtspraak-2008.pdf>. Annual Report 2008 .
- <sup>485</sup> Court Client Survey 2011 (*Klantwaardering Rechtspraak 2011, Onderzoek onder Professionals en Justitiabelen Gerechten*), IV. Online (in Dutch): <http://www.rechtspraak.nl/Organisatie/Raad-Voor-De-Rechtspraak/Nieuws/Documents/Landelijk%20Klantwaarderingsonderzoek%20Rechtspraak%202011.pdf>.
- <sup>486</sup> Ministry of Citizenship and Immigration, *Changing attitudes, changing lives: Ontario's Sexual Violence Action Plan* (March 2011), 7. Online: <http://www.citizenship.gov.on.ca/owd/english/women/svap2011.pdf>.

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<sup>487</sup> For example, the Dutch Legal Aid has developed a number of on-line tools as part of the ‘Rechtwijzer’-initiative. Online (in Dutch): [www.echtscheidingsplan.nl](http://www.echtscheidingsplan.nl).

<sup>488</sup> The Law Society of Upper Canada, Report to Convocation, December 9, 2011, online: <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147486356>.

<sup>489</sup> *Home Court Advantage*, note 18, 11-13.

<sup>490</sup> See Rule 2.03 of the *Law Society of Upper Canada’s Rules of Professional Conduct*, note 132.

<sup>491</sup> In Mamo, Jaffe and Chiodo’s study, for example, the cases in which domestic violence was reported involved 98% women with a median income of \$21,000. In 84% of these cases children were involved. *The Mamo Report*, note 17, 82.

<sup>492</sup> *Voices From a Broken Family Justice System*, note 15, 12.

<sup>493</sup> Jacobs and Jacobs, note 16, 64.

<sup>494</sup> See, for example, *Home Court Advantage*, note 18, 26.

<sup>495</sup> Note 18, 26.

<sup>496</sup> Auditor General of Ontario, 2011 Annual Report, note 414, 204.

<sup>497</sup> Note 414, 202.

<sup>498</sup> Note 414, 209.

<sup>499</sup> Note 475.

<sup>500</sup> Legal Aid Board, *Legal Aid in the Netherlands, a Broad Outline*. Online (in English):

<http://www.rvr.org/binaries/rbv-downloads/brochures/def-opmaakvoorsel-brochure-legal-aid--rvr90265- ve.pdf>.

<sup>501</sup> Relatively more Ontarians had contacts with legal aid, but the number of legal aid certificates in the Netherlands was significantly higher than in Ontario. The number of legal certificates in the Netherlands was 422,530 (23% of which in family law cases). About 645,000 persons had contacted the legal services counter for information and advice (16% of the contacts were related to family law). The number of certificates issued in Ontario in 2006-2007 was almost 110,000 and the total number of Ontarians assisted was over 1,120,000. See *The Netherlands Legal Aid Board*, note 500, 10-13 and Trebilcock, note 160, 71.

<sup>502</sup> According to Legal Aid Ontario’s, *Legal Aid Ontario’s Tariff and Billing Handbook (last revised 2011)*, section 2-4, the hourly compensation in 2011 was \$89.79, \$101.01, or \$112.24, depending on the lawyer’s experience and activities. According to *Legal Aid in the Netherlands, a Broad Outline*, the hourly compensation was €110 (about \$154): note 500.

<sup>503</sup> *Legal Aid in the Netherlands, a Broad Outline*, note 500, 16.

<sup>504</sup> Trebilcock, note 160, 74.

<sup>505</sup> It is difficult to compare the costs of the systems. According to CEPEJ’s *Efficiency and Quality of Justice 2010*, the costs minus revenues of the Dutch Court system were about €727 million (over \$1 billion): note 479, 62. The costs minus revenues of Ontario’s provincial court services in 2009/2010 were \$300 million, but these numbers do not include judges appointed by the federal government: Office of the Auditor General of Ontario, 2010 Annual Report, Section 4.07. Online: [http://www.auditor.on.ca/en/reports\\_en/en10/407en10.pdf](http://www.auditor.on.ca/en/reports_en/en10/407en10.pdf).

<sup>506</sup> *Legal Aid in the Netherlands, a Broad Outline*, note 500, 3.

<sup>507</sup> Trebilcock, note 160, 75.

<sup>508</sup> Baxter and Yoon, [note](#) 388, 98.

<sup>509</sup> Ministry of the Attorney General, *Backgrounder - Transforming Legal Aid Ontario* (September 8, 2009). Online: <http://www.attorneygeneral.jus.gov.on.ca/english/news/2009/20090908-lao-bg-en.pdf>.

<sup>510</sup> Office of the Auditor General of Ontario, 2011 Annual report, note 414, 210.

<sup>511</sup> Note 414, 210.

<sup>512</sup> Chief Justice Winkler, as quoted by Kirk Makin, “A Reformer’s Project”, note 382.

<sup>513</sup> *The Mamo Report*, note 17, 93.

<sup>514</sup> *Supporting Families*, note 319.

<sup>515</sup> *The Mamo Report*, note 17, 124.

<sup>516</sup> Kirk Makin, *A program to fix our ailing family courts* (*The Globe and Mail*, June 10, 2011). Online:

<http://www.theglobeandmail.com/news/national/a-program-to-fix-our-ailing-family-courts/article1957443/?service=mobile> See also Michael Mckiernan, “Winkler calls for “fresh” approach by making expanded mediation mandatory” (*Law Times*, September 19, 2010). Online:



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<http://www.lawtimesnews.com/201009207552/Headline-News/Winkler-calls-for-fresh-approach-with-expanded-mandatory-mediation>.

<sup>517</sup> Creating a Family Law Process that Works, note 18, 11-13.

<sup>518</sup> Birnbaum and Bala, note 263, 412 and 413.

<sup>519</sup> Legal workers will often have to rely on the advice of mental health experts. This is particularly the case when there are allegations of parental alienation: Bala *et al*, note 266, para 38.

<sup>520</sup> See, for example, *The Mamo Report*, note 17, 10, and *Home Court Advantage*, note 18, 26-29.