



LAW COMMISSION OF ONTARIO
COMMISSION DU DROIT DE L'ONTARIO

Best Practices at Family Justice System Entry Points: Needs of Users and Responses of Workers in the Justice System

CONSULTATION PAPER

SEPTEMBER 2009

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Launched on September 7, 2007, the Law Commission of Ontario (LCO) is a partnership among the Law Foundation of Ontario, the Ministry of the Attorney General, Osgoode Hall Law School and the Law Society of Upper Canada, all of whom provide funding to the LCO, as well as the Law Deans of Ontario's other law schools. It operates independently of government.

The LCO has a mandate to recommend law reform measures to increase the legal system's relevance, effectiveness and accessibility; to clarify and simplify the law; consider technology as a means to enhance access to justice; and stimulate critical debate about law and promote scholarly legal research. Its mission is to become a leading voice in law reform. The LCO's core values are independence; integrity; excellence; innovation; relevance; open-mindedness; transparency; diversity; inclusiveness; multi/interdisciplinarity; collaboration; pragmatism; efficiency and accountability. As stated in its strategic plan, "the LCO is premised on a vision of law reform as a creative yet pragmatic endeavour." Chosen LCO reform projects reflect this vision.

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I. INTRODUCTION

This fall, the Law Commission of Ontario (LCO) is conducting public consultations about family justice. These consultations are part of the latest LCO family justice project entitled “Best Practices at Family Justice System Entry Points: Needs of Users and Responses of Workers in the Justice System.”¹ Consultations seek to identify where people go to try to solve family challenges or problems and what services help them navigate through the complicated Ontario family justice system. The aim of this project is to contribute to ongoing efforts at improving the family justice process across the province by focusing on the early stages of this process.

This consultation paper provides background on the LCO family justice project and consultation methodology. It describes other projects related to the LCO project. It raises questions to which the general public as well as stakeholders in the family justice area are invited to respond.

As a family justice system user or worker, you will find information in the last section of the paper about how to participate in consultations. You may collaborate with the LCO to plan user or worker group consultations at your organization or in collaboration with others. You may also send us a submission. Our goal is to generate discussions that will be mutually beneficial.

II. BACKGROUND ABOUT THE PROJECT

This is not the first LCO family justice project. The LCO did a previous project about pension division at marriage breakdown.² This is also not the first LCO family justice public consultation.³ In fact, previous consultations were held to identify what area of family justice the LCO should focus on: these were instrumental in the LCO’s selection of this project. Many respondents expressed the need to focus on process as opposed to substantive law issues. The LCO therefore decided to design a project that would

address one of the most crucial stages of the family justice process: the beginning. The following sections describe the LCO project, methodology and timeline.

A. What is the Project About?

The LCO project explores the early stages of the family justice process. The best way to understand what the LCO means by “early stages” is to put yourself in the shoes of someone who has just faced a family challenge or problem. Family challenges include planning an intimate relationship according to Ontario law; learning about Ontario family property law prior to marriage and discussing possible arrangements without hurting the relationship; or planning a relationship when spouses do not live in the same country, for example. Family problems include separating from an intimate partner; managing care giving responsibilities towards children post-separation; having a child removed from one’s care; facing violence from a family member; and trying to break financial and emotional dependency patterns from a spouse. With these examples in mind, the first question you might ask is: “Where would someone facing each of these different scenarios go to get help?” To answer this question, you need to identify people’s needs and the services that are available to them. You also need to look at family justice in connection with other social and health services. This is what the LCO means by the early stages of the family justice process. The LCO therefore seeks to develop a holistic approach to the early stages of the family justice process and consider not only its legal dimensions but also other dimensions.

As the above scenarios demonstrate, questions arise at any time and stage of family formation and development. Early on, family formation already involves many legal and emotional challenges. These challenges can, for example, be related to formalizing a relationship through contract or simply cohabiting with an intimate partner. At this stage, part of the challenge may be to overcome the fear of emotions that may arise if legal issues are raised (how family finances and care giving responsibilities will be organized, for example) and of emotions involved in resolving them. Family justice issues can also arise at a later stage, when couples decide to have children or when intimate partners start feeling that they do not get along anymore and cohabiting becomes difficult. Single persons may also face family challenges, such as when they explore adoption possibilities. In this context, it is important to distinguish between the time at which family challenges or problems arise and the early stages of resolving them.

In addition to their potential to emerge in good as well as bad times, family difficulties have particular characteristics. They tend to be charged with emotions and at the heart of people's identities. Family relationships can involve various levels of proximity and dependency. They can be tense because of money or lack of money. In short, they require specific solutions. Although everyone is vulnerable to family problems, this does not mean that all families are the same or that families are fixed. On the contrary, they are constantly changing. Over the past decades, the concept of "family" has shifted, cultural familial practices have become diverse, the boundary between public and private has become far more permeable, the roles of family members have changed and the expectations of family members have reflected changing expectations in society generally.⁴ It is difficult for the family justice system to adapt. The solutions envisioned by this project need to be specific, but also pluralist and flexible in recognition of different needs among users and different skills required by justice workers.

B. Methodology and Timeline

As in any LCO project, this project will involve both research and consultations. During consultations, the LCO invites both individual members of the public (users of the family justice system) and organizations or professionals who provide services to the public in Ontario (workers in the family justice system) to participate. As this project is closely connected to users' needs and habits in accessing the family justice system, user participation is extremely significant. The LCO therefore invites family justice system workers to share their knowledge but also, if possible, to help reach out to and organize consultations with particular user groups. Consultations may take place in person, by conference call or by other means of communication.

The project will be conducted in three phases:

1. Public consultations will take place from September to December 2009.
2. The LCO will compile consultation results, conduct further research and consultations during the first half of 2010.⁵
3. Finally, the LCO will release its final recommendations and report in November 2010.

This paper is designed to guide consultation participants through phase 1 of the project. However, at any time, Ontarians and Ontario-based organizations are encouraged to contact the Project Head⁶ to discuss their preferred way to participate in these consultations.

In terms of consultation methodology, the LCO's approach towards users and workers will be different. In the case of users, the LCO will use a narrative approach. In other words, the LCO will invite Ontarians to tell their stories. It will ask Ontarians to focus on a limited time frame to tell their stories: from the moment they faced a family issue to their first contact with what they consider to be the justice system. The LCO will also invite users to share what they learned from their experiences as well as their analysis of the current family justice system.

In the case of workers, the LCO will adopt a practical and self-reflective approach. It will ask workers to think about how users learn about their services and what steps users take before getting to the point of using their services. It will also ask workers to evaluate whether their services can be considered family justice system "entry points", which will be discussed in the next section. In addition, the LCO will ask workers to draw a map of how they are connected to other workers in the family justice system and related social and health services.

In consulting with users and workers, the LCO will pay particular attention to how these individuals are situated in terms of their identity characteristics such as gender, sexual orientation, race, class, culture, religion, language, Aboriginal ancestry, age, ability and geographical location.⁷ With both user and worker perspectives in mind, combining their respective paths and roadmaps, the LCO will explore what already existing or new routes can lead to more effective and efficient early intervention in the area of family justice. In short, based on both research and consultations, the LCO will identify best practices that can help workers better respond to users' needs.

III. KEY TERMS

This consultation paper uses key terms in a broader sense than is usually understood in the legal world. These key terms include "family justice process", "entry point", "user" and "worker". It also uses images such as "cluster of problems" and "silos". The next

subsections will explain what the LCO means by these key terms in the context of this project.

A. Family Justice Process

“Family justice process” can be defined in many ways. It can be narrowly understood as the family court process. A slightly broader understanding may include court-related services such as court-based information and mediation services, as well as out of court processes involving lawyers such as collaborative law. However, a much broader understanding of the family justice process involves every step that needs to be taken, including the thought process, for someone to identify and resolve a family challenge or problem that has a legal as well as other dimensions, to come to have a sense of closure in terms of its resolution and a feeling that justice has been done. This definition forces us to think about people’s informal networks, about connections between social, health and legal services and about barriers to access to justice more generally. As stated above, the LCO will concentrate on the “early stages” of this more broadly defined process.

B. Entry Points

“Entry points” into this broadly defined family justice process framework are multiple and diverse. An entry point can be any person, service or physical location that someone needing help with family matters may encounter. Other research projects have used the term “access point”, which has a similar meaning.⁸ Examples of the earliest informal entry points may include a friend who happens to know a community centre for women, someone’s mailbox containing a court document, and a school bulletin board where a parent saw a posting about free family law information sessions. More formal entry points may include court-based Family Legal Information Centres (FLICs) and the Parent Information Sessions they offer, the 9-1-1 emergency phone line as well as a lawyer’s office. During consultations, the LCO would like to hear about what entry points people have come across while looking for a solution to their family problems or when attempting to design their family relationships to avoid future problems. It would also like to know what workers think may be key entry points for users where services are not yet offered. The LCO expects to learn about a wide range of entry points, especially since entry points are closely linked to people’s diverse identities and community connections.

As an example of culturally specific entry points, Iranian registrars and Ontario municipal offices currently serve as entry points for members of the Ontario Iranian communities. An Iranian registrar office is where a person would go to receive help with Iranian and Canadian marriage and divorce.⁹ The registrar office might not be the initial entry point, however. Most people would learn about registrar offices through their informal networks. Others could, for example, go to an Ontario municipal office and get information about how to get married under Canadian law. They might also ask how they can get married under Iranian law. The municipality would then refer them to a list of religious officials authorized to solemnize marriages and provide contact information for the religious official chosen by the user.¹⁰ These two entry points, the Ontario municipal office and the local Iranian registrar are therefore directly connected. Iranian Ontarians rely on them to formalize their relationships.

Once the LCO identifies entry points like these, it will ask whether quality services are offered at these entry points and whether these entry points are the best locations to reach out to particular user groups. In the case of Iranian registrars, LCO research revealed that religious officials who run these registrars may be trained in Iranian law but not necessarily in Ontario and Canadian law.¹¹ It may therefore be important for the province of Ontario to regulate services offered at these entry points so that workers obtain relevant training. The LCO also found that other locations may be more relevant to reach out to certain subgroup of the Ontario Iranian population. Schools, for example, may be more appropriate to reach out to Iranian women who do not go out a lot but definitely go to their children's schools.¹² Analyzing a wide variety of entry points will help the LCO identify best practices at the early stages of family problem resolution. The LCO invites consultation participants to share other culturally specific examples of entry points into the family justice system.

C. Users and Clusters of Problems

The targeted user population of this research includes all Ontarians, regardless of whether they already used the system or not. From an access to justice perspective, the LCO recognizes the diversity of needs across Ontario and will develop case studies that reflect the experiences of various user groups. It will conduct an intersectional analysis of submissions received by consultation participants.¹³ Moreover, the LCO will seek to

identify the specific “clusters of problems” experienced by each user group when facing a family problem.

The notion of clusters of problems has been used in previous research.¹⁴ In short, when users experience family problems, they do not only experience legal problems. They experience a range of problems of different natures that are interrelated: mental health, financial and legal problems, for example. Depending on their situation, different user groups will experience different clusters of problems and it is therefore important to consider these differences before thinking about solutions. Similar considerations apply to workers.

D. Workers and Silo Problems

If a cluster can be a useful image to think about the problems of users, silos can be a useful one to think about those of workers. Many workers within the family justice system face heavy workloads, time management issues and lack of resources that make it very difficult to work collaboratively with other professionals, regardless of their desire to do so.¹⁵ In addition, their professional roles and work culture may not necessarily help foster a collaborative environment.¹⁶ As a result, many work in silos. The LCO is therefore interested in learning more about the various difficulties workers experience in trying to respond to users’ needs. When considering how public legal education materials and high quality referral services may help fill gaps between these silos, for example, the LCO will also take into account the limits of their workplace environment and ask what systemic changes are necessary to be able to implement recommended changes. Perhaps in some cases, workers will need to broaden their horizons to be able to work collaboratively. They may also have to change their usual practices and have more frequent contact with other members of the community to be able to make effective referrals.

IV. WHAT OTHERS HAVE DONE OR ARE CURRENTLY DOING

During the past few years, a significant amount of work has been done to remedy deficiencies in family justice and improve access to justice in Ontario. The LCO is building on this knowledge and will continue conducting research about family justice initiatives in Ontario and elsewhere throughout the project. In bringing these initiatives to

the attention of consultation participants, the LCO seeks to highlight connections between its project and current or past projects conducted by other organizations. It also invites input from those who have participated in these projects. Finally, it invites leaders of other projects that are not cited in this paper to communicate with the LCO to explore common points and avoid duplication.

In November 2008, the Attorney General of Ontario, the Honourable Chris Bentley, introduced amendments to the *Family Law Act* to address domestic violence, child support and pension reform and these were given Royal Assent in May 2009.¹⁷ The Attorney has engaged in consultations about the family law system over the past year. He recently announced that legal aid funding would be increased by \$150 million over four years and that part of this funding will be allocated to family law process and to legal clinics serving people in poverty. The Attorney has also indicated that the government would focus on the distribution of information and on expediting dispute resolution, among other initiatives in the family area.¹⁸ As the LCO's own project on family law process proceeds, we will take into account developments arising from the Minister's initiatives and welcome contributing to them, should the opportunity arise.

One of the most important reports produced in the area of family justice process in the past few years is the report prepared by Alfred A. Mamo, Peter G. Jaffe, and Debbie G. Chiodo.¹⁹ Although focused on courts and interviews with workers, as opposed to the LCO project that will put specific emphasis on users, this report contains relevant information for the LCO project. The LCO project builds on many of the recommendations found in the Mamo, Jaffe and Chiodo Report such as ensuring the Family Law Information Centre (FLIC) be the main entry point into the family court system; realizing the full potential of mediation services; adapting to the reality of self-represented litigants; handling domestic violence and high conflict cases differently from other cases; sharing promising practices across the province and conducting a systematic and comprehensive review of the Ontario family justice delivery system.²⁰

Embracing the Mamo, Jaffe and Chiodo Report's recommendations, the Ontario Bar Association Family Law Section, the ADR Institute of Ontario and the Ontario Association for Family Mediation made a proposal to the Honourable Chris Bentley, Attorney General of Ontario, this year, for concrete implementation of these

recommendations.²¹ This group's vision is that family courts should be the default option and not the entry point into the family justice system, except in cases of emergency such as domestic violence and urgent child and spousal support cases.²² This proposal also emphasizes that legal information, referral and intake triage systems, as well as less adversity and more collaboration within the justice system, are key elements to improve the family justice process. The LCO project will explore similar issues. However, it will explore a broader range of issues, including for example, challenges that arise at the moment of family formation in addition to problems related to family breakdown, and entry points, both formal and informal. The LCO will also put greater emphasis on users' experiences within the system.

Prior to the Mamo, Jaffe and Chiodo Report, Justice Coulter A. Osborne produced a more general civil court focused report.²³ Some recommendations found in the Osborne Report, especially about unrepresented litigants, the importance of civility in the legal profession and the use of technology in the justice system, apply to the LCO project. Although the report does not focus specifically on family justice, when it comes to legal service delivery there are common grounds between civil and family justice.

The report prepared by Michael Trebilcock about Legal Aid Ontario is another important report in terms of access to justice.²⁴ In relation to family law, the Report pointed out that "[m]any submissions expressed particular concerns over the very restrictive access to legal aid assistance in family law matters."²⁵ It also revealed that many Ontario organizations are interested in service integration and multi-disciplinary clinics providing a single entry point for users.²⁶ They considered this type of multi-faceted service an important component of successful early intervention.²⁷ These observations are important for the LCO project. The LCO will continue exploring how Legal Aid Ontario can become a more effective entry point in the justice system.

Emerging from recommendations from the Osborne Report, the current Ontario Civil Legal Needs Project led by Honourable R. Roy McMurtry, is another initiative that seeks to address similar concerns as the LCO project.²⁸ This project seeks to provide a legal need assessment of low and middle-income users of the Civil Justice System.²⁹ The Law Society of Upper Canada, Pro Bono Law Ontario, and Legal Aid Ontario have initiated this project to provide "a comprehensive, empirically based study of unmet legal

needs in Ontario”.³⁰ The research is still in progress. It involves an extensive telephone survey of civil system users, focus group interviews with “front-line legal and social service providers”, and a mapping of existing services that enhance access to justice.³¹ With an expected release date of early 2010, the final report will seek to establish a “roadmap to help stakeholders in the legal service delivery system establish priorities, allot existing resources effectively and identify opportunities for enhanced collaboration and improvement”.³² In addition, this project’s definition of legal needs is very close to the LCO approach to family challenges and problems. They are defined as problems that are difficult to resolve.³³ Moreover, the project acknowledges on the one hand that “not all problems with a legal *dimension* necessarily create legal *needs*” and on the other hand that there is a connection between legal and social needs.³⁴ The timing of this Project Report’s release will allow the LCO to draw from it in examining more specifically the needs of family justice system users. The LCO work is likely to be complementary to the Ontario Civil Needs’ Project as it will analyze in greater detail one category of civil legal needs, relating to the family.

In line with the project of assessing needs across the province, Karen Cohl and George Thomson’s report *Connecting Across Language and Distance: Linguistic and Rural Access to Legal Information and Services* explores ways to increase access to justice across language and geographical barriers.³⁵ Not surprisingly, most findings about accessibility found in this Report apply to the LCO project. These findings include the fact that vulnerable persons need legal services more than self-help; that family and child protection are priority areas of the law; that a system, as opposed to a single entity, with multiple access points needs to be created; that community organizations should play an important role in that system; and that a commitment to collaboration is necessary to improve access to justice.³⁶ Some of these ideas have come back in many reports and the LCO hopes to design best practices that will help implement them.

Although the LCO explores similar access to justice issues as did the Linguistic and Rural Access Project, its project is different in that it focuses more narrowly on family issues. The linguistic and rural access project also did not explore Aboriginal peoples’ needs³⁷, suggesting that a separate project addressing their needs should be undertaken, which is something that the LCO hopes to do, even though it agrees that Aboriginal peoples’ issues are complex and may require special study. The Linguistic

and Rural Access Project Report pointed out that although there is a legal requirement to offer services in French in Ontario in specific areas, francophone communities still faced challenges in accessing legal information and services.³⁸ The LCO will consult with francophone communities to consider how access to family justice services in French can be improved. In short, the LCO decided to leave the project open for participation from various groups in Ontario, including Aboriginal and French speaking groups. The LCO recognizes that particular communities have particular needs. Moreover, it recognizes that there is a great diversity within communities across the province. However, it will consider submissions from all groups and apply an intersectional analysis to better understand their needs.

Another example of recent and related work in the province is Luke's Place report on the needs of Abused Women Unrepresented in the Family Law System.³⁹ Luke's Place is a centre in Oshawa that "provides professional and peer support services to women and their children free of charge in a comfortable, accessible and confidential environment."⁴⁰ In collaboration with The Denise House, an emergency shelter for abused women and their children, Luke's Place conducted focus groups with and circulated a questionnaire to women survivors of violence who were unrepresented in family court as well as community workers, legal support workers, lawyers and judges.⁴¹ This is an interesting study for the LCO as it focuses on a particular user group included in the LCO project.

Perhaps even more than the previously mentioned projects, this study made a particular effort at focusing on users, in this case women, and making their voices heard in the report through quotes from interviews. This project's approach to users and recommendations are in line with the LCO family justice project. It recommends, for example, developing a triage system to handle emergencies on a *pro bono* basis or with legal aid support; removing barriers that prevent women on legal aid certificates from retaining a lawyer they saw at a Family Law Information Centre (FLIC) or as duty counsel; developing an information sharing/communication system between family and criminal courts; developing a screening process to fast-track cases involving woman abuse and to address the issue of legal bullying; increasing the scope of FLIC services (separate waiting room for abused women, free child care, free photocopying, legal aid office in courthouse, space for community supports and services); and exploring the option of providing legal services while women access other types of services (shelter,

immigration and mental health services for example).⁴² These are all possibilities that the LCO will take into consideration in its own research. Like some of the initiatives mentioned above, this Report also highlights the importance of domestic violence issues within the family justice process and the fact that these issues need to be identified early in the process, dealt with rapidly and in a different manner than other cases, and responded to through a variety of services and not only family legal services.

Also related to domestic violence, the Ontario Court of Justice Criminal-Family Intersection Working Group is currently discussing the possibility of having integrated domestic violence courts (IDVC) in Ontario.⁴³ Participants in this group include judges, lawyers, a regional Senior Justice of the Peace, a Victim/Witness Support Assistance representative and police officers. The LCO attended one of this group's meetings in June 2009 and will follow these discussions with great interest as IDVCs provide an example of integrated service delivery and coordination beyond specific areas of the law (family, criminal and possibly immigration law) to better respond to needs of specific user groups, i.e. victims and perpetrators of domestic violence.

In addition to these initiatives, a significant number of public legal education materials have been produced in Ontario. Existing public legal education materials include: Community Legal Education Ontario's (CLEO) online family law publications,⁴⁴ CLEO's six languages project,⁴⁵ as well as the Ontario Ministry of the Attorney General website, which contains public legal information about Ontario law including family law resources.⁴⁶ Other initiatives focusing on Ontario women's need for public legal education include: Family Law Education for Women (FLEW), which targets various audiences in terms of language and culture;⁴⁷ the Ontario Women's Justice Network (OWJN), which also includes information about family law⁴⁸ and violence against women;⁴⁹ and the Canadian Council for Muslim Women's (CCMW) comparative brochures about Canadian and Muslim family law.⁵⁰ Justice Harvey Brownstone also recently published a book, *Tug of War: A Judge's Verdict on Separation, Custody Battles, and the Bitter Realities of Family Court*,⁵¹ which seeks to help people understand the family justice process. In addition to these materials, Ontarians have access to the federal government website, which provides information about various topics including family violence for example.⁵² As the next section will explain, the better circulation of information about the family justice process is one of the possible solutions

to improve the system. It is therefore important to be aware of the materials that are already available for distribution.

Interesting work has also been done in other jurisdictions. The LCO is only at the initial stage of conducting comparative research both nationally and internationally. However, an example worth considering in relation to family justice is the British Columbia Family Justice Reform Working Group, which was created by the BC Justice Review Task Force, to facilitate “ongoing collaboration between government, the judiciary and lawyers, working together to help make the justice system more responsive, accessible and cost-effective”.⁵³ There are interesting examples of innovative service delivery models in the United States, including one-stop-shopping family courts with full-time therapists on site⁵⁴ and a marriage license fee reduction upon completion of a premarital preparation course.⁵⁵ The Australia-based study “Working on their Relationships: a study of inter-professional practices in a changing family law system” is another example that provides helpful insight into the necessary elements to foster true and effective interdisciplinary collaboration in the area of family justice.⁵⁶ This is the kind of research that will supplement Ontario focused research and consultations. The LCO will continue inquiring into research and initiatives in other jurisdictions to find possible models that may apply to Ontario. Findings from comparative research will appear in the LCO final report during phase 3 of this project.

V. POSSIBLE RESPONSES

Many possible solutions have already been mentioned in previous sections of this paper. Better information circulation, referrals and coordination across disciplines appear to be key elements of effective early intervention. Integrated service delivery models, service hubs or one-stop-shops were also mentioned as possible ways of integrating these key elements.⁵⁷ The more human aspects involved in community building, fostering new interdisciplinary relationships and enabling cross-cultural exchanges were also discussed as significant factors without which collaboration cannot work. In that regard, social work scholarship provides insight into the meaning of collaboration:

The term collaboration is used in two ways. The common meaning of the word, reflecting its Latin roots, is that of ‘working together’. In the literature on human services organisations and inter-organisational relations,

collaboration also has a more specific meaning, that of the formal joining of structures and processes between organisations. It is part of a spectrum ranging from the informal to the formal, beginning with cooperation (as in informal information exchange), through coordination (as in development of formal protocols) to collaboration and ultimately, integration, which involves the formation of new organizational structures....⁵⁸

Improving the family justice system's early intervention capacity will likely involve a commitment to better collaboration. It may also require a transformation in the way Ontarians approach family challenges and problems. These are elements to consider in thinking about possible solutions.

The possible solutions mentioned in this paper involve both informal and formal rules. Some involve legal procedural issues, professional responsibility issues or additional regulation of certain workers' services. Others involve, for workers, more socializing with workers from other disciplines, and for users, having the courage to confront family challenges as soon as they arise. Solutions may also be mandatory or optional, in the case of information sessions and mediation services for example. In addition, solutions may require the use of different technologies to respond to different users' needs. Finally, time and resources also determine what solutions can realistically be implemented.

With these possible responses and implementation considerations in mind, the LCO looks forward to receiving feedback from users and workers on what responses may work for them. The LCO is interested in hearing participants' views about short, medium and long term responses that may be implemented to improve the family justice system. It is also interested in hearing about what current practices in Ontario could be considered great examples for the rest of the province. Although the LCO will examine systemic issues related to the allocation of resources, it will also explore solutions that may be implemented with resources currently allocated to the family justice process.

VI. CONSULTATION QUESTIONS

This section includes questions that you may consider in your submission to or conversation with the LCO. Questions are designed for users, workers or both, and are intended to be a guide for providing feedback. You do not need to answer all the questions and you may wish to provide your comments without reference to these specific questions. Organizations and academics are also invited to comment on themes included in the user and worker sections. If you have questions about this section, please contact the Project Head whose contact information is included in the last section of this paper.

A. Users

Tell us Your Story

Can you tell us the beginning of your story, from the point when you realized that you had a family challenge or problem and wanted external help, to the moment when you came in contact with someone who provided you with help (inside or outside of the family law justice system)?

If you felt blocked in the process and couldn't receive any help, you can also tell us this story.

You may also trace your story backwards, from the moment you came into contact with a family justice worker back to the beginning of your family challenge or problem.

Imagining a Different Scenario

If you had to redo everything again, what would you do again, do differently or never do again at the beginning of the process of solving your family challenge or problem?

What would your story have looked like if you had had access to the services you were looking for?

Your Resources

Who was the most helpful person in terms of helping you resolve your family challenge or problem? (This person may or may not be a family justice system worker.)

Do you have access to an informal network of support?

- If you do, can you describe it?
 - o Could you rely on a person within this network to help you if you had a family challenge or problem?
- If you don't, what would you do if you needed family-related help?
 - o Who would be the best person to help you?

When it comes to receiving family justice services, do you have specific needs related to your group identity, ability, geographical location or experience of migrating to Canada?

What did you NOT know before or during your relationship, parenting experience or overall family experience that may have helped prevent family challenges or problems?

External Resources

Please identify any of the following online public legal education resources that you know about or have used by checking the boxes:

- Ministry of the Attorney General Know about Have used
http://www.attorneygeneral.jus.gov.on.ca/english/justice-ont/family_law.asp
- Community Legal Education Ontario
Family law Know about Have used
<http://www.cleo.on.ca/english/pub/onpub/subject/family.htm>
- Six languages project Know about Have used
<http://www.cleo.on.ca/english/six/index.htm>
- Family Law Education for Women Know about Have used
<http://onefamilylaw.ca/>
- Ontario Women Justice Network <http://www.owjn.org/>
Family law Know about Have used
http://www.owjn.org/index.php?option=com_content&view=article&id=219&Itemid=104
- Violence against women Know about Have used
http://www.owjn.org/index.php?option=com_content&view=article&id=217&Itemid=107
- Canadian Council for Muslim Women <http://www.ccmw.com>
Muslim and Canadian family law Know about Have used
http://www.ccmw.com/documents/Muslim_and_Canadian_Family_Laws.pdf
- Department of Justice Canada
Family Violence Know about Have used
<<http://www.justice.gc.ca/eng/pi/fv-vf/pub/abus/aiw-meil/index.html>>.
- Other (please indicate the relevant resource): _____

External Resources (Continued)

Do you think such resources can be helpful in preventing and/or resolving family challenges or problems?

- If you do,
 - o How would you prefer receiving this information?
 - o Where would you go if you had access to this information but wanted to learn more or if you were facing a family challenge and needed further help to resolve it?
- If not, why?

Assuming that not everyone prefers or is in a position to receive services in the same way, how do you prefer receiving services in the area of family law?

- What would be the most accessible entry point for you?
- How important are in-person interactions for you?
- Do some means of communication work better than others for you?
- Are there any technologies that may help reaching out to you?

B. Workers

Your Situation

Where are you situated in the family law process?

- Do you intervene at an early stage in the process?
- Do you receive phone calls from people who just had a family challenge or problem?
- How do people find you?

Do you consider yourself an entry point into the family justice system?

- If so, why?
- If not, where do people typically go before meeting you?

Your Challenges

Have you worked with people who experienced domestic and family violence?

- How do you identify these cases?
 - o Do you have specific criteria to identify these cases?
 - o How would you describe domestic and family violence?
- Do you provide specific information or referrals to users or other workers who have to deal with this type of problem?

Have you worked with people who could be described as “legal bullies” or who engage in “legal bullying” (i.e. using the legal system to bully someone)?

- Do you have specific criteria to identify these cases?
- How would you describe “legal bullying”?

Rewriting a User's Story

If you could rewrite the story of one of your clients (or a user of the system that you have interacted with) and design the most effective way to solve the issue, what would that story be?

C. Family Law Lawyers

Your Situation

How would you describe your clientele from a group identity perspective (income, sex, race, age, ability, religion, etc.)?

How do your clients come to you?

What steps do you take to try to solve your client's issue in a fast and cost effective way?

- Do you explore collaborative law or ADR options when appropriate?
- Do you find that you have enough of an opportunity to negotiate settlements?
- Do you take Legal Aid Ontario certificates?

What do you consider to be limits of the law in terms of solving family challenges or problems?

- What other resources can compensate for these limits?
- What should legal professionals do to avoid reinforcing these limits?

What are the worst mistakes that happen at the beginning of the family justice process?

- How can we avoid these mistakes?

D. Questions for All

Information Circulation

Should free information sessions be mandatory before entering into a marriage or cohabitation contract?

Should court-based information sessions, such as Parent Information Sessions be mandatory before any parent starts legal procedures across Ontario?

- If they remain voluntary, who could/should refer clients to these information sessions so that they are not underused?
- How should these sessions be advertised so that users learn about them?

Should public legal education materials and information sessions be structured differently if they are offered before and after a family problem arises?

- If so, what should be the main differences?
- If not, why?

Should there be an obligation for all entry point professionals (lawyers, mediators, social workers, etc.) to inform people of their dispute resolution options at a low cost before providing any services to someone?

In-Person Support

What is the best way to ensure that users receive in-person support and are accompanied when they navigate through the family justice system?

- Is there a way to better coordinate users' informal networks with more formal government funded ones?
- What community building efforts can be made to improve in-person services?
 - o Are there already existing support systems that could be used in more than one discipline?
 - o Are there workers (e.g. social workers) who are particularly effective at developing a holistic approach to user accompaniment within and beyond the family justice system?

Referrals

Should professionals be required to refer clients to government funded free information sessions or provide the free sessions themselves?

Should professionals be obliged to make referrals and evaluate their quality?

- Should health and legal professionals have the responsibility to making referrals to each other?
- Should family justice system workers be required to follow up on cases to evaluate whether their information and referral systems are effective?

Why do you think Ontarians do not have access to the family justice information and referrals they need?

- Is it a question of capacity building or of willingness to engage in these activities?
- Is it a question of legal professionals not perceiving information dissemination and referrals to be a part of their job?
- Is it because workers are isolated and not in touch with other workers who may provide help to users?
- Is it because users lack resources to learn about or get to family justice system entry points?

VII. HOW TO PARTICIPATE

As stated above, consultations will take place this fall. If necessary, additional consultations may be organized between January and April 2010.

If you would like to set up a consultation meeting with the LCO at your organization, you may contact the Project Head to discuss possible arrangements (see contact information below). Meetings can take place in person, by conference call or via other interactive technologies. You may propose meetings with workers and/or users of your services. You may also propose to team up with other organizations in your community to organize a meeting or signal key gatherings that the LCO could possibly join to reach out to certain groups of users or workers. Although the LCO is interested in consulting with both users and workers of the family justice system, including family law lawyers, we are

Best Practices at Family Justice System Entry Points: Needs of Users and Responses of
Workers in the Justice system

particularly interested in receiving proposals from organizations that may be able to help organize consultations with user groups in their community.

The LCO will also use its website and e-mail list to post calls for participants an in-person meetings and conference calls with targeted user and worker groups. If you would like to be added to the LCO contact list for this project, please communicate with the Project Head.

Finally, as with any LCO project, individual and organizations may send extensive submissions or shorter comments through the LCO website, by e-mail or by regular mail.

Submissions and comments must be received by **December 1, 2009**.

You can mail, fax, e-mail your submissions or comments, or use the LCO website comments form at <http://projects.lco-cdo.org/familylawprocess>.

Law Commission of Ontario
“Family Justice System Entry Points Consultation”
Computer Methods Building, Suite 201
4850 Keele Street
Toronto, ON
M3J 1P3

Fax: (416) 650-8418
E-mail: LawCommission@lco-cdo.org
Project Website Link and Comments Form:
<http://projects.lco-cdo.org/familylawprocess>

If you have questions regarding this consultation, please contact us at (416) 650-8406.

ENDNOTES

¹ Law Commission of Ontario, “Family Law Process Project”, online: LCO <<http://www.lco-cdo.org/en/familylaw.html>>.

² See the LCO website for more information on this project and to consult the final report: <http://www.lco-cdo.org/en/documents/Currentprojects/previsions.html>.

³ See the LCO Project Options Paper for information about the LCO 2008 Family Law Roundtable and early 2009 consultation about family law project options (Law Commission of Ontario, “Family Law Project Options: Consultation Paper” (January 2009), online: LCO <<http://www.lco-cdo.org/fr/documents/FamilyLawProjectOptionsConsultationpaper.pdf>> [Project Options Paper]; see also the Family Law Process Project page for more information about this project, online: LCO <<http://www.lco-cdo.org/en/familylaw.html>>.

⁴ As stated by Professor Robert Leckey, there is no official family definition under Canadian law. Families are formed for a variety of reasons and function differently from one to another. Trying to make sense of these various models and respond to them through the justice system is complex. In that regard, Professor Leckey developed a useful framework to analyze family relationships, which involves four oppositions: private versus public law; instrumental versus non-instrumental or symbolic value; formal versus functional recognition; and formal versus substantive equality. Understanding where families are situated in relation to these oppositions can help better design legal and broader social justice responses to problems faced by these families (see Robert Leckey, “Families in the Eyes of the Law: Contemporary Challenges and the Grip of the Past” (2009) 15 IRPP Choices 2).

⁵ The LCO invites stakeholders to express their particular needs in terms of timing for consultations. If the LCO is informed in advance, it may be able to accommodate groups who do not have the capacity to make a submission or participate in consultations in the fall but who would like to be heard.

⁶ See section VII, “How to Participate”, for contact information.

⁷ For a description of this project’s intersectional analytical framework, see the Project Options Paper, above note 3.

⁸ The terms “entry points”, “access points” and “point-of-entry services” are, for example, used in Gayla Reid & John Malcolmson’s “Civil Hub Research Project: Needs Mapping” (June 2007), online: Attorney General British Columbia Government <www.ag.gov.bc.ca/justice-reform-initiatives/.../CivilJusticeHub.pdf> [B.C. Civil Hub Project].

⁹ The Iranian Ontarian population may feel the necessity to be married both under Canadian and Iranian law as Iran does not recognize marriages based only on Canadian law. This can be crucial when parents want to travel to Iran together, as well as with their children. Children can only have access to Iranian birth certificates if the father is Iranian or both parents are Iranian and married under Iranian law. The children’s access to Iranian birth certificates prevents them from having to obtain foreigner visas every time they visit Iran. The Iranian embassy in Canada therefore requires official Canadian and Iranian marriage documents to recognize a couple as married under the Iranian law and provide Iranian birth certificates for their children. (Interview of Mohammad Sotoudehfar, religious official authorized by the provincial government to solemnize marriages in Ontario under the *Marriage Act*, R.S.O. 1990, c. M.3, conducted by Nazila Rostami, research student at the Law Commission of Ontario (25 May 2009) at Peivand Registrar office, North York, Ontario; confirmed by information inferred and translated by Nazila Rostami from the Iranian embassy website: www.salamiran.org). This situation will not change unless Ontario and Canada negotiate the recognition of Ontario marriages with the Iranian government. The same problem also exists with other countries such as Saudi Arabia and Pakistan (see Lauren Vriens, “Islam: Governing Under Sharia (aka shariah, shari’a)” Council on Foreign Relations (23 March 2009), online: cfr <<http://www.cfr.org/publication/8034/>>).

¹⁰ A list of religious officials is available on the Ontario government website under “Marriage – Religious Officials Authorized to Solemnize Marriage”, online: Life Events

http://www.ontario.ca/en/life_events/married/133022 [Ontario government website]. This list contains names of various religions' officials and not strictly Muslim officials.

¹¹ For example one of them is run by Mohammad Sotoudehfar who is trained in Iranian law and has some knowledge of the Canadian system. He would provide clients with basic information about Canadian marriage and divorce law but would refer clients to Ontario lawyers he knows if they required more information (Interview of Mohammad Sotoudehfar, above note 9). Moreover, the Ontario government website posts the following warning: "Registration under Ontario's *Marriage Act* authorizes a person to solemnize marriages in Ontario. However, it is the responsibility of the individual religious official to ensure he or she is complying with the requirements of *Marriage Act*. The Government of Ontario does not guarantee that an individual registered to solemnize marriages under the *Marriage Act* will comply with the requirements of the *Marriage Act*" (Ontario government website, *ibid.*). In short, although the Ontario government provides lists of religious officials authorized to celebrate marriages, it does not guarantee that these marriages will comply with Canadian law.

¹² Informal consultation with Alia Hogben, Executive Director, Canadian Council for Muslim Women, on August 14, 2009.

¹³ For more information about this project's intersectional approach, see the Project Options Paper, above note 3.

¹⁴ The notion of clusters of problems in the family law context is explained in Mary Anne Noone, "Towards Integrated Legal Service Delivery", (2009) La Trobe Law School Legal Studies Research Paper No. 2009/1, online: <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1425099> at 2 [Noone].

¹⁵ The rules of conduct of various professions may also present obstacles to collaboration. For example, the Law Society of Upper Canada does not allow lawyers to engage in other activities that can jeopardize their professional integrity, independence or competence (Law Society of Upper Canada, *Rules of Professional Conduct*, Rule 6.04, online: LSUC <http://www.lsuc.on.ca/regulation/a/profconduct>). Their collaboration with other professionals must therefore respect certain boundaries established by the profession.

¹⁶ An Australia-based study examined for example "how lawyers and family dispute resolution practitioners see each other and work together.... to identify factors that facilitate good working relationships within these contexts". This study identified lawyers' advocacy roles and family dispute resolution practitioners' neutrality obligations as significant differences that needed to be taken into account in developing collaborative relationships (Helen Rhoades, Ann Sanson, and Hilary Astor with Rae Kaspiew, "Working on their Relationships: a study of inter-professional practices in a changing family law system: Research Report 1", December 2006, The University of Melbourne at i-iii).

¹⁷ Bill 133, *An Act to amend various Acts in relation to certain family law matters and to repeal the Domestic Violence Protection Act, 2000*, 1st Sess., 39th Leg., Ontario, 2008 (assented to 14 May 2009), S.O. 2009, c.11.

¹⁸ See <http://www.attorneygeneral.jus.gov.on.ca/english/news/2009/20090908-lao-bg.asp>.

¹⁹ Alfred A. Mamo, Peter G. Jaffe, and Debbie G. Chiodo, *Recapturing and Renewing the Vision of the Family Court*, April 27, 2007 [Mamo, Jaffe and Chiodo Report].

²⁰ Mamo, Jaffe and Chiodo Report, *ibid.* at 7-10.

²¹ The Ontario Bar Association Family Law Section, ADR Institute of Ontario & IAFM, "Family Law Process Reform: Supporting Families to Support their Children" (7 April 2009), online: <http://www.oafm.on.ca/Documents/OBA%20OAFM%20ADR%20Institute%20submission%20Apr%207%202009.pdf>.

²² *Ibid.* at 4-5.

²³ Honourable Coulter A. Osborne, Q.C., *Civil Justice Reform Project: Summary of Findings and Recommendations*, November 2007, online: <http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/cjrp> [Osborne Report].

²⁴ Michael Trebilcock, "Report of the Legal Aid Review 2008" (submitted to the Honourable Chris Bentley, Attorney General of Ontario) 2008, online: <<http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/>> [Trebilcock Report].

²⁵ *Ibid.* at iii.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ Law Society of Upper Canada, "Ontario Civil Legal Needs Project", online: LSUC <<http://www.lsuc.on.ca/latest-news/a/ontario-civil-legal-needs-project/>> [Ontario Civil Legal Needs Project].

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ The Law Society of Upper Canada, News Release, "Hon. Roy McMurtry to lead comprehensive study of Ontario public's legal needs" (14 January 2009), online: LSUC <http://www.lsuc.on.ca/media/jan1308_civil_legal_needs_en.pdf> at 1 [LSUC news release].

³² *Ibid.* at 2.

³³ The Law Society of Upper Canada, "Access to Justice Committee Report to Convocation" (26, June 2008), (prepared by the Equity Initiatives Department, Jewel Amoah, Counsel – 416-947-3425) online: LSUC <http://www.lsuc.on.ca/media/convjun08_atj.pdf> at 17 [Ontario Civil Legal Needs Convocation Report].

³⁴ *Ibid.* at 18-19.

³⁵ The Law Foundation of Ontario, *Connecting Across Language and Distance: Linguistic and Rural Access to Legal Information and Services* by Karen Cohl and George Thomson (Toronto: The Law Foundation of Ontario, 2008) [Linguistic and Rural Access Project Report].

³⁶ *Ibid.* at 52-55.

³⁷ *Ibid.* at 2.

³⁸ *Ibid.*

³⁹ Luke's Place Support and Resource Centre, "Needs Assessment and Gap Analysis for Abused Women Unrepresented in the Family Law System: Final Report and Recommendations" (report prepared for The Denise House), Queens Printer, 2008 [Luke's Place Report].

⁴⁰ *Ibid.* at 2.

⁴¹ *Ibid.*

⁴² *Ibid.* at 20-24.

⁴³ The LCO attended a meeting as an observer in June 2009 at the invitation of Patti Cross.

⁴⁴ Child protection is amongst the family law topics on this website; see Community Legal Education Ontario, "Family Law Resources in Ontario" *Publications Online: Family* (April 2007), online: CLEO <<http://www.cleo.on.ca/english/pub/onpub/subject/family.htm>>.

⁴⁵ CLEO's text and audio materials are available in Arabic, Chinese (Mandarin and Simplified Chinese), Somali, Spanish, Tamil and Urdu; see Community Legal Education Ontario, "Six Languages Text and Audio Project: A pilot project released by CLEO in 2008", online: CLEO <<http://www.cleo.on.ca/english/six/index.htm>>.

⁴⁶ "Family Law Resources" *Ministry of the Attorney General*, online: MAG <http://www.attorneygeneral.jus.gov.on.ca/english/justice-ont/family_law.asp>; see also Ontario, Ministry of the Attorney General, *What you should know about Family Law* (information booklet), (Ontario: ISBN 0-7778-8502-6, March 2006).

⁴⁷ Family Law Education for Women (FLEW) is a project funded by the Government of Ontario, which provides plain language legal information on women's rights under Ontario family law. This information is available in 11 languages: English, French, Arabic, Chinese (traditional), Chinese (simplified), Farsi, Punjabi, Somali, Spanish, Tamil and Urdu. See "All Women. One Family Law: Know your Rights" *Family Law Education for Women*, online: flew <<http://onefamilylaw.ca/en/home>>.

⁴⁸ Ontario Women's Justice Network, "Understanding Violence Against Women", online: OWJN <http://www.owjn.org/index.php?option=com_content&view=article&id=217&Itemid=107>.

⁴⁹ Ontario Women's Justice Network, "Family Law", online: OWJN <http://www.owjn.org/index.php?option=com_content&view=article&id=219&Itemid=104>.

⁵⁰ These comparative public legal education materials are available at the cost of \$25 (see Canadian Council of Muslim Women, "Muslim & Canadian Family Laws: A Comparative Primer", advertisement, online: CCMW <http://www.ccmw.com/documents/Muslim_and_Canadian_Family_Laws.pdf>).

⁵¹ Harvey Brownstone, *Tug of War: A Judge's Verdict on Separation, Custody Battles, and the Bitter Realities of Family Court*, Toronto: ECW Press, 2009.

⁵² Department of Justice Canada, "Family Violence Initiative", online: <<http://www.justice.gc.ca/eng/pi/fv-vf/pub/abus/aiw-mei/index.html>>.

⁵³ See the BC Justice Review Task Force Family Justice Reform Working Group website at <http://www.bcjusticereview.org/working_groups/family_justice/family_justice.asp>.

⁵⁴ Telephone Interview with Julise Johanson, Family Law Facilitator, Superior Court of Yolo County, California (June 10, 2009); see also Barbara A. Babb, "An Analysis of Unified Family Courts in Maryland and California: Their Relevance for Ontario's Family Justice System" 24 C.F.L.Q 25 at 37 (2005).

⁵⁵ See Florida legislation: Fla. Stat. Ann. § 741.0305 (West 2009).

⁵⁶ Helen Rhoades, Ann Sanson, and Hilary Astor with Rae Kaspiew, "Working on their Relationships: a study of inter-professional practices in a changing family law system: Research Report 1", December 2006, The University of Melbourne.

⁵⁷ For example, Mamo, Jaffe and Chiodo have recommended that the 'one-stop-shopping' model be adopted in Ontario and to make the Family Information Centre an entry point into the family court system (Mamo, Jaffe and Chiodo Report, above note 19 at 114); see also Noone, above note 14 at 6, for Australian examples.

⁵⁸ Dorothy Scott, "Inter-organizational collaboration in family-centred practice: A framework for analysis and action" (2005) 58 *Austl. Social Work* (No. 2) 132 at 132; see also KONRAD EL (1996), A multidimensional framework for conceptualising human services integration. *New Directions for Evaluations*, 69, 5–19.