

# Increasing Access to Family Justice Through Comprehensive Entry Points and Inclusivity

FINAL REPORT

February 2013



LAW COMMISSION OF ONTARIO  
COMMISSION DU DROIT DE L'ONTARIO





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# **INCREASING ACCESS TO FAMILY JUSTICE THROUGH COMPREHENSIVE ENTRY POINTS AND INCLUSIVITY**

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Available online at [www.lco-cdo.org](http://www.lco-cdo.org)  
Disponible en français  
ISBN: 978-1-926661-58-2

This publication may be cited as follows:  
Law Commission of Ontario, *Increasing Access to Family Justice through Comprehensive Entry  
Points and Inclusivity* (Toronto: February 2013)

## ABOUT THE LAW COMMISSION OF ONTARIO

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 Law Deans of Ontario's law schools. York University also provides funding and in-kind support. It is situated in the Ignat Kaneff Building, the home of Osgoode Hall Law School at 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 support scholarly research. The LCO is independent of government and selects projects that are of interest to and reflective of the diverse communities in Ontario. It has committed to engage in multidisciplinary research and analysis and 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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The opinions or points of view expressed in our research, findings and recommendations do not necessarily represent the views of our funders, the Law Foundation of Ontario, the Ministry of the Attorney General, Osgoode Hall Law School, and the Law Society of Upper Canada or of our supporters, the Law Deans of Ontario.

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# Foreword

Despite many reforms in the family legal system in Ontario, the most recent studies show that those trying to access the system still find it costly and confusing to navigate.

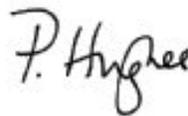
The Final Report of the Family Justice Working Group of the Action Committee on Access to Justice in Civil and Family Matters (April 2013) and Dr. Julie Macfarlane's Final Report in The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants (May 2013), both released after the Law Commission of Ontario's Board of Governors approved this Final Report in our family law project, but before its release, continue to call for change. Our Report focuses on the early stages of people's interaction with the system, when they are making the decision about whether to invoke the legal system, and integrates into consideration of the effectiveness of the system not only the factor of affordability, but also characteristics such as literacy, whether people live in rural and remote areas, culture, language, gender, disability, Aboriginality and others.

Many of the reforms that have been instituted have been linked to the courts. On the basis of in-house research, commissioned research papers and consultations with both users of and workers in the system, we have concluded that at the earliest stages, for various reasons, family disputants need effective access to resources that do not necessarily draw them into the court system but, rather, allow access to the courts when needed. Furthermore, some reforms, intended to increase access to justice by ostensibly reducing cost, may be less valuable to those whose circumstances are related to low income than to those who are more likely to be able to afford assistance. Our central recommendation, multidisciplinary multifunction centres (that is, comprehensive delivery services), acknowledges the relationship between, and confluence of, legal and non-legal problems facing families, the importance of knowing how diversity can affect the value of various reforms and the benefit of the assistance of "trusted intermediaries" in helping those who, for whatever reason, are unable to access the system themselves.

The Board of Governors, comprised of appointees of the founding partners, the judiciary and members at large, approved this Final Report in February 2013. The Board's approval reflects its members' collective responsibility to manage and conduct the affairs of the Law Commission of Ontario, and should not be considered an endorsement by individual members of the Board or by the organizations to which they belong.



Bruce P. Elman, Chair, Board of Governors



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The Law Commission of Ontario would like to extend its thanks to the numerous organizations and individuals who helped shape this project through their involvement by way of consultations, submissions and feedback. A full list of contributing organizations and experts can be found in Appendix A.

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## EXECUTIVE SUMMARY

The Law Commission of Ontario has focused its assessment of and recommendations with respect to the family law system in Ontario on the need to increase inclusivity in the justice system, to acknowledge and respond to Ontario's pluralist character, and to address the continuing problems of affordability and multifaceted problems that face families in crisis.

We assess the current system against benchmarks, make suggestions about changes to further satisfy the benchmarks and recommend the development of multidisciplinary, multifunction centres or comprehensive services at the early stages when people in family disputes seek assistance about whether they have a legal problem and if so, how they might most effectively proceed.

Over the past few years, there has been considerable study and reform of the family law system. Yet problems of complexity and difficulties for unrepresented litigants in particular remain. We recognize the considerable work that has already been done by the government, the courts, academics and community organizations, build on it and advance it by bringing the nuance of diversity and the emphasis on comprehensive services to the forefront of formal legal services.

We have prepared the Report in two Parts, with a common Introduction and a review of Part One at the beginning of Part Two. In Part One, we provide background, including assessing the strengths and weakness of the current system through an "access to justice" lens, paying particular attention to whether and how the system addresses the challenge of diversity, facilitates early and effective access to information, is responding to the increasing cost of legal services and the interrelationship between legal problems and other problems experienced by individuals facing family breakdown. In Part Two, we suggest ways to improve existing entry points to help facilitate access to family justice services. The changes we discuss in Part Two are necessary for and support the creation of the comprehensive delivery of services which we recommend at the end of Part Two.

Our approach is designed to increase access to justice through the provision of sufficient information and assistance to enable family members involved in family disputes to make a decision about whether they want to enter the family legal system and if so, how to take subsequent steps. It is premised on an understanding that the legal system is affected by and in turn affects other aspects of society, such as the increasing pluralism of Ontario society and the interdisciplinary nature of family disputes.

In Chapter II of Part One, we provide an overview of the current family justice system, including the reforms undertaken since 2010. We discuss legal information and self-help tools, legal advice and representation, dispute resolution, counselling and other supportive services and briefly, services for children. We assess the current system against benchmarks.

Although there is a great deal of information available, in print and on the internet, it quickly becomes complicated and difficult to navigate. There are many different sources, each emphasizing its own mandate. While the internet may make it easier for many people to access information, for others, it is difficult because they do not have ready access to computers or possess computer literacy and in some cases because they live in remote areas lacking high speed internet. People with low levels of literacy or whose first language is neither English nor French are likely to find written information particularly inaccessible and even if they can read it, may find it almost impossible to apply to their own circumstances.

Although online information may be helpful for many people, others will require in-person assistance to understand it. However, much of the information provided in-person by the formal system is linked to the courts. Yet not all persons with family concerns will want to begin at the courts – or even end there.

We summarize the difficulties faced by unrepresented litigants and their impact on the system. The lack of affordability of legal representation remains a serious problem, one not fully compensated for by the recent reforms. We discuss developments such as limited scope retainers and the contribution law students make to the system. We briefly review the reforms to the court system that seek to make it more accessible to litigants and

more effective. These efforts are designed to resolve low conflict and relatively uncomplicated cases more quickly, freeing up resources for high conflict and more complex cases. We also review a range of “counselling” services available to people facing family crises.

In assessing the current system against our benchmarks, we note the plethora of information and the difficulty for people with certain characteristics in accessing it, understanding it or applying it to their own circumstances. People have similar difficulties with “self-help” tools. We are also concerned with how much of the in-person information provided by the legal system assumes that people will be looking to the court to resolve their problems. Furthermore, the current system does not adequately address the multiple problems facing people that led to or exacerbate their legal problems or that make the legal problems even more difficult to resolve in the long term. Finally, while we are aware that various actors in the system have in many ways responded to the diversity of Ontario’s population, we believe more can be done in this regard.

Chapter III of Part One surveys the richness of Ontario’s pluralist character, the changes in the status of women and evolving relationships between men and women, the challenges facing persons with certain disabilities, the extent of low literacy skills, the reality of living in remote locations, legal changes such as recognition of same-sex marriage and the composition of Ontario families and the implications of all these factors for people’s interaction with the family legal system. We explain why we believe the family law system should identify advancing substantive equality as an overriding value through the way it addresses and incorporates these factors and circumstances.

In Part Two, we make suggestions for changes to the system that should help fill in remaining gaps. These changes also set the stage for the comprehensive entry points we recommend. As far as online information is concerned, we suggest the need to create a “hub” that brings the information into a more comprehensive format. We also believe that the most basic information needs to be made available where people will see it when they are thinking about their family problems – when they are shopping or waiting for a doctor’s appointment, for example. We believe that “trusted intermediaries”, at community centres, or similar places, can be particularly helpful in explaining the information to people with related ethnic backgrounds, persons with certain disabilities, those with low levels of literacy and others for whom the legal system and its language (even when apparently simplified) seem too formidable, as well as helping them with the self-help tools. We stress that trusted intermediaries must have appropriate training and access to resources to help them fulfil these responsibilities.

Even at early stages of the process, people will need access to legal advice. The reality is that full legal representation will not be available for everyone. Although we are cautious about unbundled services, especially in family cases, we acknowledge that they are an accepted part of service delivery. We emphasise, therefore, that lawyers delivering services through limited retainers appreciate the pitfalls. We refer to approaches that have been taken elsewhere to provide legal services in more affordable ways, without necessarily endorsing them. We also discuss how students’ contributions could be extended, as long as they are properly trained and appropriate limitations are placed on what they are permitted to do. Extending paralegals’ scope of practice to include family law is controversial; however, we conclude that this possibility should not simply be dismissed, but rather considered carefully, noting that concerns David Morris, who reviewed the five years of regulated paralegal practice in Ontario, expressed about training and standards of professional conduct be adequately addressed. Throughout, it is important that the needs of those whose lack of familiarity with the system and whose circumstances make the system particularly confusing and difficult to navigate be identified and addressed in how information is delivered and in the availability of appropriate intermediaries, for example. Finally, increasing access to expertise to help the multiple problems that often accompany family legal problems will contribute to the resolution of the legal aspects of their disputes.

These and similar changes we consider in Part Two would help meet the benchmarks by providing initial information when people need it, simplifying access to information, providing assistance to make the system intelligible to newcomers and people whose circumstances prevent adequate interaction with the resources available. With this assistance, people may more readily determine if they want the help of the legal system or if it is, the approach most likely to resolve it. Properly trained, students and possibly paralegals will be able to provide certain kinds of services that help people interact with the system. However, implemented as discrete programs,

these changes would not provide the seamless process that we have included among the benchmarks for an effective and responsive family law system.

The remainder of the Report explains why we believe the development of comprehensive (multidisciplinary, multifunction) services is the most effective way to provide access to the family legal system. We propose that these services be implemented according to the principle of “progressive realization”: that government define its end goals, that it implement what is feasible and identifies the gap between the goals and what has been implemented; the objective is to move forward in a progressive manner towards the goals until they are achieved. Realistically, there must be adaptation to changing circumstances; however, having a vision of what is to be achieved helps us to understand what must still be done.

It is crucial that family problems be viewed in a holistic manner, both to help identify whether the problems really need resolution in the family legal system or whether the resolution of other matters (financial or mental health issues, for example) will either mean that a couple finds that they do not need to break up, after all, or if they still want to dissolve their relationship, it is easier to address the legal aspects. These services will also allow a more satisfying response to issues related to ethnicity, gender, Aboriginality, low literacy skills and other characteristics that we have discussed throughout the Report.

We treat the development of interprofessional services in the health care sector to be a helpful analogy, albeit an imperfect one. We also find existing models of multidisciplinary, multifunction delivery of services to provide an excellent foundation for our own recommendations. The health care initiative differs from our approach because it primarily, although not exclusively, is limited to health care providers (and does not necessarily include doctors) and we advocate the inclusion of non-legal experts. The other existing models differ from our vision because although they involve multidisciplinary expertise, they tend to be limited to particular groups (such as particular ethnic or cultural communities, women who have experienced domestic violence or people living in rural communities); in contrast, we recommend services that are not dedicated to identified group or community, but rather integrate the kinds of assistance that people who find dealing with the system difficult for whatever reason –cultural identity, disability, living in remote areas, low literacy skills, among others. We emphasize that we do not believe (for instance) that everyone can be identified by their membership in a particular ethnic group; nor do we think that all members of a particular group will share the same viewpoint or needs. The same is true of other characteristics. Yet these are “markers” that reveal difficulties in dealing with the system that can be addressed with different forms of assistance that will be available to all those who require that particular help.

In Chapter IV of Part Two we explain that the stage for the approach we are recommending has been set by Ontario’s willingness to create partnerships among service providers of various kinds. We consider the challenges in creating this model, the need for quality assurance, how these comprehensive entry points must be linked to rest of the system and how this model will satisfy the benchmarks through 1) providing accessible initial information where people are likely to see it in places they frequent; 2) a single information hub, with the assistance of trusted intermediaries, that will help people decide if they want to pursue their family problem through the family legal system; 3) offering coordinated resources responses to the multidisciplinary nature of family problems; 4) developing programs in consultation with affected communities; 5) responding to problems of affordability without compromising the quality of services; 6) offering a seamless process from early stages to final resolution through systematic linking of the comprehensive entry points to later stages of the process; and 7) being based on a sustainable model developed in conformity with the principle of progressive realization. These services may all be located in a building or virtually; there may be a “centre” that links services elsewhere. Form will vary according to location and need.

Our Recommendations appear in Chapter V of Part Two: that 1) the major family law stakeholders engage in a process to develop comprehensive (multidisciplinary, multifunction services), including identifying the relevant services that meet criteria of accessibility, diversity (inclusivity), timeliness, effectiveness and other characteristics of the benchmarks set out in the Report; identifying the challenges and ways to address them; identifying relevant programs and services that already exist and ways to integrate them into the new services; developing a process for accreditation of multidisciplinary service centres; and developing a strategic implementation plan; 2) the plan incorporate both the principles of progressive realization and a method of evaluation; and 3) the Ontario government facilitate the creation of two pilot projects in two areas of the province, one urban and one rural, that meet the benchmarks.

## INTRODUCTION TO PARTS ONE AND TWO

<b>I. WHAT IS THE LCO’S FAMILY LAW PROJECT ABOUT? .....</b>	<b>5</b>
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## INTRODUCTION TO PARTS ONE AND TWO

### I. WHAT IS THE LCO'S FAMILY LAW PROJECT ABOUT?

#### A. Placing the Project in the Context of Family Law Reform

In 2010, the family justice system was described as a “system in crisis” by Chief Justice Warren Winkler.<sup>1</sup> *Listening to Ontarians* suggested that “access to resources in family law in the form of information, legal and social assistance, and resolution of family law problems for low and middle-income Ontarians is a priority issue for the civil legal system”.<sup>2</sup> Our consultation process in support of this project confirmed that users and workers also perceived the system to be in crisis. Making changes to improve access was viewed as a high priority.<sup>3</sup>

Many stakeholders have heeded calls to reform the family law system. The commencement of the LCO's project in 2009 was followed by a time of intense reform efforts by the Ministry of the Attorney General, Legal Aid Ontario and other stakeholders in the family justice system. Most notably, the Ministry of the Attorney General undertook a number of reforms of the system around the theme of “four pillars” over the period 2010-2011, which we discuss later in this Report, with the objectives of offering the same service suite to all courts that hear family cases and of improving the experience and outcomes of clients who are involved in the family courts. Other studies and bodies that have played a major role in identifying and responding to the need for family law reform include the following and we are grateful for the insights we have gained from them:

- *Recapturing and Renewing the Vision of the Family Court (“the Mamo Report”);*<sup>4</sup>
- *The Home Court Advantage project;*<sup>5</sup>
- *The Superior Court of Justice Family Law Strategic Plan;*<sup>6</sup>
- *The Ontario Court of Justice Family Law Vision Statement;*<sup>7</sup> and
- *The University of Toronto Middle Income Access to Civil Justice Initiative.*<sup>8</sup>

It has been important for the LCO to add value to what has been a crowded field of family reformers, including most notably the government. We have not only built on and complemented these initiatives, we have also attempted to tread a new path in our analysis and recommendations. We have focused our analysis on the need to increase inclusivity in the justice system in a way that acknowledges and responds to the increasing pluralism in Ontario society and the heterogeneity of the population, continuing problems of affordability of services and the multifaceted problems that face families in crisis.<sup>9</sup>

Despite a number of important reforms in recent years, which we discuss below, family law disputants in Ontario continue to face difficulties that include gaps in responding to the province's diverse population, difficulties in understanding and using information, lack of affordable representation and inadequate response to the multidisciplinary nature of family issues. A recent study has found that unrepresented litigants find the system “unwelcoming, hostile and denigrating”.<sup>10</sup> Furthermore, many of the reforms have focused on the role of the courts; yet people require more assistance very early in their desire to resolve their family law problems. With these considerations in mind, we asked, “what problems do people trying to gain access to the statutory family law regime continue to face?” We identify what we have concluded are the most significant ongoing difficulties for people with family legal problems, particularly for those unable to afford a lawyer, and provide possible solutions to diminish their impact.

For the law to be effective for those who are subject to it, access to knowledge about the law and capacity to negotiate the law, with or without assistance, is as important as “the

*We have focused our analysis on the need to increase inclusivity in the justice system in a way that acknowledges and responds to the increasing pluralism in Ontario society and the heterogeneity of the population, continuing problems of affordability of services and the multifaceted problems that face families in crisis.*

law” itself. A “good” statute has limited value if it is difficult to understand and accessing the rights it provides formidable. The LCO’s family law project is about how to make accessing family law rights easier and more effective. We believe that this requires a greater focus on providing more accessible information and affordable services in a manner that is sensitive to the diversity of Ontarians. The project also recognizes that family legal problems are often intertwined with other kinds of family problems such as financial or mental health concerns. A satisfactory solution to the legal issues thus requires incorporating recognition of other relevant problems into the initial stages of addressing the legal issues. Therefore, for the purposes of this Report, the family justice system is defined broadly to encompass not simply lawyers, mediators and the court system but also other professionals, services and organizations that are involved in assisting individuals, whether formally or informally, in resolving problems arising from family breakdown.

## B. Continuing Challenges

It is estimated that about 40 per cent of all marriages or relationships in Canada end in a break-up,<sup>11</sup> most of them uncontested.<sup>12</sup> Although not always the case, family breakdown is a profound social problem which can have negative consequences, primarily for the family members in the midst of it but also for the community at large.

*The LCO’s family law project is about how to make accessing family law rights easier and more effective. We believe that this requires a greater focus on providing more accessible information and affordable services in a manner that is sensitive to the diversity of Ontarians.*

One study found that over 41 per cent of respondents considered their relationship breakdown to be extremely or very disruptive to their daily life, with another 44 per cent finding it somewhat disruptive.<sup>13</sup> Although challenges in intimate partnerships may be resolved amicably, family breakdown may nevertheless be accompanied by at least some pain and difficulty for those involved in the same way as any major negative life event. It often has more than these effects, however, and may involve a period of stress, instability, loneliness, hurt feelings and sometimes hostility. This is even more so for families with children who are acutely affected by the dissolution of their parents’ relationship. During the LCO’s consultations with children between the ages of 8 and 13, they told us about how their parents’ breakup had affected them.

One boy talked about being woken up in the middle of the night by his parents’ fighting. Two girls talked about having to call the police themselves for fear that their father would choke or badly hurt their moms. One youth mentioned that she had to stay in a shelter with her mom for a while after the separation. Another one mentioned that it was no surprise to her when her parents separated and that she was relieved when her father left. For all of these children, their parents’ separation or divorce was an extremely difficult time.<sup>14</sup>

There is also an increased risk of mental and physical health problems during a marital conflict.<sup>15</sup> In addition, marital breakdown can affect extended family members, such as grandparents when one of the parents prevents contact with grandchildren.<sup>16</sup>

Family breakdown can exacerbate already existing vulnerability. Recent immigrants may face problems such as a fear of deportation because of separation from their sponsor or pressure from their community to stay in their marriage.<sup>17</sup> Persons with a disability may face isolation and difficulties accessing services and communicating now that the individual who was assisting them is no longer with them.

It is not unusual for persons undergoing separation to face many challenges apart from the legal ones. As Noel Semple points out, a divorce (or separation) means that the cohabitation’s economies of scale are suddenly lost.<sup>18</sup> Since many Canadian families are economically vulnerable because of an increasingly high ratio of household debt to income, a family breakdown can have a severe impact.<sup>19</sup> Factors such as the availability of childcare can affect the ability of the custodial parent to work outside the home.<sup>20</sup> A study of abused women who left their partners found many had difficulty finding adequate

housing.<sup>21</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>22</sup>

One study indicated that about 50 per cent of the respondents in Ontario had one or more justiciable problems (not necessarily family problems or linked to family legal problems), with the average number of problems being over three.<sup>23</sup> It found that “being a single parent is related to experiencing multiple problems. Among respondents reporting only one problem, 6.0 per cent are single parents. This percentage rises to 22.1 per cent who are single parents among all those reporting more than six problems.”<sup>24</sup>

Trebilcock noted the phenomenon of cascading problems in his review of the Ontario legal aid system, making the following observation:

The initial problem may be a legal problem, but without early intervention, this problem may trigger subsequent problems, legal or otherwise, such as greater demands on other social welfare programs, social housing programs, physical or mental health programs, etc. Early intervention is, in fact, cost conserving from a broader fiscal perspective in that it pre-empts these cascades. But more than this it calls for a more holistic or integrated institutional response where individuals with clusters of interrelated problems are not subject to endless referral processes that are tied to particular institutions (a silo approach) rather than particular individuals’ needs and leading to “referral fatigue” which leaves many problems unresolved.<sup>25</sup>

*Since many Canadian families are economically vulnerable because of an increasingly high ratio of household debt to income, a family breakdown can have a severe impact... 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.*

Indeed, a legal problem can be exacerbated because of the existence of other difficulties. Our recommendations in Part Two relating to comprehensive services or multidisciplinary, multifunction centres, reflect the need for our family justice system to be sensitive and responsive to these multiple causes and consequences at an early stage.

Furthermore, one partner may well face greater difficulties as a result of the breakup than the other. For example, the negative economic consequences of marital breakdown are still borne disproportionately by women as a result of the differences between men’s and women’s labour participation and care for family members, including after separation or divorce.<sup>26</sup> The termination of a marriage or common-law relationship does not always end the problems. Often the difficulties partners face continue; it is therefore all the more important that they be addressed as soon in the process as possible. Of particular significance is that domestic abuse does not end with the formal relationship. Between 2000 and 2009, although “most spousal homicides were committed by a current rather than a former spouse”, about a quarter occurred after separation and the victim was more likely to be female.<sup>27</sup>

One of the biggest challenges to the system is the number of unrepresented litigants. A study of unrepresented litigants being carried out by Julie Macfarlane still underway continues to find that users of the system generally become “overwhelmed and traumatized” as they move along the system.<sup>28</sup> Estimates of the number of family litigants who are unrepresented (by choice or not) range from 50 to 80 per cent.<sup>29</sup> Although more than 50 per cent of Macfarlane’s participants had a university degree, they still had difficulty working their way through the system. Macfarlane comments, “This is a system that makes smart people feel stupid,” and notes that even people who are legally trained are unable to navigate the system adequately on their own behalf. Indeed, lawyers who represent themselves say that they cannot believe that they are treated in the negative way they are. Although workers may be as helpful as they can be, Macfarlane describes her interviews as an “overriding tale of lament and woe”. Although family law disputants keep being told to “get a lawyer”, many cannot afford to do so, are too “dispirited” or they do not know what lawyers do. Of particular note is that participants in the Macfarlane

study did not want to talk about the outcome of their disputes, but about difficulties with the process. Macfarlane observes that these unrepresented users of the family law system are in a difficult emotional state and need human contact as they move through the system. Unrepresented litigants also pose challenges for lawyers representing other parties in many different ways, ranging from the expectation that the lawyer will give them advice to being the brunt of their anger; as well, the lawyers' clients may not appreciate why it may cost more to face an unrepresented litigant.<sup>30</sup>

It is crucial that families in crisis have access to an effective system for resolving their disputes. Yet both users and workers in the family legal system have identified many difficulties, challenges and frustrations with it, despite the reforms implemented over the past few years. Our family law project has not attempted to address all the outstanding issues with the entire family law system. Rather, it focuses on entry points to the system in the belief that effective entry points with appropriate information and supports can have a beneficial effect on disputants' interaction with the rest of the system. It also brings to the discussion a fuller consideration of the importance of diversity and the need to offer integrated services in the family justice system. Appropriate responses to the pluralism and changing nature of Ontario society are consistent with advancing substantive equality in Ontario. Integrated services acknowledge that family legal problems are not insulated from the other tensions and challenges in people's lives and that legal problems are more satisfactorily resolved if they are addressed in the broader context.

*Although family law disputants keep being told to "get a lawyer", many cannot afford to do so, are too "dispirited" or they do not know what lawyers do.*

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

The Family Law project was designed after considerable preliminary consultation. Even before the LCO began full operations, an initial call for proposals had been answered with a variety of family law proposals<sup>31</sup> and we have received additional ones since. We undertook a study of the division of pensions on marital breakdown as one of our first projects, with the purpose of identifying "the" rule for when to value pensions.<sup>32</sup> Our recommendations in the final report were largely adopted by the Ontario Government as part of its reforms of family law in 2009.<sup>33</sup> Given the large number of quite different proposals in family law, we held a Family Law Roundtable in September 2008 to determine the most pressing issues requiring redress. Participants included clinic workers, private lawyers, academics and representatives of community organizations, the Ontario government and the judiciary. 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>34</sup> Although both potential projects received support, overall we determined that we could make a more effective contribution to the area by developing a process-related project. Accordingly, in April 2009, the Board of Governors approved a project to explore entry points, formal and informal, into the family law system. We released a Consultation Paper in September 2009.<sup>35</sup> Following consultations, we released the results; this paper did not attempt to analyse the results, but simply reported them.<sup>36</sup> The results have been considered in developing the benchmarks in this Final Report, and taking into account reforms since the consultations occurred, users' and workers' comments, the background research, commissioned papers<sup>37</sup> and other feedback received up to the approval of this Report have informed our analysis and recommendations.

The project has also 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 page iv of this Report for a complete list of members).

## D. The Focus of the Project: Entry Points to the System

As we have said, our project has focused on “entry points” to the family law system: how do people enter the system? What do they need to make navigating the system at the front end easier? We do not address either later points in the system or substantive family law. “Entry points” are the first approaches to resolving a family dispute an individual may take outside his or her immediate family. Some of these entry points are not associated with the formal justice system (such as doctors or religious advisers), while others are part of the formal system (that is, all government services, such as Family Law Information Centres at the family courts, 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). In considering entry points, we use inclusivity or recognition of diverse experiences as an overriding value and we take into account that people come to the family system accompanied by all the other issues that have led to, arisen from or exacerbated their family legal disputes.

Entry points are critical as the manner in which the early stages of a family law problem are dealt with frequently determine how the 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 in ways respectful of their religious, cultural, economic and other characteristics or needs. Early intervention can often result in resolution before the need for litigation and the courts to solve a family legal problem and, in the appropriate cases, this can result in a better outcome for the family as well as a more efficient use of limited public resources. We recognize, however, that family litigants may need the assistance that only courts can provide and that in these instances, the court system must be available in a timely manner. As we discuss later, this was one of the objectives of the government and the courts’ own reforms: freeing up “court time” and resources for high conflict and otherwise difficult family matters.

*Entry points are critical as the manner in which the early stages of a family law problem are dealt with frequently determines how the dispute is resolved.*

Because of our focus on access or entry points, we do not consider the courts, except to explain briefly the relationship of entry points to the courts and to describe the reforms that have occurred in relation to court processes. These reforms have been designed not only to make the courts themselves more “accessible” to family litigants, but also to help them resolve their disputes at an earlier stage. Nor do we 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 issues that arise because one partner or parent has been charged with a criminal offence in relation to the other partner or children.

Similarly, we do not address situations in which the state compels individuals to enter the system. For example, Ontario Works<sup>38</sup> and the Ontario Disability Support Program<sup>39</sup> may require custodial parents to seek support from the other parent. These state interventions may put extra pressure on the family justice system, in particular in conflictual situations. Although this aspect of entry points may require further research, we have not included it in our research and consultations and will not address it in this Report. We also do not address in detail issues relating to children, although we acknowledge that they have an extremely important and active part at entry points to the system.<sup>40</sup> Identifying appropriate children’s rights and how they might exercise them merits a specific study. However, in this Report we do briefly address some of the main concerns about information for children, who often feel left out in the family law process.<sup>41</sup>

Some of the possible reforms we suggest build on already existing activities, while others contemplate new activities. While some of what we suggest echoes the proposals of others, we believe it is important to support these initiatives if they have yet to be implemented. We

also make proposals for new initiatives, always aware that they are reliant on when funding is made available. We add additional elements to those previously proposed by others or to initiatives already implemented by government, Legal Aid Ontario, the Law Society of Upper Canada and others. In this regard, the Ministry of the Attorney General's response to the Interim Report encouraged us "to consider proposals that maximize existing infrastructure and the use of technology whenever possible".<sup>42</sup>

## II. THE CREATION OF BENCHMARKS

We have created “benchmarks” or criteria relating to the objectives that entry point family law services need to meet for them to be effective. We briefly assess the existing system against the benchmarks, as well as show how changes, some of them in the short term, others in the longer term, could more effectively satisfy the benchmarks. Although more immediate changes could usefully be implemented separately, they are designed to create a long-term coherent approach to reform entry points significantly, culminating in a redesign of how family members wanting legal help with their problems would enter the system. The benchmarks accord with the steps most people are likely to take in addressing their family disputes.<sup>43</sup> They reflect features of the system necessary to be responsive to differences among families and individual members of families, as well as qualities necessary for an effective resolution of their disputes, such as access to affordable and effective personal assistance.

An effective entry to the family law system meets the following benchmarks:

- » provides initial information that is accessible to people in their everyday lives, including information about possible next steps in their efforts to resolve their dispute;
- » to the extent that the information is provided online, provides it through a single “hub”;
- » provides written information that is accessible to those without adequate access to the internet;
- » provides assistance for persons who might have difficulty accessing, reading, understanding or applying the information;
- » helps an individual determine the nature of their family problem(s) in a timely and effective way, including whether their dispute “really” is a legal dispute;
- » assists individuals to find the approach to resolving their problem that is as simple and timely as possible, minimizing duplication of persons and institutions with whom the individual must deal and promoting ease of communication and collaboration between different actors in the system (this refers to a “triage” system that assists in allocating resources according to priorities);
- » has the capacity to respond to different educational and literacy levels; the existence of domestic violence; and factors such as cultural norms, Aboriginal status, gender, sexual orientation, age, language, disability, geographic location and other major characteristics;
- » develops programs and policies in consultation with affected communities;
- » takes into account the financial capacity of individuals while ensuring the quality of service;
- » recognizes and responds to the multiple problems that accompany family problems, such as mental health or financial problems that may be a stimulus for or exacerbate family legal problems;
- » offers a “seamless” process from early stages to final resolution; and
- » is based on a sustainable model.<sup>44</sup>

*[The benchmarks] reflect features of the system necessary to be responsive to differences among families and individual members of families, as well as qualities necessary for an effective resolution of their disputes, such as access to affordable and effective personal assistance.*

### III. THE STRUCTURE OF THE REPORT

We have prepared the Report in two Parts for ease of reference, with this Introduction in common.

In Part One, we provide background, including assessing the strengths and weaknesses of the current family justice system through an “access to justice” lens, paying particular attention to whether and how the family justice system addresses the challenge of diversity, facilitates early and effective access to information, the increasing cost of legal services, and the interrelationship between legal problems with other problems experienced by individuals facing family breakdown. In Part Two, we examine ways to improve the existing entry points to help facilitate access to family justice services by a larger number of Ontarians, in particular the delivery of information, legal advice and legal assistance. The changes we suggest here are necessary for and support the creation of the comprehensive delivery of services (multidisciplinary, multifunction “centres”) that we recommend at the end of Part Two. As we discuss in Chapter IV of Part Two, the use of the term “centres” refers to a way of conceiving of the delivery of services and does not necessarily refer to “bricks and mortar”.

*[We assess] the strengths and weaknesses of the current family justice system through an “access to justice” lens...*

Of particular importance are the changes in the system that have occurred since we began this project; we have been careful to ensure that our focus has complemented those reforms and that our suggestions for change and our specific recommendations respond to gaps in the system that continue and to which most of the reforms were not directed.

The changes made to the Report between its interim and final versions (both in form and in substance) reflect the submissions we received in response to the Interim Report as well as further research and consultation with stakeholders. This Final Report was approved by the Board on February 28, 2013 and has been posted on the LCO website<sup>45</sup> and otherwise distributed widely.

# **PART ONE: A VIEW OF THE FAMILY JUSTICE SYSTEM THROUGH AN “ACCESS TO JUSTICE” LENS**

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## PART ONE: A VIEW OF THE FAMILY JUSTICE SYSTEM THROUGH AN "ACCESS TO JUSTICE" LENS

### I. WHAT WE MEAN BY "ACCESS TO JUSTICE"

Access to justice has been defined simply as access to lawyers and courts and as complexly as "an equal right to participate in every institution where law is debated, created, found, organized, administered, interpreted and applied".<sup>46</sup> Broadly, it has been described as "an integral part of the rule of law in constitutional democracies".<sup>47</sup> Valid as these conceptions might be, they do not help in identifying the content of access to justice. In this sense, increasing access to justice may mean ensuring physical accessibility to the courthouse, simplifying procedural rules, using plain language in a statute, explaining what the law means on the internet, provision of translation, dispute resolution other than through the courts, legal aid and similar steps to removing barriers of various kinds. A more comprehensive understanding of access to justice goes beyond the legal system to encompass efforts to assess and respond to ways in which law impedes or promotes economic or social justice, for example, recognizing the interrelationship of these systems. In short, access to justice may involve steps to diminish substantive injustice in society at large.

*A more comprehensive understanding of access to justice goes beyond the legal system to encompass efforts to assess and respond to ways in which law impedes or promotes economic or social justice....*

There have been many "access to justice" initiatives in Canada over the past decade, several focused on the family legal system, including by academics and courts, among others. For example, in undertaking its "Middle Income Access to Civil Justice Initiative" several years ago, the Faculty of Law at the University of Toronto noted that "[a]ccess to civil justice by ordinary Canadians is one of the most crucial challenges currently facing the legal profession" and that "a staggering number of Ontarians are trying to navigate a complex justice system without adequate, or in some cases any, legal representation".<sup>48</sup> The initiative's colloquium held in February 2011 resulted in a book covering the lack of justice or approaches to increasing justice in family law, consumer law and employment law.<sup>49</sup> The Canadian Judicial Council, the Canadian Bar Association, the Federation of Law Societies of Canada, Justice Canada and others are members of the Action Committee on Access to Civil and Family Matters, chaired by Justice Thomas Cromwell of the Supreme Court of Canada.<sup>50</sup> According to the web site of the Canadian Judicial Council, the Action Committee is focused on "fostering engagement, pursuing a strategic approach to reforms and coordinating the efforts of all participants concerned with civil justice".<sup>51</sup>

This Final Report in the LCO's Family Justice Project has focused on access to justice in the sense of having sufficient information and assistance to enable family members involved in family disputes to make determinations about whether they want to enter the family legal system and if so, to take subsequent steps through the process. Although this is in one sense a procedural understanding of access to justice, it is linked to substantive justice through enforcement of rights for which effective entry points are necessary. It is also linked to a broader understanding of access to justice because it is premised on an understanding that the legal system is affected by and in turn affects other aspects of society, such as the increasing pluralism of Ontario society and the interdisciplinary nature of family disputes. Access to justice is linked to advancing substantive equality. As we said in our final report in our older adults project,

The starting point of an approach to the law that advances substantive equality...is to recognize the existence of older adults as a group who may in some respects have different needs and experiences from many younger persons, whether due to the accumulated effects of their life courses, social structures, or marginalization and stereotyping of older persons...[O]ne must take those particular needs and circumstances into account when designing laws, policies and programs.<sup>52</sup>

*...[W]e believe that an accessible family justice system must be affordable and easy to navigate but we also believe that ensuring access to justice in the area of family law requires attention to other factors which create barriers to access to justice....*

The same applies to other forms of diversity, such as ethno-racial identity, Aboriginality, gender, sexual orientation, disability, economic status and geographic residence, among others, when these differences matter to whether people benefit from the system and when recognition is consistent with the commitment to equality. The breakdown of families may have implications for economic justice as family members face a diminished source of financial support and must live as two rather than one or for the smooth functioning of society as children grapple with this major disruption in their lives. These consequences are not inevitable, nor are they necessarily concomitant with the dissolution of a marriage or common law relationship. Nevertheless, we cannot pretend that either family breakdown or family law exists in a silo unconnected to other personal and societal ramifications or to other areas of law.

In other words, we believe that an accessible family justice system must be affordable and easy to navigate but we also believe that ensuring access to justice in the area of family law requires attention to other factors which create barriers to access to justice, namely the impact of an individual's culture, ethnicity, sexual orientation, ability, level of literacy, geographic residence, Aboriginality, gender or gender identity and the intersection of legal problems with other types of problems which arise from family breakdown.

## II. AN OVERVIEW OF THE FAMILY JUSTICE SYSTEM

### A. Introduction

In this section, we provide an overview of the family justice system and discuss the barriers that people in the midst of family breakdown confront when trying to access the services they require. We have focused primarily on information about the family law system, self-help materials, legal advice and representation; dispute resolution other than the courts and in the courts; counselling and other support services; and services for children. We do not describe the entire system in detail, but in broad strokes to show the links between the entry points and the rest of the system. We link (again, broadly) particular aspects of the system with the benchmarks we identified in the Introduction to Parts One and Two of this Report (see p.5). This description reflects the reforms that have been made in the system since 2010, in particular reforms grouped around the interconnected pillars of reform introduced by the Ministry of the Attorney General between 2009 and 2011:

- 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; and
- Pillar 4: Developing a streamlined and focused family court process.<sup>53</sup>

*It is crucial to appreciate... that the nature of the problem or the environment in which people find themselves may influence how they enter the family justice system.*

The following description of the family justice system roughly follows a typical path for someone seeking to have his or her (or their) family problem addressed by the legal system: the effort to obtain initial and then more advanced information; efforts at self-help or 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 of course 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; similarly, unrepresented litigants are more likely to use self-help materials than those who are able to retain legal assistance.

It is crucial to appreciate, too, as the LCO's consultations in this project showed, that the nature of the problem or the environment in which people find themselves may influence how they enter the family justice system.<sup>54</sup> If a couple wants to save their marriage and views the problem as spiritual, they may turn to a religious advisor; the extent of someone's financial resources may influence whether he or she bypasses other methods of obtaining information by going to a lawyer early in their efforts to resolve their problem; a woman experiencing domestic violence may seek out violence against women services; someone who is in a depressed state may phone an emergency distress line; if the family includes children, the parents may have access to information about legal, health or social services from their children's school or a child may speak to a trusted teacher. People's "choice" of options are influenced by how isolated they feel, whether they trust the legal system, the stage of their relationship or whether they have been brought into the legal system by others, including their partner or children's aid, for example.

Some of these initial conversations will satisfy the individual that he or she can address difficulties themselves or with informal assistance. In other cases, though, they will be preliminary to making contact with the legal system. This is where we start our journey through the system. However, we need to remember the importance of these earlier connections and to the extent possible, ensure links between them and the formal system.

## B. Entry Points to the System

### 1. Legal Information and Self-Help Tools

As we said above, people with family disputes are most likely to begin their search for information by talking to friends and family about their disputes; they may also speak to trusted advisors, such as a religious advisor; they may raise their concerns with their doctor; they may seek help from someone whom they met when they had previous dealings with the legal system (such as a court interpreter).<sup>55</sup> Not all of these people have familiarity with the system and not all will advise the individual seeking assistance to look for more reliable sources. Some professional advisors will be able to direct those seeking their assistance to another source of information, whether written or in person. It is important, therefore, to provide information in ways that those needing assistance will see it when they need it (such as when their family problems are on their mind when doing the weekly grocery shopping); and to provide information that is easy to understand or is accompanied by assistance.

*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.*

Family members looking for information about the system will find that there is a great deal of public legal information available from a variety of sources to assist families in crisis. This information is provided online, in written form and in person in varying degrees of detail. 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. Many of the publications can now be accessed as links through the website operated by Community Legal Education Ontario (CLEO).<sup>56</sup>

The Ministry of the Attorney General's (MAG) website functions to some extent as a main hub for public legal information on Ontario family law, focusing on the courts. Much of its Guide to Procedures in Family Court was revised in 2012.<sup>57</sup> The MAG online "booklet", What You Should Know about Family Law in Ontario, available in several languages, explains the system in "plain" language, using easy to understand examples.<sup>58</sup> People seeking information about specific topics may be able to find it quickly. For example, MAG's "Family Law" website provides information on various aspects of family law, using questions and the answers sometimes include links to other sites. There are also federal materials which can be accessed online. The Department of Justice's Supporting Families Initiative offers information for parents and children<sup>59</sup> and Canada Benefits has a section on Divorce or Separation with an application kit.<sup>60</sup>

In March 2011, Legal Aid Ontario (LAO) launched its Family Law Information Program (FLIP), available in two versions, one of which can be completed instead of the court-based Mandatory Information Program (discussed below), and in written and audio form.<sup>61</sup> The program is easy to navigate and gives viewers options about how much information they want.

The Law Society of Upper Canada's information portal, designed in consultation with the Ministry of the Attorney General, Legal Aid Ontario and CLEO, has been in operation since June 12, 2012.<sup>62</sup> It is a laudable step that reflects the desire of the Law Society to contribute to helping people access the system. The purpose of the portal is to provide "an easy-to-use online gateway to comprehensive information and guidance for parents and children involved in a family law dispute".<sup>63</sup> However, a web search using the kind of terms that someone with a family problem might use does not turn up the portal (it does turn up the Ministry of the Attorney General's family law site). Once found, it

provides information or links to information for parents and children. It may be most helpful for individuals who have already had discussions about certain matters; for example, clicking on "I'm separating or thinking of separating" takes the user immediately to the options of agreeing or not agreeing about "what will happen with the children". The main focus of the portal is on using legal services and going to court, although it does provide other information such as "violence at home". A user who searches "legal aid" will be taken to a link with the Legal Aid Ontario website; someone looking for a lawyer will in one click be taken to the Law Society's own website and provision of information about finding a lawyer. The program appears to be available only in English.

CLEO<sup>64</sup> and Family Law Education for Women (FLEW)<sup>65</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 or are caregivers, Jewish women, Muslim women, women of Christian faiths and women with disabilities. FLEW's brochures and web-based information and some of CLEO's information are available in 14 and 8 languages, respectively. CLEO has posted information on several topics in substantive family law (dated February 2012) in English and French. CLEO advised us that on an annual basis, it receives orders from 2,000 organizations for its family law brochures.<sup>66</sup> In 2011, it distributed over 130,000 brochures to a wide variety of community organizations, government offices, legal clinics as well as hospitals and doctors, housing providers and educational institutions.<sup>67</sup> In addition to these sources, many other organizations, including law firms, provide online information about family law.

*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.*

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 online information revealed that it was often complex and detailed and, perhaps unavoidably, eventually highly reliant on legal language, leading to concern that much of it would not be "accessible" or understandable to many people seeking information at the early stages of their dispute.

Other information can be obtained from actual persons, including the Family Law Information Centres (FLICs)<sup>68</sup> and the Mandatory Information Program (MIP),<sup>69</sup> both located at courthouses, although they do not require the individual to have filed an application in a family matter to access them. The FLICs provide pamphlets on separation, divorce and child protection matters; MAG's Guide to Family Procedures; and information about legal services, the court process and court forms. They also provide limited access to a legal aid Advice Lawyer and an Information and Referral Coordinator (IRC) who will provide information about forms of dispute resolution and relevant resources, and referrals to court-based family mediation services. Until fall 2011, mediation and information services were available at 17 court sites in Ontario; they are now available at every family court. The government has contracted with service providers to provide these services and "[t]he Family Policy and Programs Branch provides oversight to these providers, policy support, and financial accountability for these contracts."<sup>70</sup>

A study of the FLICs over the period 2003 to 2006 expressed concern about a lack of consistency and sometimes a lack of essential facilities.<sup>71</sup> For example, opening hours and physical space varied significantly at the time of the 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. The workers who were interviewed for the Mamo Report expressed doubts about the effect of the written information available at FLICs. Although the quality of the materials was not in question

and some publications were popular with users, the Report concluded that “[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>72</sup> The Mamo Report did recommend that the FLICs should be “the essential entry point into the system”, a recommendation followed by the Attorney General in expanding the FLICs to all court sites.<sup>73</sup>

The LCO’s consultations in 2010 (prior to the expansion of FLICs to all court sites) showed that there were still inconsistencies in the services being provided by FLICs and that users’ experiences were mixed.<sup>74</sup> For example, one FLIC had an onsite social worker, an extensive network of community organizations to which it could refer users, a quality control mechanism and capacity for assisting 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>75</sup> French language capacity also varied.<sup>76</sup> All FLICs now have Advice Lawyers to whom someone who is eligible may speak to for 20 minutes and IRCs, although smaller centres may not have them available full-time.<sup>77</sup>

In 2010, Brenda Jacobs and Lesley Jacobs noted the concerns of professionals that the FLICs are intimidating for some users. Professionals also contended 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 clients.<sup>78</sup> People in smaller cities reported unease about the public visibility of going into the courthouse, where FLICs are located.<sup>79</sup> The LCO’s respondents noted similar concerns about privacy when they visited the FLICs.<sup>80</sup>

*In its response to the LCO’s Interim Report, MAG explained that the [Mandatory Information Program] offered at the courts “is the vehicle used by MAG to help ensure that litigants entering the court system obtain standard basic information on their rights, responsibilities and options for resolution”.*

Although these studies were conducted prior to the 2010-2011 reforms, or shortly afterwards, many of the issues articulated did not relate to the number of FLICs or their presence only in some courts, as was earlier the case. Therefore, it is not clear whether at least some of these concerns are not still applicable. It is not necessarily straightforward to obtain information about the FLICs. Clicking on one listing on MAG’s website to obtain information about FLICs reveals a list of communities; clicking on the name of a community provides the names of mediator services and a telephone number for the FLIC.<sup>81</sup> However, there is separate listing of FLICs with addresses and telephone numbers.<sup>82</sup> It is also possible to find out more about individual FLICs and the services they provide as long as the individual searching for the information identifies a particular FLIC.<sup>83</sup>

The Superior Court of Justice in Toronto requires all litigants in its court to attend a Mandatory Information Program (MIP) session before the case can come before a judge. These are provided by volunteer lawyers and non-legal experts who use a standardized script, but apparently do not answer questions. Since September 2011, the MIP has been extended across the province and it is possible to undertake the session online<sup>84</sup> and to attend a session without filing an application.<sup>85</sup> The program is not available after 5:30 pm in most centres, while in Toronto it is held in the evenings. Although currently available only in English and French, it is intended that the script be translated. The Chief Justice of the Superior Court of Justice, the Honourable Heather F. Smith, advised us in her response to the Interim Report that since spring 2011, an additional 20,000 individuals had benefitted from the extension of the MIP; more would have done so since then. Furthermore, “[c]lient satisfaction rates for these programs have reached a remarkable 75%” and “mediation settlement rates are reportedly at an amazing 80%”.

The MIP provides comprehensive information about the system and, importantly, provides information about ways of resolving family disputes other than through the courts, as well as ways to address other family problems. The MIP’s location in the courthouse makes it easy for litigants to find services such as court-based mediation. In its response

to the LCO's Interim Report, MAG explained that the MIP offered at the courts "is the vehicle used by MAG to help ensure that litigants entering the court system obtain standard basic information on their rights, responsibilities and options for resolution". There is an advantage to providing standard basic information, but it may not be appropriate for everyone. For example, we heard that clients with just one issue find the three hour lecture irrelevant to their particular needs.<sup>86</sup> A lawyer suggested in an individual submission to the LCO that the MIP might be useful for unrepresented litigants, but not for those represented by counsel who will explain basic procedures to their clients.<sup>87</sup>

Despite the vast amount of information available, its value to people needing information varies. For example, Birnbaum and Bala's 2011-2012 study of litigants' experience with the family law system indicated that about 45 per cent of the respondents had used the MAG website, of whom 24 per cent found it "very helpful" and 73 per cent thought it was "somewhat helpful".<sup>88</sup> One respondent particularly noted, "Having all the information online and having someone to talk to in court to help you figure out how to navigate through the court system makes it easier to settle disputes without a lawyer". On the other hand, one respondent found it "hard to find a definite answer to anything". Many of the 40 per cent of respondents who had used the brochures and pamphlets at FLICs found them helpful, but some nevertheless commented on the difficulty of understanding them. One person said, "Some words are too big, especially for people that have disabilities".<sup>89</sup> As a "user" of the system said in his submission to us in response to our Interim Report, "You refer to many online resources but not everyone has access to the internet and the resources they have access to are not user friendly or able to be understood by regular people with no legal training."

*Individuals using information, however acquired, must be able to read it, understand it and apply it to their own situation... Yet a significant minority of people lacks the required literacy even to understand the information, particularly since it can quickly become complex and use legal terms.*

*Listening to Ontarians* found that most respondents were unaware of public online resources.<sup>90</sup> Only one in eight of the persons surveyed had heard of any of the government sites mentioned. We also found in our consultations that many people were unaware of the various sources of information. Until March 2011, when Legal Aid Ontario launched its online FLIP, only very few users accessed the written information provided or funded by the government or LAO. During the LCO's 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 which may be an indication that the information did not meet users' expectations in this respect.<sup>91</sup>

The challenges in Ontario's provision of public online information are not unusual. The 2012 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>92</sup>

Individuals using information, however acquired, must be able to read it, understand it and apply it to their own situation. Each of these tasks requires an increasing level of literacy. Yet a significant minority of people lacks the required literacy even to understand the information, particularly since it can quickly become complex and use legal terms. A study of literacy<sup>93</sup> shows that about 20 per cent of Ontarians have level 1 (lowest) prose literacy level and about 25 per cent have level 2.<sup>94</sup> To apply information requires level 3 at a minimum, depending on the information context. The results for document literacy are similar.<sup>95</sup> Women have slightly higher prose literacy scores, while men tend to have higher document literacy scores.<sup>96</sup> As will be discussed more fully below, the difficulty in comprehending information is exacerbated further for some groups.

Even individuals who do not face literacy challenges will have difficulty understanding legal information. For many people, their efforts to work through the system will take them

into alien territory: they know little about the legal system or its legal language; they may assume they need a lawyer, yet be concerned that they cannot afford one; they may have fears about how their partner will respond to their efforts to take their problems outside the family; they may be facing conflict between what they need themselves and what their children need. In short, they require information that takes them step by step, that they can trust and that they can understand and use.

Given these difficulties, many people would prefer to speak to someone to obtain information in order to relate the information to their own situation. The MIP, while providing basic information, does not allow for that individual approach. Other people are reluctant to attend at a courthouse. Some individuals may prefer at least to begin with members of their own community working or volunteering in community organizations, band offices or shelters. These workers or volunteers can be described as “transitional workers” or “trusted intermediaries”. 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 online information which is available through public legal information. The intermediaries can also assist individuals in identifying what is required to solve their problem and assist by contacting specialist providers of information and advice. However, the contribution of these intermediaries may be limited by their lack of training and education in legal matters, as well as their lack of access to expert advice.

*Online information is here to stay and it is increasingly being employed because of the lack of affordable legal advice.*

In short, initial efforts to obtain information may face serious barriers, including language, literacy, computer availability and unfamiliarity with the system as a whole. Online information is here to stay and it is increasingly being employed because of the lack of affordable legal advice. The in person advice that is available is limited and often requires an individual to attend at a courthouse. There have been serious efforts to provide information to those in family disputes, in a variety of formats, including written information, and in this sense the information satisfies the benchmarks. For many people, the initial information does not satisfy the benchmarks: it is not always easily accessible to people in their everyday lives; it is hard to understand – even when it seems easy at the beginning it inevitably becomes harder to follow and even harder for people to apply to their own situation; most seriously, there is inadequate personal assistance at this stage that would help people decide whether they even want to enter the legal system. We consider this further below when we explore legal advice and representation.

The concerns about applying information to the individual’s own situation are particularly appropriate with respect to self-help tools. Self-help tools are programs or systems that are meant to allow individuals to prepare court documents which have historically been prepared by lawyers. These tools include interactive court forms and interview-based document generators.

Prior to 2009, there were virtually no self-help tools available for family law in Ontario. In May 2010, MAG launched the Forms Assistant Web Tool which guides litigants through a series of plain language questions, similar to a QuickTax program. As of the date of approval of this Report, February 28, 2013, there were over 160,000 visits to the site and some 66,000 family forms were completed or partially completed using the Forms Assistant. The tool includes eight forms related to family law, including the Application and Answer, the Parenting Affidavit, and Financial Statements, among others.<sup>97</sup> Increasing the availability of self-help tools is consistent with the assumption that many individuals will guide themselves through the family legal system.

For relatively simple cases, for people not facing the challenges we identified above, such as lack of literacy, lack of computer familiarity or language, or simply lack of familiarity with the system, they may be satisfactory. In such cases, they may meet the benchmark of moving forward to the next stage of resolving their problem. Others,

however, may need assistance in completing the forms and in understanding their relevance in the context of the system as a whole.

## **2. Legal Advice and Representation**

The information needs of people change as they move through the system. Even if the initial basic information 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. Historically, this has meant legal representation. Today legal representation is primarily limited to persons with relatively high incomes or the very poor, and full legal representation only in the case of those with considerable discretionary resources. Yet the system is still for the most part based on the need for a lawyer. It is not surprising that most information sites advise people to obtain the advice of a lawyer.

The lack of affordable legal services is a significant factor in the increasing number of unrepresented litigants as discussed above. It has been estimated that between 50 and 70 per cent of litigants in family law cases are not represented.<sup>98</sup>

From research and surveys that have been conducted in Ontario and in comparable jurisdictions, a general picture emerges of unrepresented litigants who, despite the fact that they frequently have higher education, have "an overwhelming need for procedural advice".<sup>99</sup> Such advice and support can include information about court procedures and forms and the rules of evidence. 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.

Anne-Marie Langan's 2005 survey among 35 unrepresented users in the Kingston Family Court showed that users perceived "filling out forms" (60 per cent), "knowing my legal rights" (57 per cent) and "negotiating with/talking to lawyers" (37 per cent) as raising the most difficulty.<sup>100</sup> Sixty-five per cent thought that self-representation increased the amount of time it took to resolve the matter. In 57 per cent of the cases self-represented parties were not able to settle.<sup>101</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>102</sup> The Ontario Association of Interval and Transition Houses (OAITH), in its response to our Interim Report, points out that men who are accused of abuse and who are unrepresented may use or try to use the proceedings "to intimidate and harass their former partners" and suggests that "the court must pay special attention and intervene" when this occurs. This point is equally valid at the earlier stages of the process on which we have focused.

The 2008 Study on the Experiences of Abused Women commissioned by Luke's Place showed that 48 per cent of the women sampled found that there were not enough services and resources in the family justice system, although the survey showed that they were very satisfied with those services they had accessed. 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>103</sup> Some of these concerns may have been addressed by the Family Court Support Workers (referred to later) and the expansion of FLICs.

Birnbaum and Bala's study of lawyers' attitudes to unrepresented litigants found that, according to lawyers who responded, unrepresented litigants routinely turn to the lawyer representing the other disputant for information and advice.<sup>104</sup> 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.

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In their study of litigants, Birnbaum and Bala examined the experiences and perceptions of both represented and unrepresented litigants. They came to the following conclusions:

...[T]he most important reason for the lack of representation is the inability of family litigants to afford a lawyer and the lack of eligibility for Legal Aid. Many of those without lawyers are being helped by an expanding range of government services, and some feel reasonably comfortable dealing with the family justice process without retaining a lawyer. For those with a low conflict separation, adequate education and literacy skills and relatively simple financial affairs, the lack of representation may not present a large problem, at least for the litigants. Given the cost of legal services and the availability of “free” or subsidized government services, for some individuals the decision not to retain counsel to resolve family matters may well be a rational decision (though these litigants are imposing costs on the justice system and government).

There is however, also a very significant portion of self-represented family litigants who are unable to afford a lawyer in cases where there are serious concerns about the effect of lack of representation on outcomes for litigants and their children. Our preliminary results indicate that for about one half of unrepresented litigants, the primary reason for not having a lawyer was that they did not have enough money to pay a lawyer and were not eligible for legal aid. Many of those without lawyers expect worse outcomes and less protection because they are without counsel.<sup>105</sup>

A number of recent studies have examined the phenomenon of unrepresented individuals. Addressing the Needs of Self Represented Litigants in the Canadian Justice System classified self-represented litigants (called “SRLs” in the report) into the following seven basic types:

*Notwithstanding the reason why people are not represented by counsel, the phenomenon of litigants without lawyers is taxing on the justice system and the parties. The system’s design is premised on the presence of lawyers. The lack of legal representation threatens the justice system and the well-being of Ontario families....*

- The primary group of SRLs includes people with a lack of social resources (low income, low education, low literacy, etc.).
- Low income SRLs with some social resources (people who cannot afford a lawyer but who have sufficient social resources and education to seek available services).
- SRLs living with social barriers that interfere with accessing justice (i.e. people living with challenges resulting from physical or mental differences, language and cultural barriers, people living in remote locations, etc.).
- SRLs who are unable to find a lawyer (usually people who live in small towns or remote areas).
- SRLs who were previously represented but who are no longer represented (usually in lengthy cases with no permanent resolution).
- SRLs in cases where representation is said not to be necessary (i.e. small claims, traffic court, etc.).
- SRLs who could access representation but prefer to self-represent (usually well-educated people who distrust the legal profession). SRLs in this latter category have been found to be a “significant minority” of the overall SRL population.<sup>106</sup>

Notwithstanding the reason why people are not represented by counsel, the phenomenon of litigants without lawyers is taxing on the justice system and the parties. The system’s design is premised on the presence of lawyers. The lack of legal representation threatens the justice system and the well-being of Ontario families in several ways:

- Some Ontarians may not access the family justice system at all. This may have grave consequences on parties and their children, who may forego, for example, exercising their right to obtain financial support from a parent and have reduced economic circumstances as a result. Surveys conducted in connection with *Listening to Ontarians* found that three quarters of those reporting problems said they experienced at least some disruption in their daily lives because of their problems, with a significant number reporting stress-related illnesses, health problems, loss of employment or income and relationship breakdown.<sup>107</sup>
- Self-representation is stressful and will in particular affect lone-parent families and their children who already face financial and personal stress. For example, according to one B.C. woman who was unrepresented in her family law case:

After I became self-represented I had to draft my own court documents...I had to do my own research and present my own evidence...Dealing with this case became like a part-time job for me...This has meant keeping very late hours in order to ensure that my children do not have to deal with what is going on. Because of the time I had to spend working on this case, I lost a job...because I didn't have the time to do both the job and prepare for court appearances.<sup>108</sup>

- Self-represented people will turn to the courts because it is the only resource that they do not have to pay out of pocket for and therefore cases which could have been resolved without judicial intervention are being dealt with by our costliest resources. 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.
- The "asymmetry" between a represented and unrepresented litigant may also affect the person who is represented. The extra time which is often needed in such cases is reflected in extra lawyers' fees for the represented party. Many lawyers surveyed by Birnbaum and Bala in their 2011 study believed that their client was disadvantaged in one way or another when the party on the other side was unrepresented.<sup>109</sup>
- 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. Despite some guidance for judges, in practice judges' attitudes towards unrepresented litigants can vary. Judges participating in the LCO's consultations mentioned that they found it sometimes difficult to deal with unrepresented litigants. Mamo, Chiodo and Jaffe describe the frustrations of judges about unrepresented litigants who have not received input from duty counsel.<sup>110</sup>
- Court cases in which one or both parties are unrepresented can incur significant delays.
- Court staff will face extra pressures because they have to deal with unrepresented litigants who can be impatient.
- Lawyers face communications pressures because of unreasonable unrepresented litigants with whom they have to deal.
- When users have limited access to lawyers because of costs or availability other workers outside 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.

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Reforms to date have not addressed the lack of legal representation for a large segment of people facing a family law problem. Therefore, there continues to be no individual or resource to help many individuals facing family breakdown apply the legal information available to the facts of their case. If individuals choose not to engage they may never have their legal needs met. For example, the UK Justice Review indicated that a consequence of a proposal to reduce access to legal aid in the UK could be "that some parents will simply not pursue their dispute leading to some children losing contact with a parent".<sup>111</sup> Unmet legal needs have profound social, economic and health consequences.<sup>112</sup>

Although data about people who are not represented by lawyers are limited, it is reasonable to conclude that the low eligibility cut off for legal aid services and the great expense associated with full representation in a family law matter means that there is a wide economic spectrum of people who do not have legal representation. *Listening to Ontarians* emphasized the importance of distinguishing between the needs of

low-income and middle-income Ontarians: “While the needs of both are critical to access to justice, programs designed for one group may not be appropriate or effective for the other.”<sup>113</sup> To date there has been no systematic approach to tackling the issues raised by the large number of people who do not have legal representation, let alone a nuanced approach which would factor in the diverse socio-economic circumstances of people without lawyers.

Representation or other forms of assistance at early stages are expected to reduce the need for litigation, and could be less expensive, not only for individuals, but in the long run for the system. Litigation is expensive. In 2009, the average legal fee for a contested divorce in Ontario was about \$12,000 per party.<sup>114</sup> The average legal fee for a case resulting in a trial in Ontario is much higher: over \$45,000 per party.<sup>115</sup> Retaining other private sector professionals such as mediators or assessors may add to the cost of Ontario divorce and separation cases.<sup>116</sup> To qualify for a legal aid certificate, single persons will be eligible only if their income is below \$10,800, although they may be able to obtain a certificate subject to a contribution agreement if their income is between \$10,800 and \$12,500.<sup>117</sup> To qualify for duty counsel services, a single person will be eligible only if his or her income is below \$18,000.<sup>118</sup>

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Historically, LAO’s model of service delivery presupposed litigation as the primary framework for resolving family law disputes. The blocks of hours granted under the LAO’s tariff for certificates are geared mainly toward initiating and prosecuting or responding to and defending a law suit. The tariff provides limited hours for negotiation or participation in alternative dispute resolution (ADR). Traditionally, LAO provided only limited upfront information and case assessment. Once a client was determined to be financially eligible, they were either directed to duty counsel (in cases where the matter is considered straightforward) or provided with a certificate which enables them to retain a member of the private bar.

Legal Aid Ontario has made significant changes to its family law service delivery, however, in response to the recommendations in Michael Trebilcock’s 2008 review of the legal aid system.<sup>119</sup> It has taken steps to improve its service model to support a front-end loaded family justice system which provides alternatives to litigation. In January 2010, the provincial government made a \$150-million investment in Ontario’s legal aid system, including \$60 million towards base funding on an ongoing basis. This enabled LAO to make a number of changes to its service delivery model including the following: telephone services which assess the potential client for financial and legal eligibility for other services and which also connects potential family law clients to services that can assist with family breakdown (such as counselling) and dispute resolution alternatives (high risk or urgent cases are diverted to litigation services); a telephone summary legal advice line; advice lawyers at FLICs and Family Law Service Centres at seven locations, offering a full range of services;<sup>120</sup> duty counsel services in Family Justice Centres for victims of domestic violence in Kitchener and Peel; and mediation services. Thus LAO has been able to tailor its services to be proportional to the client’s needs, from summary legal advice, to drafting to full scope representation. Service through calling LAO on its toll-free number can be provided in 200 languages, including 18 Aboriginal languages and dialects.<sup>121</sup>

In an effort to provide some services for people who cannot afford full representation some lawyers have begun to provide limited retainer services (called colloquially, “unbundled” services), defined by the Law Society of Upper Canada’s Rules of Professional Conduct as “the provision of legal services by a lawyer for part, but not all, of a client’s legal matter by agreement between the lawyer and the client”.<sup>122</sup>

A number of concerns have been expressed about the unbundling of legal services. One concern is that individuals may not be able to make sound decisions about which services

to obtain on a piecemeal basis. Other concerns are that limitation periods will be missed and critical litigation elements will be overlooked by the lawyer and the client. A divided responsibility for parts of the file could reinforce the sense that no one person really has the whole picture. LawPRO, Ontario's legal profession insurer, has expressed concern that "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>123</sup> LawPRO explained that in the United States, lawyers have been found liable for malpractice "for failing to warn the client of material legal issues or claims, even though they were not part of the limited scope representation agreement".<sup>124</sup>

The Law Society has amended its Rules of Professional Conduct to recognize limited scope retainers as a way to enhance access to justice, particularly for people who are not able to afford the services of a lawyer for their entire legal matter and who do not qualify for legal aid. The Law Society's amendments to the Rules of Professional Conduct in September 2011 seek to address some of the concerns identified with limited scope retainers<sup>125</sup> and knowledge of the limited scope retainer rules is one of the competencies tested in licensing examinations.<sup>126</sup>

Law students also deliver certain family law services. Downtown Legal Services, at the University of Toronto, Faculty of Law, is the only student legal clinic in Ontario offering family law services.<sup>127</sup> Its financial eligibility criteria are slightly more generous than LAO's eligibility criteria. The students are supervised by a lawyer who acts as review counsel. To date, they have been granted rights of audience only at the Ontario Court of Justice at 47 Sheppard Avenue East in Toronto.<sup>128</sup>

Pro Bono Students Canada (PBSC) has delivered family law services since 1997 and currently runs Family Law Programs (FLP) in four Ontario law schools and eight courthouses, as well as elsewhere in the country. The Ontario FLP is partnered with Legal Aid Ontario. According to the PBSC's Family Law Program Description, "[i]n 2011-2012, [169 volunteer] students assisted well over 2200 clients [in Ontario] with their court forms, and helped them navigate through the complex legal system". With funding from the Law Foundation of Ontario's Access to Justice Fund, PBSC is expanding the program in Ontario and other areas of the country.<sup>129</sup>

Additionally, many first year students are participating in a new FLP pilot project at Osgoode Hall Law School and the University of Toronto, Faculty of Law that sees them shadowing family practice lawyers and other practitioners (such as mediators), as well as judges at the North Toronto Family Court, and providing support to litigation lawyers or developing public legal education workshops for women survivors of domestic violence.<sup>130</sup>

There may be something to learn from other jurisdictions in this regard, such as the JusticeCorps Program in California under which students provide services to self-represented litigants in a court setting.<sup>131</sup> Through the program, undergraduate students (not law students), supervised by court staff members, volunteer in self-help centers and offer three types of services: 1) they provide information to litigants about options and referrals to services in or outside courts; 2) they help litigants locate and complete forms and procedures through one-on-one assistance or in group workshops; and 3) they observe court proceedings and give information to litigants thereafter.<sup>132</sup> The students' participation has enabled the lawyers to focus on complex cases and the centres to serve a higher number of clients. Judicial officers noticed an improvement in the quality of hearings and orders being made where litigants had been helped by JusticeCorps members.<sup>133</sup> Furthermore, 68 per cent of JusticeCorps services were provided by volunteers in a language other than English.<sup>134</sup>

As in California, it is important that the courts be part of the process for implementing student services at the courts. According to Nikki Gershain, the National Coordinator of PBSC, the

feedback of the bench to the drafting services provided through the FLP has been overwhelmingly positive. There has been a more mixed reception to the prospect of students' representing clients in court. If students are adequately supervised by review counsel, however, the files they take are appropriate to their skill level and they receive professional development, their participation provides a useful option for assisting otherwise unrepresented persons.<sup>135</sup> As previously stated, the Ontario Court of Justice at 47 Sheppard Avenue East does permit students who meet these criteria to appear before judges there.

Both the Law Foundation of Ontario and Legal Aid Ontario have identified articling students as a resource to improve access to justice and have undertaken initiatives to leverage the capacity of students to provide service for low-income individuals. In 2008, the Law Foundation of Ontario created the Connecting Articling Fellowships and sought proposals from various organizations including community legal clinics and Legal Aid Ontario to host students who could serve rural and remote communities and linguistic minorities.<sup>136</sup> In 2011, LAO concluded that articling students could be deployed to assist both staff lawyers and in some cases could be "loaned" to private bar practitioners who do certificate work and community legal clinics. The goal is to facilitate the creation of another service to assist clients and also to provide law students who are interested in careers in social justice with a window into social justice legal work and the opportunity to be rehired as a lawyer with Legal Aid Ontario.<sup>137</sup> Students in both programs could be assigned to family law matters. Students selecting the co-operative work placement option in the Law Society of Upper Canada's new licensing programs might be placed with family lawyers.<sup>138</sup>

*...[I]t is crucial that the access points meld smoothly into the court system in cases where judicial adjudication or assistance is required and that the courts are available to family members to resolve their disputes when other methods are unsuccessful or the situation is, for one reason or another, legally complex or of high conflict.*

Other student programs that provide potential for a limited contribution to family law include Osgoode Hall Law School's public interest requirement. Ogoode's creation of an Office of Experiential Learning to coordinate the various experiential opportunities available at the law school promotes student involvement in a wide range of areas of law, including family.<sup>139</sup>

### **3. Dispute Resolution**

Although there have been efforts to encourage, in the appropriate cases, mediation and other ways to help people resolve their family disputes, in many respects, the courts remain the focus of family law dispute resolution. As we have pointed out, however, the court themselves have sought to ease the process for disputants through the implementation of new or expanded processes, such as the MIP (discussed above; we refer to other initiatives below). Nevertheless, court procedure is still complicated and taking a case to trial is difficult without legal representation. Our focus is on entry points to the family law system, but it is crucial that the access points meld smoothly into the court system in cases where judicial adjudication or assistance is required and that the courts are available to family members to resolve their disputes when other methods are unsuccessful or the situation is, for one reason or another, legally complex or of high conflict.

A 2009 submission to the Ministry of the Attorney General of Ontario stated that "the court should be the default if parties are not appropriate for a less adversarial approach".<sup>140</sup> The report recommended front-end loading the system to educate people, assess their needs and divert them from litigation if appropriate in the circumstances. Thus the court system would be reserved for urgent matters, cases involving domestic violence, high conflict cases or precedent setting matters. Reforms (discussed below) implemented by the Ministry of the Attorney General over the period 2010 and 2011, as well as ongoing reforms initiated by the courts themselves, have been designed to meet this objective of "front-end loading" the system.<sup>141</sup>

Assessments of the system indicate the challenge. For example, according to *Listening to Ontarians*, four in ten people (44 per cent) with a family relationship problem had not resolved their problem within three years.<sup>142</sup> In Canada, about 50 per cent of all

cases remain in the system for more than one year and some considerably longer.<sup>143</sup> The time taken to deal with a case can be related to the difficulties parties often have in resolving family disputes, for example, even with the assistance of the courts, but it is also related to the capacity of the courts to handle the volume.<sup>144</sup> There has been a decrease in new family proceedings, including the Family Court, Superior Court of Justice (3 per cent decrease) and the Ontario Court of Justice (9 per cent decrease), since 2007-2008.<sup>145</sup>

Custody, access and support are not only the most litigated matters at the Ontario Court of Justice, they are also the matters which tend to remain longer in the family justice system.<sup>146</sup> In 2009-2010, cases involving child access and child and/or spousal support arrangements represented the highest proportion of cases remaining in the system.<sup>147</sup> Of access and support issues, access was the most contested issue.<sup>148</sup>

*Custody, access and support are not only the most litigated matters at the Ontario Court of Justice, they are also the matters which tend to remain longer in the family justice system.*

Three different types of courts deal with family matters: Family Courts (which are a branch of the Superior Court), the regular Superior Court of Justice and the Ontario Court of Justice. Thirty-eight years ago, after observing that "in general the adversary approach promotes a ritualistic and unrealistic response to family problems",<sup>149</sup> and that family disputes needed procedures directed at settlement and assistance if required, the Law Reform Commission of Canada (the LRCC) recommended the implementation of a Unified Family Court (UFC) to provide "one-stop shopping" for family law services by unifying the jurisdiction of the federal government and the provinces into a single court. Since then, there have been many changes to the system, including the creation of the first UFC in Hamilton and the creation of the Family Court Branch of the Superior Court of Justice in 17 court locations with reforms relating to the provision of information, the introduction of mediation and other initiatives that resemble those envisioned for the UFC. It can be said that these Family Courts are intended to unify the system without the formality of creating UFCs. Ontario would like to extend the unified family court.<sup>150</sup> In the other court locations, the Superior Court hears many family matters, but does not hear matters within the jurisdiction of the province which are heard by the Ontario Court of Justice.<sup>151</sup>

In 2009, Justice Canada evaluated the UFC, concluding the following:

- Overall, Unified Family Courts enable better access to a specialized bench of judges and on-site dispute resolution and family justice services than non-Unified Family Court sites.
- A specialized bench was reported to be of primary importance to the overall performance of the Unified Family Courts in meeting objectives.
- There is some evidence to suggest that the Unified Family Court Model helps to resolve issues more efficiently.<sup>152</sup>

The Report noted that it had been expected that simplified procedures, specialist judges and "a full range of professional and community support services" would "speed up the resolution of family matters [and] reduc[e] the potential for further conflict, increasing the ability of family members to access the court and obtain other services most appropriate to their needs and offering better long-term outcomes for children and their families."<sup>153</sup> To some extent, these characteristics have been introduced into the court process.

For example, Family Law Rules (Rules) were introduced in 1999 in both the Superior Court of Justice and the Ontario Court of Justice, replacing the Rules of Civil Procedure (in the Superior Court) and the Rules of the Ontario Court (Provincial Division) in the Ontario Court of Justice with respect to family matters. The Rules were meant to buttress the effectiveness and efficiency of courts hearing family law matters.<sup>154</sup> As of July 2004, the Rules were expanded to apply in all Superior Court of Justice court locations. The Rules

and forms use plain language in order to help clients understand the court process more easily. The Rules incorporate a system of case management, key features of which include a duty to manage cases expeditiously and fairly using at least one conference. The case management system under the Rules has been described as a “front end loaded system” which “creates a system of early judicial intervention in which attempts are made to divert the parties from the adversarial method of resolving disputes to one that is resolution-based.”<sup>155</sup>

The objective of the Rules is consistent with improving the process for family litigants. However, it has been found that each court delivers the steps required by the Rules in slightly different ways, creating some confusion. In response to the LCO’s Interim Report, family law lawyers in individual submissions as well as the Advocates’ Society pointed to the introduction of the Family Law Rules as a source of delay. One lawyer who has practised family law over two decades maintains that the mandated use of conferences “have added immeasurably to the cost of family litigation [and] have placed families in limbo”. Separating couples, he said, “need one thing more than any other...a binding and clear decision made regarding custody, access, child support, spousal support, residence and disclosure” as early as possible. Another lawyer commented, “The current system places tremendous stress on our clients by not permitting an easy way to ensure that they are able to pay their bills.” Of particular concern are subsections (2) and (4.2) of Rule 14, providing that, except in circumstances of urgency or hardship, the parties must attend for a case conference before bringing an interim motion. According to the Advocates’ Society’s submission in response to our Interim Report, this Rule

*Separating couples “need one thing more than any other...a binding and clear decision made regarding custody, access, child support, spousal support, residence and disclosure” as early as possible.*

- Lawyer with over twenty years’ practice in family law

...has resulted in significant delays and many unresolvable interim problems for individual families. Wait times for a Case Conference vary by jurisdiction, but the usual wait time is anywhere from three to six months from the date of commencement of the proceeding.

The Ontario Court of Justice has implemented single judge case management; however, Family Court and other Superior Court locations do not consistently employ single judge case management.<sup>156</sup> The Superior Court judges are not specialist judges, although all are judges of the Family Court branch. Although this has been the subject of criticism, we have been advised that it is necessary that Superior Court judges be able to preside over all matters addressed by the Superior Court which is a generalist court dealing with civil, family and criminal. Thus it is not effective or efficient to implement single judge case management. Furthermore, although the Rules were meant to assist litigants and courts in the goal of resolving cases more effectively and efficiently, their ability to do so is impacted by the volume of cases facing the court.

In April 2009, the Superior Court of Justice issued its Family Law Strategic Plan, among the goals of which were the following:

Collaborate with all levels of government, justice partners and stakeholders to ensure the **availability of comprehensive front-end family court services to all litigants**, both represented and self-represented. At a minimum, the following services should be available and fully resourced across the province: Family Law Information Centres, Mandatory Information Sessions, Mediation, Legal Aid Services, Supervised Access Centres and Support Re-calculation Services.<sup>157</sup>

One of the underlying principles of the Family Court is commitment to early intervention and non-adversarial resolution of family disputes and to this end representatives of the Superior Court of Justice have worked closely with MAG and LAO to roll out the services described above, as well as Information and Referral Coordinators<sup>158</sup> and the expansion of the Dispute Resolution Officer Program, initially implemented by the Superior Court of Justice in Toronto, to other areas of the province.<sup>159</sup> In requests to change an order, Dispute Resolution Officers (DROs) undertake a case conference designed to facilitate settlement and narrow the issues in dispute, after which the parties may or may be required by the

DRO (depending on location) to attend a judicial case conference. There is a “strenuous” process of selection for DROs, who are volunteers (receiving a small honorarium), and the most senior lawyer involved is in charge of the program.<sup>160</sup> According to Justice Canada, which contributed funds to the DRO program, it has had a 63 per cent success rate,<sup>161</sup> although we have been advised it may be as high as 80 per cent. Parties are able to meet with a DRO within ten days.

These attempts at resolving disputes before they reach a judge or before a judge undertakes an adjudicative role are consistent with the view that, while in some cases a court adjudication of a dispute may be appropriate, in many cases it is not.

Some courts have initiated processes to help move cases through the system quickly. For example, the Ottawa family case manager pilot project was initiated in 2007 in response to concerns expressed in the report, *The Family Court in Crisis*.<sup>162</sup> The pilot project relies on the appointment of Family Case Managers; these are masters who have the jurisdiction to resolve procedural issues in the Family Court.<sup>163</sup> This program appears to have significantly reduced delays and increased the efficiency of using judicial resources.<sup>164</sup>

Victims of domestic violence who are involved in a family dispute in the family justice system face particular challenges. In 2008, the *Family Law Act* and the *Children’s Law Reform Act* were amended to address some of the difficulties.<sup>165</sup> The Integrated Domestic Violence Court (DVC) was established at 311 Jarvis Street in Toronto in June 2011 as a pilot project to provide a single judge to hear both the criminal and the family law cases (excluding divorce, family property and child protection cases) that relate to one family where the underlying issue is domestic violence. This court is intended to offer a more integrated and holistic approach to families experiencing domestic violence, increased consistency between family and criminal court orders and quicker resolution of judicial proceedings. There is now a DVC program in each of the province’s 54 court jurisdictions. A Community Resource Coordinator assists the parties in finding community resources and services. Participation in this court is voluntary; all parties must consent before the family and criminal cases will be transferred.<sup>166</sup>

In the spring of 2012, the Ministry of the Attorney General implemented its Family Court Support Worker program to provide direct support to victims of domestic violence who are involved in the family court process.<sup>167</sup> They provide information about the process, help victims of domestic violence prepare for family court proceedings and refer them to other services and supports, assist with “safety planning” (including travelling to and from court) and accompany the victim to a court proceeding when appropriate. Family Court Support Workers are based in communities across the province at centres providing services to victims of domestic violence. As are the FLICs (including IRCs), mediation and the MIP, the Family Court Support Worker programs are delivered by contract service providers.

Over the years, the difficulties with using the courts, whether inherent in the adversarial system or resulting from time delays and other problems, to resolve family disputes have given rise to a number of non-court based modes of dispute resolution. Some of these forms of resolving disputes are intended to replace the courts and some of have become part of the courts’ own processes; some are available as both freestanding and court-annexed procedures. These range from informal dispute resolution, perhaps by religious organizations, to more sophisticated methods involving experts such as collaborative law, parenting coordination, mediation, arbitration and med/arb (a combination of one person’s serving as mediator and arbitrator).

Another option for clients is collaborative family law, conducted by specially trained lawyers who are expected to ensure that their clients disclose all relevant information in a

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timely fashion and encourage them to settle the case. In practice, after 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. 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 professional. Of key importance in the collaborative process is the retainer in which it is acknowledged by the client that if the collaborative process fails, he or she must retain other counsel to litigate. Although it requires the funds to retain counsel and other experts, the Ontario Collaborative Law Federation, in its response to the LCO's Interim Report's reference to the cost of collaborative law, pointed out,

Many collaborative clients are of modest means, looking for a way to ensure they do not end up accumulating significant debt or eating up any retirement savings in a legal battle in or outside court...There are not studies to our knowledge that conclude a collaborative approach is more expensive than traditional adversarial negotiations.

Many lawyers will encourage their clients to attempt some form of non-court based resolution before resorting to the commencement of legal proceedings unless a situation of urgency or the health and safety of one of the parties or their children is at risk. In particular, for wealthier litigants, private mediation, arbitration and med/arb may be faster and more predictable and have the advantage of being more confidential than the court.

*Non-court dispute resolution may still be difficult or prohibitive for family disputants with low economic resources. Historically, Legal Aid Ontario has not provided legal services to support clients through the process of mediation.*

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. For example, mediation which aims to have a "transformative effect" to help establish a constructive parenting arrangement can be relatively resource intensive.

Non-court dispute resolution may still be difficult or prohibitive for family disputants with low economic resources. Historically, Legal Aid Ontario has not provided legal services to support clients through the process of mediation. It does provide assistance for settlement conferences.<sup>168</sup> Family Law Service Centres run by Legal Aid Ontario may offer mediation services.<sup>169</sup>

Although mediation has been available for family disputes for many years,<sup>170</sup> more deliberate efforts have been made recently to direct unrepresented clients to court based mediation which is either free or low-cost.<sup>171</sup> Mediators may be lawyers, but they may also be other professionals whose skills are particularly appropriate for family disputes. Yet these processes are also not always easy for unrepresented litigants who may not appreciate what they are giving up in a settlement. Indeed, the Ministry of the Attorney General website advises that an individual should see a lawyer before going to mediation in order to know their rights,<sup>172</sup> a view echoed by a participant in the LCO's consultations who had not received a legal opinion before entering mediation.<sup>173</sup> As previously mentioned, in Ontario there is free and low-cost mediation connected to the court.<sup>174</sup> Until recently, on site mediation was offered only at the 17 UFCs and the Ontario Court of Justice in Toronto; however, it has now been extended across the province. This subsidized mediation can also be accessed before any court file begins.

The providers of subsidized mediation services connected to the courts have to comply with the professional standards for family mediation.<sup>175</sup> Nevertheless, there are concerns that the funding for subsidized court connected mediation is not sufficient to attract the most qualified mediators. The Mamo Report found that in some cases judges did not have faith in mediators and did not refer parties to mediation, although mediation has become more obviously part of the system since then. Participants in the LCO's

consultations also questioned the expertise and qualifications of mediators, although they recognized that there are many competent mediators in Ontario. Participants thought that other regulated professions had stricter codes of conduct, although they did not indicate their reasons for this conclusion.<sup>176</sup>

There are two particular concerns about mediation: that there is proper screening to ensure that victims of domestic violence are not inappropriately involved in mediation with the perpetrator and that people do not feel coerced into entering mediation. With respect to whether victims of domestic violence should engage in mediation, the Ministry of the Attorney’s website notes, “Mediation is not right for everyone, particularly in cases where there has been violence or abuse.”<sup>177</sup> There are different views about the appropriateness of mediation in these cases and the more recent view tends to be that the appropriate way to proceed is to develop a process that specifically addresses the concerns pre, during and post-mediation.<sup>178</sup>

Even if the emphasis on mediation 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 “insistence” for users not to go to the court. Chief Justice Warren Winkler noted, in the context of the court process, that

*Even if the emphasis on mediation 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 “insistence” for users not to go to the court.*

[t]he 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>179</sup>

Independent legal advice (ILA) is an important component of providing mediation services, both for the person who may be disadvantaged by any agreement reached and for the person who may have seemed to be advantaged. Both the Ministry of the Attorney General and the Law Society of Upper Canada provide information about independent legal advice.<sup>180</sup> In its response to the Interim Report, the Advocates’ Society raised concerns about the practice of mediating disputes without providing access to ILA and supported the provision of a discrete ILA process for individuals who reach agreement in mediation:

Lawyers require protection in this context to guard against liability issues. Parties need to understand and accept the inherent shortcomings of limited ILA. A limited scope retainer agreement, in standard form, could accomplish these twin goals. The availability of ILA Counsel would enable parties to enter into a fairly negotiated agreement with confidence and would provide a further important safeguard to redress any imbalance of power issues and ensure parties are entering into agreements willingly.

There is however, reluctance on the part of many lawyers to provide ILA for fear of liability risks. In its practice resources, LawPRO highlights the liability risks in providing ILA and it urges lawyers to keep detailed notes and use checklists. LawPRO has posted an Independent Legal Advice Checklist on its website.<sup>181</sup> Courts have also placed very stringent obligations on lawyers who provide ILA.<sup>182</sup>

#### **4. Counselling and Other Supportive Services**

We have concluded that the availability of services in areas other than law is an important element in addressing family legal problems at an early stage, as well as later. Counselling services, for example, are widely recognized among legal professionals as being a necessary form of non-legal intervention in family law cases, especially in divorce cases with high-conflict families.<sup>183</sup>

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. The complexity of family law matters is

driven by causes and consequences that cannot be remedied by family law or a court hearing. The recent reforms go some way to address these consequences through information and referral coordinators but they do not represent an integrated response to family breakdown. Centres focusing on specific issues, such as violence against women, or on the needs of particular immigrant communities may have links with a range of social agencies. These do not necessarily offer legal advice, or offer them as a peripheral services.

The Trebilcock report highlighted the tendency of socioeconomic problems to occur in groups or clusters.<sup>184</sup> This was echoed by Cohl and Thomson in their study of geographic and linguistic barriers to justice.<sup>185</sup> *Listening to Ontarians* also observed that the clustering of problems has important implications for service delivery and design, since “[t]he traditional model of legal services – be it private, publicly funded or even pro-bono – segregates and isolates legal needs into discrete, legally defined categories” and thus too often ignores these cascading effects.<sup>186</sup>

The emotional consequences of family breakdown are often a significant impediment to the resolution of the matter. Frequently, the hurt and anger become a driver of hostility and escalation of the legal matter. Family law matters can be characterized by irrational decision-making and inflexibility. When these consequences are not adequately dealt with, it can create great difficulty in legal cases. Lawyers are not trained to deal with the emotional consequences of marital breakdown and being required to act for someone who is trying to deal with the emotional fall out without assistance can be taxing for counsel.

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The LCO’s consultations revealed how difficult it is for the legal process and emotional grieving to happen side by side. Most professionals to whom the LCO talked believed that, where possible, efforts to encourage a collaborative process, or on the contrary, where necessary, efforts to use the legal system to create a distance between parties involved in a family dispute and providing mental health support on each side separately, were essential elements to improve the family justice system. Participants in the LCO consultation process identified therapy or social work as crucial to solving family problems:

According to some consultation participants, these considerations are even more important when children are involved. They mentioned that parenting is a long term responsibility and sharing this responsibility after a separation is a challenge especially for parents who did not share care-giving activities during the relationship. Parents do not have a choice but to have at least minimal interaction with their children and with each other after they separate. Counsellors and social workers have skills to help people understand their parenting role and transition from parenting together to parenting separately. In high conflict cases, social workers can also act as parenting coordinators, which means that they can help parents develop parenting plans as well as mediate and arbitrate disputes that arise in the application of this parenting plan. In scenarios that involve violence, a clear separation between the people involved needs to be put in place to protect them. In short, consultation participants believed that coordinating social and legal services was an important consideration for family justice reform.<sup>187</sup>

Family law problems may also create serious economic problems as the income used to support one household must now support two. The stress on the family members can have multiple emotional consequences outside of the context of the family law case. As Jacobs and Jacobs observed,

Often, the challenges and problems facing Ontario’s families are neither simple nor one-dimensional. Employment issues may bleed into problems paying the rent or create health problems. Marital problems at home may affect educational achievements at school. Domestic violence might affect relationships with otherwise supportive extended family. As others have noted, when families are in crisis, they experience clusters of problems, problems that are different in nature but interrelated.<sup>188</sup>

Jacobs and Jacobs further suggested that “by addressing problems earlier or indeed preventing new problems from emerging,...[teams of service providers] can result in considerable cost savings...[and] it is less likely that the remedies and solutions will overlap and be redundant”.<sup>189</sup>

While IRCs are tasked with performing issue identification and making referrals they do not perform a comprehensive “triage” function and accordingly may not be able to effectively identify the services that a family needs and provide them with a connection to the right service.

Accordingly, many people have limited or no professional assistance to help them identify their problem, and to recommend a course of action and then assist them in navigating the network of services they may require. People who are in a time of intense personal upheaval are often left to navigate on their own in order to access all of the services that they and their children need. Even if they are able to access the services, the services are currently delivered in a fragmented fashion, requiring the person to attend at multiple locations to deal with the services they need and tell their story over and over again.

*Supporting Families* recommended that FLICs could become multifunctional and in some respects multidisciplinary.<sup>190</sup> We pursue this concept in Part Two of this Report.

Here we briefly discuss the kinds of services that already exist which may be employed at any time during a family dispute. Family counselling services are offered at many locations across Ontario, including in family service centres,<sup>191</sup> hospitals, cultural centres and mental health centres. The fees for these services vary by centre, although many publicly-funded agencies provide services for free or on a sliding scale.<sup>192</sup> Counselling services are usually community-based and employ a variety of mental health professionals, including psychiatrists, social workers, pastoral counsellors and psychologists.<sup>193</sup> Other centres offer assistance in relation to relevant matters such as employment or settlement without explicitly linking it to resolution of family legal disputes.<sup>194</sup>

Counselling is often recommended in low- and medium-conflict cases, but is rarely attended.<sup>195</sup> One writer identifies counselling and therapeutic services as “the most traditional community-based services that divorcing families use” and states that significant overlap occurs between legal and therapeutic services.<sup>196</sup> As parents and children often first seek counselling upon separation and divorce, counselling is also an entry point to the family justice system. If used early enough in a family conflict, family counselling may even prevent divorce in appropriate cases, and may contribute to a more amicable divorce in others.<sup>197</sup>

Family Service Ontario (FSO) is an association of 42 agencies offering services dealing with marital and family issues, financial problems and parenting skills. These agencies also have programs targeted at survivors of domestic violence, gay men and lesbians, persons with developmental disabilities and newcomers. In Ontario, 27 cities have at least one family service agency, many of which have specific religious and cultural connections while offering services to all members of the community.<sup>198</sup> For example, Family Service Toronto offers family counselling at five different locations throughout the Greater Toronto Area. Counselling can also be obtained over the phone or over a secure website. Fees are paid on a sliding scale based on household income but no one is denied services because of inability to pay. Services are open to all people living or working in Toronto and are offered in multiple languages including English, Spanish and Farsi. An LGBTQ Counselling Program is available, as is a Families in Transition program providing parenting plan mediation and a Seniors and Caregivers Support Program.<sup>199</sup> Credit counselling is another family service that is often important in responding to family breakdown. Several FSO member agencies are also Ontario Association of Credit Counselling Services (OACCS) members and provide accredited family and credit

counselling services.<sup>200</sup> Credit counsellors work with clients to create a financial assessment and provide them with options for credit and debt management. Fees for credit counselling vary, with many accredited agencies providing first consultations for a low cost or for free. In place of a one-on-one consultation, clients may ask the agency for resources (e.g., brochures or videos) or participate in seminars in their community, if available. OACCS counsellors may intervene on a client's behalf in court proceedings and with other community service providers, and may refer clients to other services.

Jacobs and Jacobs also note several multidisciplinary centres in Ontario that are focused on non-legal family services, but offer some legal services.<sup>201</sup> The services can focus on different aspects of people's problems: a number are concerned with domestic violence, while others may have a health focus, a specifically mental health focus or a broader family focus. Multidisciplinary approaches are most common for victims of domestic violence, such as the Family Violence Project of Waterloo Region, the Durham Region's Intimate-Relationship Violence Empowerment Network and the Barbra Schlifer Commemorative Clinic.<sup>202</sup> These service models have apparently been very successful in responding to the needs of Aboriginal communities by providing culturally-based services that respect their values.<sup>203</sup> Some of these centres are discussed more fully in Part Two of this Report.

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### **5. Services for Children**

We have referred earlier to the negative experiences that children have with the family justice system and the impact on them of family breakdown which in some situations can be irreparable and in others, highly upsetting. In cases where the parents are conscious of the impact on their children and are able to put their own hurts aside, the children will not be untouched by what is happening to their family, but they can recover and have happy relationships with both parents. In some cases, there is no doubt that the impacts can be highly deleterious and long-lasting.<sup>204</sup> We do not suggest changes to the current system with respect to how it deals with children's needs, since we believe this would require a more thorough analysis than is possible in this project. Some young people in our consultations expressed concern about the extent to which their views were considered seriously and had doubts about the effectiveness of the system. For example,

all children had a negative perception of lawyers. They were particularly frustrated by the fact that lawyers either did not ask them for their opinions or, when they did, did not seem to hear them. One youth who had her own lawyer reported that her lawyer would ask her a question such as "do you want to see your dad?" and she would answer a clear "no" but that the lawyer would keep rephrasing and asking again, such as "if such and such events happened, would you like to see your dad?" and she kept answering no. She said that the lawyer kept rephrasing what she said and never accepted her answer. She felt that no lawyer paid attention to what she had to say and that she had no voice. One youth said "why should a one line e-mail cost one hundred dollars to my mother?" Another youth commented on the wait time in court. She thought that the court system did not work and should be completely redesigned.<sup>205</sup>

The legal system provides specific representation for children through the Office of the Children's Lawyer (OCL) in the Ministry of the Attorney General which delivers programs in the administration of justice on behalf of children with respect to their personal and property rights, representing children in various areas of law including child custody and access disputes, child protection proceedings and civil litigation. Lawyers may be OCL employees or members of the OCL panel, a group of private bar lawyers across the province who provide services on contract to the OCL. The OCL also employs (either directly or through empanelment) clinical investigators, mainly social workers, who prepare reports for the court in custody/access proceedings and who may assist lawyers representing children in such matters. In its response to the Interim Report, the Ministry of the Attorney General advised that at any given time, the OCL provides services to approximately 20,000 children throughout Ontario. In 2010-2011, the OCL became involved in 2,650 new custody and access cases. Almost all of these cases would fit the definition of "high conflict".

Where there is a dispute before the court about child custody or access matters, the court may request the appointment of a Children's Lawyer under the *Courts of Justice Act*. This happens when the court requires independent information and representation about the interests, needs and wishes of the child who is the subject of the proceedings.<sup>206</sup> The involvement of the OCL is limited to cases where a court application has already been started. In numerous instances, parents are unrepresented and the Children's Lawyer is the only counsel in the matter and in approximately 25 per cent of custody and access referrals none of the parties is represented.<sup>207</sup> Once the Children's Lawyer has completed his or her interviews or the clinical investigator has completed his or her investigation, the Children's Lawyer may invite the parties to a disclosure meeting. The OCL will explain its position at this meeting and will attempt to foster a settlement between the parties.

Although we do not specifically address how the system could be improved to respond to the experiences of children, it should be understood that services for families must include services for children and that all efforts must be made to reduce the confusion, hurt and anger that they often feel. To some extent, the better the system works for their parents, the more likely the parents will be able to give a high priority to their children's concerns.

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### **C. Assessing the Current System against the Benchmarks**

For convenience, we include the Benchmarks we discussed in the Introduction to Parts One and Two.

An effective entry to the family law system meets the following benchmarks:

- » provides initial information that is accessible to people in their everyday lives, including information about possible next steps in their efforts to resolve their dispute;
- » to the extent that the information is provided online, provides it through a single "hub";
- » provides written information that is accessible to those without adequate access to the internet;
- » provides assistance for persons who might have difficulty accessing, reading, understanding or applying the information;
- » helps an individual determine the nature of their family problem(s) in a timely and effective way, including whether their dispute "really" is a legal dispute;
- » assists individuals to find the approach to resolving their problem that is as simple and timely as possible, minimizing duplication of persons and institutions with whom the individual must deal and promoting ease of communication and collaboration between different actors in the system (this refers to a "triage" system that assists in allocating resources according to priorities);
- » has the capacity to respond to different educational and literacy levels; the existence of domestic violence; and factors such as cultural norms, Aboriginal status, gender, sexual orientation, age, language, disability, geographic location and other major characteristics;
- » develops programs and policies in consultation with affected communities;
- » takes into account the financial capacity of individuals while ensuring the quality of service;
- » recognizes and responds to the multiple problems that accompany family problems, such as mental health or financial problems that may be a stimulus for or exacerbate family legal problems;
- » offers a "seamless" process from early stages to final resolution; and is based on a sustainable model.

As we have said, there have been many reforms to the family law system in the past few years. We note the considerable amount of information available on the internet

from various sources, including the Ministry of the Attorney General, Legal Aid Ontario, the Law Society of Upper Canada, CLEO and community organizations, some general, and some directed at particular communities. Many sites have special information relating to domestic violence. The difficulty at the entry point stage is the amount and complexity of the information, as well as where people at the earliest stages of their thinking about doing something about their family problems might find it. Much of the information rapidly becomes more “technical” than people with low levels of literacy or familiarity with English or French are likely to understand.

Determining next steps in a dispute may not be easy, since it would be difficult for many people to apply the information to their own situation to allow them to determine the nature of their family problem(s) in a timely and effective way. The increasing emphasis on online information, while not surprising and helpful for many people, may be a barrier for those people who for whatever reason do not yet have easy access to the internet.<sup>208</sup>

Many of the reforms, such as FLICs and the MIP, have been designed to align with the courts. Setting aside whether this is a problem for people who are unfamiliar with the courts or who wish to avoid the courts, the in person interaction provided remains limited. Individuals who cannot afford lawyers will have a difficult time moving beyond their initial interaction with information provision to decide how to address their family problems – or to decide whether the problems within the family are actually legal problems. This will complicate the move from the entry points to resolution, whether in the courts or elsewhere. Furthermore, despite recent court reforms, the process takes time and is difficult for those without representation; the different aspects of the system need to be linked to the entry points in a way that responds to the needs of litigants.

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We also note that while there are many organizations providing assistance of various kinds generally or to members of particular communities, these may or may not be linked to the family justice system in a way that enables individuals to assess their problems holistically or comprehensively.

Thus although the reforms have contributed to benchmarks related to providing information and simplifying the system, there is more that can be done. In the next section, we describe the continuing gaps in greater detail, beginning with the way Ontario’s pluralist character affects people’s interaction with the family justice system.

### III. INCLUSIVITY AND ACCESS TO FAMILY JUSTICE

#### A. Introduction

The preceding discussion illustrates that stakeholders in the family justice system, both large and small, have devoted considerable time and resources to make the family justice system more accessible, effective and affordable for families facing relationship breakdown. A plethora of services have developed to assist families, as different stakeholders in the justice system with diverse mandates have attempted to address the problems within their jurisdiction or develop services to assist their constituents. There have been a number of important developments to help families over the past two or three years in particular. We endorse the comments of Chief Justice Smith of the Superior Court of Justice in response to our Interim Report. The Chief Justice emphasized the importance and success of these initiatives so far, stressing the significance of the reforms in difficult economic times as well as the “dedication and commitment of the [Ministry of the Attorney General] staff”, “the tireless support from the judiciary” and the “selfless volunteerism of many members of the Bar”.

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There is no doubt that the willingness to initiate and implement the reforms of recent years has been a necessary precondition to meeting the challenges in the family legal system. Notwithstanding these promising reforms, however, there remain a number of issues still to be addressed. In particular, the most significant barriers to accessing the family justice system remain the lack of a systematic approach to diversity which the reforms, including the most current, do not explicitly address; lack of a coherent approach to provision of information; the lack of affordable assistance; and a need for additional ways to address the intersection of family legal problems and non-legal problems related to family breakdown. We discuss ways to improve these particular aspects of the system in Part Two of this Report.

In this Chapter, we provide a portrait of contemporary Ontario society and discuss the importance of establishing the goal of inclusiveness as an overriding value to be considered in making more specific changes and in co-ordinating the current disparate initiatives. In thinking about the particular characteristics we discuss below, it is important to recognize that people do not fit into one “category” and that they cannot be defined by one particular characteristic; rather, our identities are fluid and different characteristics may be more predominant than others, depending on context. Furthermore, inclusivity does not mean forcing people into straightjackets of identity, but providing the conditions necessary for implementing Ontario’s commitment to pluralism.

#### B. Ontario’s Pluralism and Changing Circumstances

##### 1. Introduction

We recognize that the Ontario family legal system and the legal system generally have developed programs and approaches intended to respond to and include the province’s various populations. For example, the Ministry of the Attorney General (MAG) has developed family law information designed for Aboriginal persons. Community Legal Education Ontario (CLEO) and others have provided general or family law information in several languages. Ontario’s legal system is “bilingual” and is expected to provide services in French, as well as English, and there are efforts to improve access to these services. More generally, the courts have responded to the needs of persons with disabilities.

These attempts to be inclusive have not yet been fully realized. To cite just two very different examples, the Family Law Information Centres (FLICs) appear to have uneven

capacity to provide French language services (similarly, we were advised in the consultations for our project on the modernization of the *Provincial Offences Act* that French defendants were not always able to obtain a trial in the French language in a timely way);<sup>209</sup> and family law information provided online is not easy to access for persons living in areas of the province lacking high speed internet or by persons with low literacy levels. Nevertheless, these initiatives reflect recognition of a need. Furthermore, the province has taken steps towards ensuring that its laws and policies do respond to diversity needs. As we discuss further below, the Ontario Public Service (OPS) has developed a lens for assessing laws and policy against different types of characteristics.

Our point is not that the system and relevant actors have not in various ways responded to Ontario's pluralism and that inclusivity is an ongoing project, but that there needs to be a systemic approach. We are also aware that the best of intentions are faced with fiscal challenges. In both our frameworks relating to older adults and persons with disabilities, respectively, we acknowledge the principle of "progressive realization": not everything can be done at once, but it is important to know the goals, the gaps between aspiration and realization and the actions required to achieve the goals.<sup>210</sup> The same thing might be said about the family law system. Where resources are limited, implementing new systems and approaches may occur over time when resources are available or when it has been determined that resources supporting outmoded approaches can be redistributed to programs that will improve the system. It is also important, however, to identify the end goals and to take progressive steps to achieve them.

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In the next section, we explore some of the ways in which Ontario society and family relationships have been transformed. We then discuss specific issues that affect access to justice as people consider entering or actually enter the system, including the relevance of diversity to these issues. We close Chapter III of Part One with reiteration of the significance of inclusivity to advancing substantive equality, including with respect to entry points to the family justice system.

## **2. Painting a Portrait**

The diversity among Ontario families reflects the diversity in 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 or three decades, the beliefs of some groups may appear to challenge the commitment to equality between men and women that has been recognized in the *Canadian Charter of Rights and Freedoms*<sup>211</sup> and the *Ontario Human Rights Code*.<sup>212</sup> Fathers are increasingly engaged with the upbringing of their children and expect to be included in post-separation relationships with their children. While it may have seemed a considerable time in coming, the legal recognition of same-sex couples (whether the right to support, custody of or access to children or marriage) has accompanied a widespread acceptance of homosexuality, a form of sexuality that was once illegal. There is now recognition of a broader understanding of gender identity and expression.<sup>213</sup> Public policy is now grounded in recognition that a society modeled on an assumption of "able-bodiedness" must be refashioned to incorporate the needs of persons with different types and severity of disabilities. The "aging" of the population has alerted us to the reality that access to the legal system and the problems facing them may not be the same for older adults as for younger adults. The greater sophistication of young people in some respects and the breaking down of time and space barriers that technology has transformed in only a short period of time have in complex ways changed the relationship between parents and children. And these and other developments have had ramifications in how we view communal obligations and the challenges we face at the societal level.

For the family justice system to be effective and responsive to the needs of families, it must appreciate how families are not only similar, but also how they are different. Systems,

processes and methods that are premised on a primarily homogenous family structure and background require rethinking in a province which has committed to diversity. The system must respond to problems that not only cut across families, but also to problems that arise from diverse family situations. This requires understanding how families in Ontario have changed over the past two or three decades. It also requires recognizing that this is not a static situation, that newcomers’ relationship to Ontario society evolves, that second generation individuals may view things far differently from their parents and that social conditions can have an impact on this changing dynamic. We are particularly cognizant in this Report of several dimensions of diversity which impact on the ability to access services.

Some examples of “pluralism” have existed for as long as Ontario has existed, as well as before. Indeed, First Nations were heterogeneous, with “diversity” becoming more pronounced with the first contact with Europeans. The issues we refer to here as they relate to First Nations have arisen in some ways from the clash between pre-colonial existence and non-aboriginal society as it emerged in Canada, or the lack of symmetry between the two cultures and worldviews. Persons with disabilities have lived in society forever, although their circumstances have changed considerably over time and the types of disabilities that government and society at large have acknowledged should be addressed have increased. In other cases, such as the relationship between men and women, relationships have shifted significantly, while the impacts have not been fully addressed. In yet another example, while same-sex relationships have long existed in fact, the legally sanctioned structure of the family has changed with the recognition of same-sex marriage. Certainly one of the biggest changes has been in the ethnic, cultural and religious composition of the province, particularly its urban areas, which has permeated not only the justice system, but also the economy, politics and social relations.

*The principle we advance is that the design of the system needs to be inclusive and that it needs to be flexible in recognizing that not all individuals who appear to be characterized in a particular way share the same views and experiences. The challenge is always to avoid “slotting” people into certain categories while at the same time remaining open to different needs and expectations.*

We cannot exhaustively describe the very many ways in which Ontario society has changed, or the ways in which on-going circumstances are being approached differently, particularly over the past thirty or so years, nor is what we do describe particularly startling or new. Yet we consider it important to provide support for our view that a systemic approach to inclusivity when improving access to the family legal system is critical. We therefore discuss examples of the diverse circumstances which we believe need to be taken into account in thinking about how to fashion entry points. The principle we advance is that the design of the system needs to be inclusive and that it needs to be flexible in recognizing that not all individuals who appear to be characterized in a particular way share the same views and experiences. The challenge is always to avoid “slotting” people into certain categories while at the same time remaining open to different needs and expectations.

Most of Ontario’s 3.6 million families consist of married couples, with a far smaller number living in common law relationships.<sup>214</sup> The proportion of lone-parent families is about 16 per cent of families. Male lone-parent families experienced higher growth over the period between 2006 and 2011 than did female lone-parent families, although there are still far more female lone-parent families.<sup>215</sup> At the same time, there are some differences in family structure in this regard among ethno-cultural groups which we discuss below.

Not surprisingly, there was a dramatic increase in the number of same-sex legal marriages between 2006 and 2011, following the federal establishment of the legal right of same sex partners to marry in 2005.<sup>216</sup> Although the patterns of opposite-sex and same-sex marriages are similar across the country, same-sex couples tend to be clustered in large cities.<sup>217</sup> Of interest is that the proportion living in large cities is slightly lower than was the case in 2006, suggesting that same-sex marriage may be becoming more common in smaller centres.

Consistent with the aging of the population, the number of couples with children living at home slightly decreased in 2011.<sup>218</sup> Same-sex couples are less likely to have children at home than are opposite-sex couples and more female same-sex couples are likely to have children at home than are male same-sex couples.<sup>219</sup> We can expect this situation to change in the future given the change in the definition of marriage and increasing acceptance of same-sex relationships.<sup>220</sup>

The situation of families has been complicated not only by reproductive technologies and adoption, through which children may have ties with non-biological parents and little or no contact with biological parents,<sup>221</sup> but by remarriages after a divorce. In 2011, Statistics Canada for the first time was able to distinguish between families in which the children were the biological or adopted children of their parents (these are termed “intact families”) and “step families”.<sup>222</sup> In Canada in 2011, over 87 per cent of families with children were “intact” families, while there were over 10 per cent of “step families”.<sup>223</sup> Post-separation custody and access arrangements for children may be complicated by their membership in more than one family; and the increased difficulties resulting from the breakdown of a second family may well exacerbate the usual distress children may feel at the time of the dissolution of their family.

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The vast majority of children 14 and under lived in a family with their parents, with the remainder living with other relatives or non-relatives.<sup>224</sup> About 19 per cent of children lived with lone parents, a slight increase from 2001; of these, over 82 per cent lived with female lone parents.<sup>225</sup> There has been a small increase in the number of children living in households with grandparents, although most of them are living with their parent(s), as well.<sup>226</sup> This may have ramifications for more grandparents applying for custody or access in the case of family breakup. A Bill to strengthen grandparents’ rights to form and continue relationships with their grandchildren was introduced in the Ontario legislature in April 2012.<sup>227</sup> While the tendency for several generations to live under one roof may have declined in certain cultures, it may be more significant among other cultures in which it is not unusual for grandmothers and sometimes other female relatives to assist with the care of the family.<sup>228</sup>

Within the family, the role of women has undergone a profound transformation in part resulting from women’s increased economic independence and more generally their greater independence in law and socially, as well as an evolution in expectations about men’s role. In part, it also reflects an economy and increased expectations about what families should provide that requires two income earners in the family. Notably, men are no longer the main income generators within a family.<sup>229</sup> However, women still earn less than men, however measured, although the gap is smallest with younger women.<sup>230</sup> The increased economic participation of women, among other factors, has contributed to a trend that couples have fewer children and at a later age.<sup>231</sup>

We appear to be in a significant transition period in the relationship between female and male partners, as more fathers play a significant role with their children, as couples decide whether one parent should stay home with the children on factors other than status as the mother and as fewer couples assume that it will be the mother who takes time off work when children are sick.<sup>232</sup> Nevertheless, despite these shifts, there remain significant differences in gender roles within families. For example, among part-time workers, 32 per cent of women work part-time in order to accommodate child care responsibilities, while only 6 per cent of men work part-time for this reason.<sup>233</sup> In 2010, Canadian women spent an average total of 50 hours per week caring for household children, double that spent by men.<sup>234</sup> Although both men and women report caring for seniors, women spend more time doing so.<sup>235</sup> While relations within the family may have begun to change, employers are less likely to allow flexible work hours than was the case in 2001.<sup>236</sup> Nevertheless, women’s increased capacity for economic independence and men’s desire to engage with their children are just two aspects of the changing

relationship that have implications for resolving custody and access and spousal support obligations. One matter that may be of interest is whether these changing circumstances have affected how men and women negotiate family issues differently.

While the observations in the above paragraph may be generally the case, there are many differences among women. Factors such as sexuality, ethnicity, Aboriginality, economic status, religion or culture, ability, age, place of residence (urban or rural), among others, will have an effect on the lives of women, as they do on the lives of men.<sup>237</sup> We provide a few examples that might be relevant to family relationships and breakdown.

Aboriginal women are less likely to be in married relationships than are non-Aboriginal women.<sup>238</sup> They are also more likely to be lone parents and to have more children at a younger age.<sup>239</sup> However, there is a greater likelihood that more people, including Elders, are involved in raising a child.<sup>240</sup> Aboriginal women were less likely to have a university degree than were non-Aboriginal women (but more likely than Aboriginal men),<sup>241</sup> less likely to be employed than were non-Aboriginal women, as well as than Aboriginal men who lived off-reserve<sup>242 243</sup> and more likely to live in low income than either non-Aboriginal women or Aboriginal men.<sup>244</sup>

There has been a dramatic shift in the home countries of immigrants generally over the past two or three decades and this is true of women. Female immigrants now come from over 220 countries and the proportions coming from Europe and from Asia and the Middle East has reversed since 1971.<sup>245</sup> More female (as well as male) immigrants are likely to be members of visible minority communities than was the case in the past, as a result of the change in "source countries". Thus "[i]n 2006, visible minorities accounted for 55% of the total female immigrant population, up from 22% in 1981".<sup>246</sup>

Women who are immigrants are more likely to be married than are Canadian-born women.<sup>247</sup> More "visible minority" women lived in married relationships than non-visible minority women.<sup>248</sup> Visible minority women are also more likely to have a university degree than are non-visible minority women.<sup>249</sup> Immigrant women generally are more likely to have a university degree than Canadian-born women, yet although a very high proportion of immigrant women work for pay (some 90 per cent of immigrant women in the core working ages of 25 to 54 were wage earners), the levels and income are lower than for Canadian-born women; the gap is less for immigrant women who have been in Canada for longer periods, however. Women have been more likely to enter Canada under the Family Class category or as the spouse or dependent of an Economic Class principal immigrant than as an Economic Class immigrant and this can have consequences for language or employment skills.<sup>250</sup>

As we previously noted, while the lives of women may differ depending on a number of factors, the lives of many women are different from those of men across most communities, whether economically, socially or in other respects. For example, women are more likely to be subject to domestic violence than are men, and to be subject to more serious forms of violence. For Aboriginal women, the reported rate of spousal violence in 2009 was 12 per cent, compared to 6 per cent for non-Aboriginal women.<sup>251</sup> Aboriginal women also report high rates of financial or emotional abuse, but in this case similar to rates reported by Aboriginal men.<sup>252</sup>

In 2006, Aboriginal people constituted 2 per cent of Ontario's population. The 2006 Census revealed 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 Canadian Aboriginal children 14 and under lived with both parents, Aboriginal children were more likely to live in lone-parent households (most often with the mother or a grandparent). They were also more likely to live in multiple family households. Sixty per cent of Aboriginal people in

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Canada lived off-reserve, with approximately 20 per cent living in rural areas.<sup>253</sup> Aboriginal Affairs and Northern Development Canada reports that “[o]ne in four Ontario First Nations is a small, remote community, accessible only by air year round, or by ice road in the winter. Ontario has more remote First Nations than any other region in Canada”.<sup>254</sup> This has implications for how information and services are delivered to the members of these communities.

For Aboriginal people in Ontario the family encompasses an extended network of grandparents, aunts, uncles and cousins. This element of Aboriginal cultural identity is highly relevant to family law issues such as custody and access, and it underlines the necessity for cultural sensitivity within the family justice system.

Aboriginal people are overrepresented in Ontario’s family law system as well as in the criminal justice system.<sup>255</sup> Aboriginal communities face unique and complex barriers to accessing justice. One significant barrier is the distrust that many Aboriginal people experience towards the justice system and law enforcement authorities reflecting different conceptions of justice, historical and ongoing discrimination in court and language barriers.<sup>256</sup>

*Building on our Competencies* did not provide information about the literacy rates of Aboriginal populations in Ontario; however, it states that “[t]he prose literacy performance of the Aboriginal populations surveyed is lower than that of the total Canadian population”, with 60 per cent of the urban Aboriginal populations in both Manitoba and Saskatchewan scoring below Level 3 on the prose literacy scale (compared to 48 per cent of the Canadian population as a whole).<sup>257</sup> Although we do not have figures about literacy for Ontario, we note that in Ontario, 38 per cent of Aboriginal peoples have not completed high school and about 38 per cent have some type of post-secondary education (compared to 51 per cent of the non-Aboriginal population).<sup>258</sup>

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For status Indians living on reserves, family law is legislatively more complicated than for most people living in Canada. For example, the matrimonial home on a reserve is not subject to provincial legislation, although legislation before Parliament would apply provincial legislation in this regard to reserves.<sup>259</sup> First Nations that are covered by the *First Nations Land Management Act* are required to create a regime relating to First Nations land in the event of marriage breakdown.<sup>260</sup>

In developing its Aboriginal Strategy, Legal Aid Ontario (LAO) heard about four barriers in particular that Aboriginal people experience in accessing justice: 1) administrative and operational problems (including geographic barriers as a result of living in remote communities, lack of access to computers and telephones, and language barriers); 2) the lack of cultural competency among lawyers and LAO staff; 3) the lack of public legal education and information accessible to Aboriginal communities and service providers; and 4) insufficient outreach to and too few networking opportunities among Aboriginal communities and organizations.<sup>261</sup> Across many of these categories, there is a lack of culturally-specific education materials available to the public, especially materials recognizing historical injustices experienced by Aboriginal people.<sup>262</sup> LAO has taken steps each year since to advance its Aboriginal strategy by providing Aboriginal competency training, seeking to hire Aboriginal staff and developing “a public legal education plan focusing on Aboriginal child protection, to be delivered in a culturally appropriate format, via print, audio/radio and video”, among other initiatives.<sup>263</sup>

Changes in immigration patterns have led to changes in the ethnic and religious make-up of Ontario families, particularly in larger urban centres. About 67 per cent of Canada’s population growth now occurs through immigration.<sup>264</sup> In the 2006 Census, foreign-born Canadians reported more than 200 countries of origin. Ontario was home to more than 3 million first generation immigrants representing almost 30 per cent of Ontario’s

population.<sup>265</sup> In 2009 and 2010, just over 42 per cent of new Canadian immigrants (118,116 people) settled in Ontario, the largest percentage of all the provinces.<sup>266 267</sup> The bulk of Ontario immigrants (80 per cent) settle in the Greater Toronto Area.<sup>268</sup> Although the majority of these immigrants live in Toronto, they are increasingly settling in suburban communities such as Mississauga and Brampton. Other urban communities such as Ottawa, Hamilton and London also attract increasing numbers of immigrants.<sup>269</sup>

In 2006, over 20 per cent of Ontario's residents were racialized persons.<sup>270</sup> In Toronto, approximately 43 per cent of residents were racialized.<sup>271</sup> While the rates in specific communities may vary, racialized people in Toronto are much more likely to live in poverty than members of other groups.<sup>272</sup> This means that the availability of legal aid or other means of accessing legal representation has an even greater impact for members of this group and for others (such as single parent families, individuals over 65 and Aboriginal persons) than others.

The influx of newcomers from Asia and the Middle East has been accompanied by an increase in persons identifying with religions such as Islam, Hinduism, Sikhism and Buddhism, although the Protestant and Roman Catholic religions remain the predominant religions in Ontario.<sup>273</sup> As far as degree of "religiosity", one study found that young people are less likely to be religious than are older people and "[m]en are also much more likely to have low religiosity than women". Furthermore, the study found that 41 per cent "of the immigrants who arrived in Canada between 1982 and 2001 have a high degree of religiosity, compared with 26 per cent of persons born in Canada".<sup>274</sup> Where religion plays a significant role in the family or for only one partner, it may help to define relations between the couple and expectations about family breakdown, custody and access and possibly the treatment of one or the other partner by their community.

*Some members of racialized communities (immigrants or born in Canada) may have developed a distrust of the system, sometimes from experiences in their "home" country, but also possibly from previous experiences with the Canadian system, that make them reluctant to access services connected with the court system...*

The increased diversity of immigrants and of cultural norms and values also affects access to the family legal system. For our purposes, there are two important issues: the extent to which immigrants are unfamiliar with the Canadian justice system generally and more particularly with the family justice system (something they may share, but for different reasons, with Canadian born individuals) or the extent to which they face language and cultural barriers that complicate interaction with the system. Some members of racialized communities (immigrants or born in Canada)<sup>275</sup> may have developed a distrust of the system, sometimes from experiences in their "home" country, but also possibly from previous experiences with the Canadian system, that make them reluctant to access services connected with the court system, for example.<sup>276</sup>

Immigrants face a number of challenges in accessing the justice system, in particular language barriers. According to the 2006 Census, 1.8 million Ontarians speak a language other than English or French most often at home and nearly 270,000 Ontarians have no knowledge of either official language.<sup>277</sup> Between the 2001 and 2006 censuses, the number of people in Ontario with no knowledge of either official language increased by nearly 34,000 and the number who spoke a non-official language most often at home rose by nearly 275,000, although this does not mean that they lack facility in English or French. The 2011 Census showed that in Toronto, just over 15 per cent of persons spoke only a language other than English or French.<sup>278</sup>

Cohl and Thomson's 2008 Report, *Connecting Across Language and Distance*, estimates that up to 500,000 Ontarians may need an interpreter to access legal information. The vast majority of immigrants with language challenges live in urban centres such as Toronto, indicating that linguistic access to justice is primarily an urban issue with certain exceptions such as temporary migrant workers.<sup>279 280</sup> It is worth noting that it is not only immigrants for whom English (or French) may not be a first language. Although the mother tongue of

most Aboriginal women in 2006 was English, with far fewer identifying French, the mother tongue of almost a fifth was an Aboriginal language.<sup>281</sup>

In this regard, it has been suggested that although many people describe the central barriers to accessing the justice system as high costs and procedural delays, another significant source of barriers may be the lack of a common language and dialogue about the meaning of justice.<sup>282</sup> In the family system, this may take the form of different understandings of what an “effective family” is or what the appropriate relationships among family members are. 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>283</sup> based on the factual situation of persons having formed close ties, economically and personally.<sup>284</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>285</sup> In practice this can raise complex issues for families recently emigrated from countries with these familial characteristics.<sup>286</sup>

...[I]t has been suggested that although many people describe the central barriers to accessing the justice system as high costs and procedural delays, another significant source of barriers may be the lack of a common language and dialogue about the meaning of justice.

The lack of a shared language across diverse communities may impede immigrant or racialized people’s ability to obtain information about their legal options that is accessible and applicable to their lives. In “Cultural Fluency for Family Law Lawyers”, Fareen Jamal discusses the impact of culture differences in family law matters. While stressing that an individual’s behavior cannot be predicted solely on cultural background or affiliation, she underscores the utility of understanding cultural aspects when understanding behaviour in a pluralist context, particularly when, as she notes, diverse individuals are accessing family justice services that “have historically been designed to cater to middle-class North-American Caucasian families with a European heritage”.<sup>287</sup> Macfarlane notes, “[law’s] claim to universalism means that law has few if any mechanisms for identifying personal cultural norms or cultural misunderstandings between disputants and even fewer for addressing these in process or in outcomes”.<sup>288</sup>

*Building on our Competencies*, which discusses literacy levels, does not distinguish literacy rates for immigrants based on province, but reports that “[s]ixty percent of recent and established immigrants, compared to 37 percent of the Canadian-born population, are at Levels 1 and 2 [the lowest levels] in prose literacy”. Of note is that “[t]hirty-four percent of recent female immigrants are at Level 1 – compared to nine percent for Canadian-born females”.<sup>289</sup> Immigrants whose mother tongue is neither English nor French have lower prose literacy rates; however, *Building on our Competencies* cautions that one cannot generalize from these rates to rates in immigrants’ mother tongues.<sup>290</sup>

Other barriers also prevent immigrants from accessing the justice system. Many immigrants come from countries with very different legal systems and they may be unfamiliar with basic rights guaranteed under the Canadian system as well as the social services that are available to them. A combination of language barriers, lack of computer literacy, low income, isolation and discrimination may prevent them from learning about services and supports.<sup>291</sup> Some immigrants are reluctant to access services that are not sensitive to their culture, value systems and faith traditions.<sup>292</sup>

Obtaining access to justice in the family system can be difficult for persons with certain kinds of disabilities or with severe disabilities. Approximately 15 per cent of Ontario’s population lives with some kind of disability and in some cases with multiple disabilities.<sup>293</sup> Women are more likely to report living with a disability and with a more severe disability than are men, although they are also more likely to be employed than are men.<sup>294</sup> There is a higher rate of disability among Aboriginal persons than other segments of the population and Aboriginal persons with disabilities have higher rates of low income than other Aboriginal persons or non-Aboriginal persons with disabilities.<sup>295</sup> Canadians living with disabilities earn lower incomes on average than do Canadians without disabilities.<sup>296</sup>

Type and severity of disability also affects the likelihood of living in low income or of living on social assistance.

Persons with disabilities often experience barriers to accessing justice that are unique to their particular disability. For example, someone with a mobility disability may not be able to attend a Mandatory Information Program (MIP) session held in an inaccessible location, while someone with a particular type of learning disability might have trouble accessing the MIP online. A person with a cognitive disability may be precluded from making decisions about taking legal action where he or she is found to lack capacity.<sup>297</sup> Each individual’s specific experience of disability must be considered when evaluating access to justice in the family justice system.

Many persons with disabilities cannot afford to hire a lawyer and, unless legal aid is available, they may be less inclined to pursue a legal claim.<sup>298</sup> Also, persons with disabilities are often dependent on family members for support. This dependency may discourage them from making a complaint or taking legal action against these caregivers.<sup>299</sup>

Other barriers to justice include resource limitations and the lack of disability-related accommodations for services and programs.<sup>300</sup> Although innovations in technology have improved access to the justice system (e.g., wireless communications systems that permit people who are hard of hearing to use earphones to hear proceedings), a lack of resources precludes some people from accessing these tools.<sup>301</sup>

*Perhaps especially where an individual’s disability is not visible (including some types of physical, mental and cognitive disabilities), a lack of awareness and sensitivity may be observed among legal professionals who, like many of us, are not always familiar with the ramifications of non-visible disabilities.*

Communication barriers remain a significant problem for persons with disabilities, both in terms of accessible information and in-person communication with legal professionals. In 2006, a nation-wide study found that none of the materials available to the public in the courthouse racks, legal aid offices, and legal education and information centres they surveyed were available in large print or in audio format.<sup>302</sup> Since then, however, Ontario public agencies have been engaged in meeting the requirements of the *Accessibility for Ontarians with Disabilities Act* which is intended to reduce or remove barriers for persons with disabilities and to require pro-active measures by most organizations by 2025 or in some instances earlier.<sup>303</sup> The Ministry of the Attorney General’s website explains how people can request and receive accommodations such as assistive listening devices, scheduling of proceedings, as well as others.<sup>304</sup> Frustration, fear and a lack of understanding of legal processes may also place additional barriers on an individual’s ability to communicate effectively with others in the justice system.<sup>305</sup> Individuals in the legal system may have difficulty understanding persons with certain kinds of communication disabilities.<sup>306</sup>

Learning disabilities may make learning to read difficult and thus are also associated with low literacy, particularly if the learning disability is not identified early.<sup>307</sup> Other forms of disability may also be linked to low literacy skills. For example, we were told that for many Deaf persons, English or French is a second language and interpreters are required for written documents.<sup>308</sup>

Finally, persons with disabilities are frequently subject to ableist stereotypes that increase barriers to justice and push them towards the social and economic margins of society. Perhaps especially where an individual’s disability is not visible (including some types of physical, mental and cognitive disabilities), a lack of awareness and sensitivity may be observed among legal professionals who, like many of us, are not always familiar with the ramifications of non-visible disabilities.<sup>309</sup>

A poignant example of the gap between the needs of a group of disabled individuals and the delivery of services was brought to our attention by The Canadian Hearing Society in response to our Interim Report in this project:

While the report is working on improvement of the family law system there are still systemic barriers faced by consumers that are Deaf or Hard of Hearing that require services in ASL. For these consumers use of entry points such as the 20 minute phone conversation are not accessible without qualified professional interpreters being used by the legal services themselves. Barriers are created if the burden of equitable access is placed on the consumer who uses other languages to communicate. Most lawyers, duty counsels and other parts of the legal system are unaware of how to provide services that are culturally and linguistically appropriate for ASL users. And it seems that once the problems have been resolved in one region, the solutions do not get shared with other regions so each community means reinventing the wheel and educating staff, lawyers etc. about equitable access to ensure good information and quality of service.

*“Barriers are created if the burden of equitable access is placed on the consumer who uses other languages to communicate.”*

-The Canadian Hearing Society

Ontario’s population is aging.<sup>310</sup> Family issues such as separation and divorce affect individuals regardless of age. However, the increased number of older Ontarians has implications for some family legal issues such as parental abuse by grown children, the obligations of grown children towards elderly parents and the rights of grandparents to see their grandchildren. Certain factors associated with aging may disadvantage some older adults in accessing the justice system. Many older adults experience decreased mobility as they age and require supports (including transportation and enhancements to physical accessibility) to access the justice system. Vulnerable older adults are often dependent on family members or other caregivers for their physical, emotional and financial wellbeing. They may be unwilling to pursue family law claims against people with whom they want or need to maintain ongoing relationships. Older adults may also be reluctant to report abuse if they perceive that police are insensitive or disrespectful to them.<sup>311</sup> *Building on Our Competencies* showed that prose literacy decreased with age and that for the largest proportion of persons over 65 was at Level 1, making it difficult to use legal information.<sup>312</sup> The delivery of information online may also disadvantage those older adults who have not acquired computer skills. Older adults who have had to give up their driver’s licence may find transportation to larger centres hard to find if they live in rural areas.

Older adults also face systemic barriers to access to justice. These include ageist or paternalistic attitudes of people implementing the law, lack of sufficient training and information on legal requirements for those implementing the law, lack of oversight mechanisms for legal rights and protections, lack of meaningful remedies when rights have been violated, over-reliance on complaint-based systems and the failure to acknowledge and accommodate older adults’ needs in establishing and delivering services.<sup>313</sup> A serious problem exists in the complexity of the laws dealing with older adults; only a small minority of lawyers has expertise in these issues and very few plain language materials about seniors’ legal rights are currently available to the public.<sup>314</sup>

In addition to the diversity of its population, Ontario must also contend with the diversity of its geography. Ontario has reversed the proportion of its population living in rural and urban areas over the past 150 years. In 1851, 86 per cent of the population lived in rural areas; by 2006, 85 per cent lived in urban centres.<sup>315</sup> According to Statistics Canada, in 2011, the city metropolitan area (CMA) populations of Ontario’s urban areas ranged from nearly 119,000 people in Peterborough to over 5.5 million in Toronto.<sup>316</sup> Notwithstanding this trend toward urbanization, legal services must be delivered across the province, including more remote locations. Distance has been identified as the biggest barrier to obtaining legal information and services. For example, broadband access is not available in certain parts of the province.<sup>317</sup>

One of the most significant and perhaps most widely acknowledged forms of diversity in relation to accessing the legal system, including the family system, is economic status. Legal aid and other ways of delivering legal services at lower cost are responses to the inability of people to access the system effectively because they cannot afford legal

representation. However, the inaccessibility of the legal system on economic grounds remains a serious challenge, not only in regard to legal representation, but in other ways. One’s hours of work or flexibility in obtaining “time off” may make it more difficult to attend the MIP in some areas in person, for example, or to attend a mediation or court. The need to pay for childcare in similar situations may also be a difficulty.

Nor is “*economic status*” all about poverty, since, as we discuss elsewhere in this Report, the middle-class face significant economic barriers in accessing the system since they cannot afford or easily afford legal services and are not eligible for legal aid. The financial situation of each partner to a dispute can affect the scope of his or her discretion to settle disputes and life after separation. One lawyer wrote to us about her middle-class clients as follows in response to our Interim Report:

Many of my clients are middle class. They have no significant savings so they live off debt or have to sell their homes, borrow money etc. They are often living pay cheque to pay cheque before the relationship breakdown. Things generally do not improve financially after the breakdown. Their children are left during this difficult time in their lives with having parents who are additionally stressed by the judicial system and the lack of a speedy and effective remedy.

Although low economic status cuts across various groups, as we have indicated in this section previously, some groups are more likely to live in low-income or have lower financial means at their discretion, including Aboriginal persons, persons with disabilities, women, especially single parents, and some ethnic groups, and persons with combinations of these characteristics may face even greater difficulties economically. As the Ontario Association of Interval and Transition Houses (OAITH) points out in its response to our Interim Report,

...[C]onsidering how poverty impedes access to justice without accounting for how some groups face disproportionate levels of poverty exacerbated by discrimination based on disability or race, will also fail to adequately account for the lived realities of many Ontarians that impair their access to resources and options others take for granted.

Ontario is home to a rich and diverse population including many vulnerable individuals. Some individuals have intersecting vulnerabilities and all individuals have varying experiences and attitudes. Participants in the system have provided services that recognize the access challenges posed by diversity. Although there are efforts to provide material in different languages or to develop information specifically for Aboriginal communities, for example, the reforms do not appear to address in a systemic way the challenges posed by diversity. For those in remote communities, for those whose language of communication is other than English or French, for women who have small children requiring care, for persons with disabilities and for immigrants from countries with a dysfunctional and authoritarian government, the court house may remain as intimidating and inaccessible to them as it was before the reforms, albeit for different reasons. Nor do the reforms, focused primarily on the courts, address the needs of many individuals who need information and access to help before considering going to court. As we have pointed out in Chapter II of this Part, while there is a great deal of information available offered by many different entities, much of it is difficult to navigate or understand, especially if people do not have help.

The challenge for Ontario’s family justice system is to ensure services respond to this diversity to improve access to justice for all Ontarians. Policy makers must have a nuanced understanding of the different makeup of Ontario families and the differing roles within the family in order to provide service that is responsive to the needs of users of the system. This is not to say that family justice stakeholders have not developed materials and services with a view to diversity.<sup>318</sup> Rather a continued and even increased awareness of the challenges posed by delivering services to a diverse population – and the changing dynamic of that diversity – must be a focal point of policy and program development and of service delivery.

*Although low economic status cuts across various groups...some groups are more likely to live in low-income or have lower financial means at their discretion, including Aboriginal persons, persons with disabilities, women, especially single parents, and some ethnic groups, and persons with combinations of these characteristics may face even greater difficulties economically.*

### 3. The Seeds of an Inclusive Family Law System

As one commentator has observed,

...[W]hile we can't know all there is to know about all of the different people and circumstances with whom and with which we interact, we do need to be cognizant of the existence of those other realities and circumstances. We must therefore develop the sensibilities that allow us to recognize that there are other realities than our own that may be influencing a situation or context.

To do this requires that we continually reflect on our assumptions and taken for granted conclusions. Our histories of inclusion and exclusion in society require that we must recognize when situations, systems and yes even our laws are not always equitable. It also means that sometimes we must take a differentiated approach to create equality of opportunity, or of access. It means that although we may feel that we have heard enough about the issue of diversity and inclusion, we haven't.<sup>319</sup>

Ontario is not unique in the world in facing the challenge of providing services to diverse groups of individuals. Many countries around the world are becoming culturally diverse and migrants are increasingly looking to the nation state for laws, policies and practices leading to increased political participation and official recognition of their language and religion. Accordingly, managing diversity and developing policies aimed at social inclusion has become a major focus in many nations. Australia, for example, has been faced with similar challenges in its family justice system. In February 2012, Australia's Family Law Council released a report to the Attorney General entitled *Improving The Family Law System for Clients from Culturally and Linguistically Diverse Backgrounds*.<sup>320</sup> Although we do not say that the comparison is completely apt, it is worth noting that the Council identified "factors that operate in combination to impede the ability of people from culturally and linguistically diverse backgrounds to access the services of the family law system" that are similar to those that our research and consultations also have identified, including

a lack of knowledge about the law and a lack of awareness of available services, language and literacy barriers, cultural and religious barriers that inhibit help-seeking outside the community, negative perceptions of the courts and family relationships services, social isolation, a lack of collaboration between migrant services and the family law system, a fear of government agencies, a lack of culturally responsive services and bicultural personnel, legislative factors and cost and resource issues.<sup>321</sup>

In the Council's consultations, it found that while there was evidence of collaboration between service providers and community members to address the needs of cultural and linguistic communities, its "examination of these issues suggests that a more systematic set of responses is warranted".<sup>322</sup> Although the Council's scope was limited to culturally and linguistically diverse populations, the authors reported that many service providers in the family law system advised that "many of the barriers that inhibit clients from culturally and linguistically diverse backgrounds from successfully engaging with the system similarly affect other clients from low socio-economic and disadvantaged backgrounds".<sup>323</sup>

In *Delivering Services in Multicultural Societies*, Alexandre Marc argues that addressing diversity through public policy has a number of benefits, one of which is the reduction of the consequences of social exclusion in "prevent[ing] people from accessing services, employment, or justice".<sup>324</sup> Marc explained that mental health researchers have defined the concept of "cultural competence" "as a set of congruent behaviours, attitudes and policies that come together in a system or agency or among professionals that enables systems, agencies and professionals to work effectively in cross-cultural situations".<sup>325</sup> This is equally relevant for actors in the legal system and in collaboration between the legal system and other disciplines or regimes. Marc adds, "The concept of cultural competency goes beyond cultural awareness or sensitivity. It represents the institutionalization of efforts to provide appropriate programs or policies for diverse populations".<sup>326</sup>

*"The concept of cultural competency goes beyond cultural awareness or sensitivity. It represents the institutionalization of efforts to provide appropriate programs or policies for diverse populations".*

- Alexandre Marc

Jamal also underscored the importance of "cultural fluency" in the practice of family law:

Cultural fluency is particularly important for family law as it is often precisely within the parameters of the marital relationship that individuals are motivated to practice their normative culturally determined ethics.

...

Family is a contentious and emotive subject. Controversies about "the family" touch deep emotional commitments that shape the social and political positions people take and their willingness to defend their position or to compromise. These commitments are culturally informed and raise debates about the kind of society we value and aspire to.<sup>327</sup>

Although the above discussion relates specifically to the issue of cultural diversity, including membership in an Aboriginal community, it is equally important to identify and be responsive to the other dimensions of diversity described in the previous section, including age, disability, gender/sex, sexual orientation, literacy, geography and economic status. Thus one of the remaining challenges for the family justice system is to develop service delivery that addresses the various dimensions of diversity with the goal of increasing substantive inclusiveness. The provincial government is well aware of this issue and has taken important steps to ensuring that diversity is accounted for in the development of programs and services. In 2009, the provincial government launched the OPS diversity three year strategic plan.<sup>328</sup> In the 2011 OPS Diversity Annual Report, *Toward Inclusion*, the Diversity Office outlined the impetus for a diversity plan as follows:

The Ontario Public Service (OPS) provides programs, policies and services to 13 million people in one of the most diverse jurisdictions in the world.

Ontario has changed dramatically and projections show this change will continue well into the future as our population ages and we continue to attract newcomers from around the world. In 2009 the Diversity Office released the OPS Diversity Three-Year Strategic Plan, *Driving Change From a Solid Foundation*, which sought to integrate diversity, accessibility and inclusion into the core business of the OPS.<sup>329</sup>

Part of the OPS strategic plan was to develop a diversity and inclusion lens. The OPS Inclusion Lens is an online tool that identifies existing and potential barriers to inclusion when developing or reviewing policies, programs and services. It asks questions about diversity, accessibility and inclusion. In essence, the lens is an analytical framework along 17 dimensions of diversity for use by OPS staff in the course of their work including in the implementation of a program or service; full implementation is expected by 2016. According to a description prepared by the OPS Diversity Office:

The Lens ensures that government policies, programs and services are inclusive and responsive to the needs of all Ontarians. This is critically important for an OPS that delivers relevant and excellent public services. Inclusion and accessibility are a top priority for the Government of Ontario and the Lens is a key commitment of the OPS Diversity Three-Year Strategic Plan.<sup>330</sup>

The use of an analytical tool such as the Inclusion Lens is a way to critically evaluate programs and services from the perspective of diversity. We believe that any program or service which is meant to serve the public must be evaluated in this manner to ensure it is accessible to all Ontarians. The LCO has created two Frameworks that may be of value to government and quasi-public and private actors in reviewing existing or developing new laws, policies and practices, as appropriate; one is intended to promote consideration of the needs and experiences of older adults and the other the needs and experiences of persons with disabilities, both designed to advance substantive equality.<sup>331</sup>

One area in particular in which diversity has been recognized in provincial policy is that of domestic violence. For example, Ontario's domestic violence action plan identifies as one component the transformation from a "mainstream" program to one that includes "[t]argeted approaches to meet diverse needs (francophone, aboriginal, ethnocultural/

racial, people with disabilities, rural/farm/northern, seniors)”, including “[t]argeted initiatives for groups that are at increased risk of domestic violence or for whom access to supports is limited by language, geography, disability or culture”.<sup>332</sup>

Although there have been discrete efforts to be more inclusive, some of which we have referred to above, what appears to be lacking often is a systematic approach to diversity in the family sector. A systematic approach would, as do the OPS Diversity Lens and the two LCO Frameworks, identify characteristics which are relevant for (that is, affect) people’s interaction with the family legal system, a method for ensuring that these are taken into account in creating or reviewing the programs and services and anticipated timelines for implementation. As we said previously, implementing new services or programs or redesigning existing services or programs would follow the principle of progressive realization: when objectives or goals have been defined, it is possible to identify where gaps remain and fill them as resources become available.

In the next section, we discuss very briefly how diversity or inclusiveness has influenced our assessment of the early stages in the family system and how it stands above individual parts of the system.

### **C. Inclusiveness as an Overriding Value: Advancing Substantive Equality**

*Inclusiveness is an overriding value rather than equivalent to the improving of a particular aspect of the system, such as increased access to legal representation. It is, nevertheless, advanced by improvements in these specific aspects and it in turn contributes to the development of substantive equality in Ontario society.*

Inclusiveness is an overriding value rather than equivalent to the improving of a particular aspect of the system, such as increased access to legal representation. It is, nevertheless, advanced by improvements in these specific aspects and it in turn contributes to the development of substantive equality in Ontario society. Identifying “achieving substantive equality” as an overriding value in our two framework reports (on older adults and persons with disabilities, respectively) influenced how we developed the principles and their application that comprise the framework. It also influenced how we carried out those projects. The same is true of this Final Report in our family law project.

In this regard, although we concentrate below on identifying where the system can still benefit from reforms in specific ways (provision of information, access to legal advice and representation and responding to the relationship between legal and non-legal matters), it is important to note that there are some larger issues that cannot be ignored (and that are not unique to family law) that complicate how to respond to these more specific issues.

In presenting the “postcards” of diversity earlier, we do not suggest either that they are unique to the family context or that addressing them will necessarily resolve other aspects of people’s lives, although they may have some impact. Indeed, for some people the need to access the family system may never arise or arise in only a minor way. Yet this does not mean we should not seek to mitigate them where we can. Similarly, to the extent members of some communities have an uneasy relationship with the family legal system for one reason or another, this may extend to the legal system more generally. Where views about women’s role may run contrary to mainstream views, they likely affect not only expectations about family dissolution, but also about how women should behave in society at large. They need to be taken into account if we are to understand and improve the bigger picture and assess their relationship to fundamental Canadian values. Our task here, however, is to appreciate that the overriding value of inclusivity responds to the uneven distribution of disadvantage experienced by different groups in Ontario.

There are some challenges that transcend the experiences or needs of particular groups, but that may have consequences that vary depending on people’s characteristics or

backgrounds. In these cases, there may need to be specific adaptations to more general responses. For example, in thinking about improving access to information, there are some general suggestions we can make about the need to make sources more comprehensive and to make it easier to navigate the maze of online information. In creating an information "hub", however, we need to remember that literacy skills, for example, can affect access to online materials. Low literacy levels are not unique to particular groups and ways of addressing them can be helpful across the population, particularly those with low education levels. At the same time, Aboriginal persons, older adults and some immigrants are more likely to have lower literacy skills than others.

The suggestion has been made that programs designed and delivered by non-Aboriginals simply cannot bridge the cultural divide between the mainstream justice system and the unique world-view and needs of Aboriginal communities. Some culturally-specific legal services such as Aboriginal Legal Services of Toronto currently exist in Ontario.<sup>333</sup> In other parts of the system where services are provided to people regardless of their background, it may be desirable to place an emphasis on training Aboriginal service providers.<sup>334</sup>

There are other examples. People who have reached older age today tend to have lower levels of education and are less likely to be computer literate.<sup>335</sup> An individual whose first language is not English or French may have great difficulty deriving benefit from sitting in a Mandatory Information Program (MIP) session if they cannot bring their own "translator", perhaps a member of the family, who in any event, is unlikely to be familiar with what is being described. (We understand that efforts are being made to provide the MIP in other languages.)

Similarly, we know that poverty or low income is not unique only to particular groups and that and that efforts to provide services to those in low-income do not have to be designed for each specific group. Nevertheless, more people in certain groups than others experience it. A significant number of older adults live in poverty.<sup>336</sup> Older women in particular seeking to end or having to respond to their husband's desire to end a marriage may have difficulty accessing funds to support early access to reliable advice and representation. Low income is also an issue for persons with disabilities. As we indicated above, poverty rates are higher in certain "visible minority" communities. For some groups in particular, poverty will increase the difficulty of accessing help in the first place. Where and how legal aid services are delivered, as well as how their availability is communicated, may be shaped at least in part by the more specific way poverty is experienced by different people. In other words, the idea is not to develop legal aid for persons with disabilities (for instance) and legal aid for older adults, but for persons who cannot afford legal assistance and to incorporate aspects that will be particularly helpful to persons with disabilities and particularly for older adults and no doubt, helpful to others.

## **D. The Need for Systemic Change**

The barriers that we have identified through our research and our consultation process are complex and our family justice system, as it currently exists, cannot meet them. This is hardly surprising. With some (important) exceptions, our system presumes homogeneity on the part of users, it is premised on the presence of lawyers who have specialized knowledge and training to shepherd lay people through the system and for the most part, it divorces the legal problem from the other issues that attend relationship breakdown. We believe that any further reform of the system must address these issues in order to create meaningful access to the family justice system for the citizens of Ontario. This requires seeing our family justice system as it is perceived by those who need to access the system, ensuring that their diversity is accounted for in the creation of services, as much as possible in line with

*Where and how legal aid services are delivered, as well as how their availability is communicated, may be shaped at least in part by the more specific way poverty is experienced by different people.*

progressive realization. It also requires thinking creatively about how to provide legal services. Full scope legal representation is out of the reach of many, if not most people. It has been increasingly recognized that the justice system and lawyers can no longer operate on the all or nothing proposition that traditional legal representation embodies. We must take a hard look at what “lawyering” entails and find ways to create competent and effective legal services outside full scope representation by a lawyer. It is also necessary to find a way to effectively deal with the cluster of problems which arise from marital breakdown and ensure that people have access to the non-legal services they need to ensure the health and stability of their families.

*We believe a systemic response to the issues that prevent effective access to the family justice system would involve better coordination of efforts to create comprehensive models of service delivery. The model would reflect the benchmarks discussed above and would treat inclusiveness as an overriding value.*

Our consultations and research and the responses to the Interim Report have shown that people facing family breakdown seek information and solutions in places where they feel comfortable and where there exists a level of trust between them and the service provider. These places, whether formal or informal, whether directly tied to the court system or not, operate as “entry points” into the family justice system: they provide access to family justice. There have been some efforts at developing entry points outside the court house in order to better accommodate the needs of users. These include the recent collaborations between LAO and Family Justice Centres to provide duty counsel services within the centres and the creation of a Family Law Information Program based on the Mandatory Information Program and available to all who have access to it on the internet. These initiatives, however, are limited in scope. In the context of access to justice for rural and remote communities and linguistic minorities, Cohl and Thomson observed,

There is little evidence of province-wide or regional efforts to create a systemic response to access to justice challenges that builds from a shared vision, involves all who need to be part of it, identifies the highest priorities and explores the benefits of working together. While some collaboration and innovative partnerships exist, there are few incentives to create and nurture them. As a result, systemic issues do not get sufficient attention.<sup>337</sup>

This observation can be extended to the access to justice challenges facing many Ontarians in larger communities who find themselves in the midst of family breakdown. We believe a systemic response to the issues that prevent effective access to the family justice system would involve better coordination of efforts to create comprehensive models of service delivery. The model would reflect the benchmarks discussed above and would treat inclusiveness as an overriding value.

In Part Two, we examine recent and innovative developments both within Ontario and in other jurisdictions that may provide valuable lessons and direction to addressing the systemic barriers to family justice in Ontario. Creating these entry points requires significant changes to the way legal services are delivered. Nevertheless, we believe that the optimal approach to addressing these barriers is to strengthen access to service through the creation of integrated entry points and in doing so, also to advance substantive equality in Ontario.

## **PART TWO:TRANSFORMING THE FAMILY JUSTICE SYSTEM: MULTIDISCIPLINARY, MULTIFUNCTION CENTRES**

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## **PART TWO: TRANSFORMING THE FAMILY JUSTICE SYSTEM: MULTIDISCIPLINARY, MULTIFUNCTION CENTRES**

### **I. REVIEW OF PART ONE**

For readers who are focussing on this Part of the report, the Introduction at the beginning of the entire report may provide useful background about the origins and focus of the LCO's family law project.

In Part One, we provided an overview of the family justice system, including a discussion of the most recent reforms to the system, briefly measured against benchmarks (which we discuss again below), and remaining important gaps at access points that we believe could be improved. We have adopted an underlying premise that early intervention in family law disputes can minimize the likelihood of an unnecessary protracted dispute before the court and result in better outcomes for families. We recognize that there are cases for which the particular attributes provided by the courts may be the best option; however, as the courts themselves have said, there are many cases that can be resolved prior to or at early stages of the court process. We believe that the current system could benefit from changes in the following areas:

- a more systematic response to Ontario's diverse population and geography;
- rationalization of the provision of information;
- greater assistance with using information and self-help materials;
- greater provision of affordable legal services; and
- explicit inclusion of responses to the intersection of legal problems with other problems for individuals who are facing family breakdown.

To provide a context for our suggestions and recommendations in this Report, we discussed in Part One the ways in which the structure of and relationships within the family have changed over the past two decades and more recently. In this regard, we referred to common law and legal marriage and sole-parent families and to the legal recognition of same-sex marriage, as well as to the evolving relationship between men and women and between parents and children, both reflective of changes in the broader society. These changes include the greater economic independence of women and the way in which technology has dramatically shifted understandings of time and space that affect the parent-child relationship, for example.

We also discussed how major societal changes have affected the composition of families in another way, specifically the increased diversity in cultural and religious values held by family members resulting from the increase in immigrants from countries other than the United Kingdom or Europe. Similarly, the family system must respond to the aging of the population and to the increased expectations about (and reality of) the inclusion of persons with disabilities. We further noted that the family legal system must continue to grapple with longstanding challenges, notably the situation of members of Aboriginal communities and domestic violence which is perpetrated primarily against women and which cuts across communities. Still remaining, despite greater urbanization, are difficulties associated with geography, whether rural areas or the Ontario north. Literacy levels have still not reached the point at which we can assume that everyone is able to understand and apply to their own circumstances the vast amounts of family information available to assist people in considering their own family problems. Finally, we explained, as have others, that the lack of affordable legal advice and representation remains a problem to be solved.

In the longer term, we believe that these issues can be best addressed through the creation of integrated entry points into the family justice system, that is, multidisciplinary, multifunction centres. However, there are some changes that would need to occur to provide the appropriate setting for the development of these centres, changes which we believe would also benefit the system in the short term. We discuss these possible changes below. As mentioned above, we have developed “benchmarks” that we think reflect the characteristics of a system that responds to the needs of family litigants and applied these benchmarks in Part One in broad terms to the current system. For convenience, we reproduce them here again.

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An effective entry to the family law system meets the following benchmarks:

- » provides initial information that is accessible to people in their everyday lives, including information about possible next steps in their efforts to resolve their dispute;
- » to the extent that the information is provided online, provides it through a single “hub”;
- » provides assistance for persons who might have difficulty accessing, reading, understanding or applying the information;
- » helps an individual determine the nature of their family problem(s) in a timely and effective way, including whether their dispute “really” is a legal dispute;
- » assists individuals to find the approach to resolving their problem that is as simple and timely as possible, minimizing duplication of persons and institutions with whom the individual must deal and promoting ease of communication and collaboration between different actors in the system (this refers to a “triage” system that assists in allocating resources according to priorities);
- » has the capacity to respond to different educational and literacy levels; the existence of domestic violence; and factors such as cultural norms, Aboriginal status, gender, sexual orientation, age, language, disability, geographic location and other major characteristics;
- » develops programs and policies in consultation with affected communities;
- » takes into account the financial capacity of individuals while ensuring the quality of service;
- » recognizes the multiple problems that accompany family problems, such as mental health or financial problems that may be a stimulus for or exacerbate family problems;
- » offers a “seamless” process from early stages to final resolution; and
- » is based on a sustainable model.

## II. LAYING THE GROUNDWORK FOR EFFECTIVE ENTRY POINTS

### A. Introduction

The creation of effective entry points requires a reimagining of the services to be delivered and the roles of various actors in the justice system. Among them are the need to make information more accessible, increased assistance with “self-help materials”, particularly for those who may need help for reasons of literacy, language, culture or lack of economic resources; alternatives to full-service representation by lawyers and service by legally trained persons other than lawyers; throughout an appreciation that family disputants may have different responses to, expectations about and capacity to interact with the family justice system based on a range of backgrounds and characteristics; and recognition that people may have problems that are not family legal problems, but that may have led to, exacerbated or prolonged the existence of family legal problems. In this chapter, we make suggestions about how these aspects of the family justice system might be improved. In the next chapter, we discuss and make recommendations about the creation of the multidisciplinary, multifunction (or integrated) centres we have referred to above and for which we believe that these suggestions are a precondition, as well as having merit on their own basis.

*...[T]he volume of information and the number of stakeholders who develop and deliver information speak to the lack of integration and coordination required to make information easily accessible and seamless to the user.*

### B. Changes to Facilitate the Development of the Multidisciplinary, Multifunction Centres

#### 1. Effective Provision of Information

Based on what we have heard through consultations and submissions, although there has been an increase in information and as a number of stakeholders pointed out, there is actually a great deal of information, it is not always easy to access, navigate or understand for many people. We referred in Part One to Birnbaum and Bala’s 2011-2012 study of family litigants’ mixed experiences with the MAG website, for example. Some litigants found the website helpful, while others found it too complicated or difficult to translate from legal language.<sup>338</sup>

The very fact of the volume of information and the number of stakeholders who develop and deliver information speak to the lack of integration and coordination required to make information easily accessible and seamless to the user.

As the province moves toward greater access to the Internet for residents throughout the province, the web has become a primary tool for most people to find information. In its response to the Interim Report, the Ministry of the Attorney General highlighted the cost of print material that we had recommended be widely distributed to locations where people regularly go and suggested that a less costly alternative to producing and updating brochures might be a colourful sticker or bookmark to promote the availability of web-based materials. In its comments on the Interim Report, the Ministry of the Attorney General also proposed making contact with service providers such as YMCAs, the College of Physicians and Surgeons and community centres and encouraging these organizations to post a link to family law information on their web sites. We agree that these could be effective initial sources of information that people might see at times they are thinking about getting help for their family problems, rather than having to seek it out.

As we said previously, the Law Society of Upper Canada’s portal is a laudable step toward a better integration of certain kinds of information; however, it is not clear at this point whether the portal will function as a central “hub”. As we explain in Part One, the portal is not easily found and tends to focus on particular family problems and the assistance of lawyers. The location of the Mandatory Information Program and

the Family Law Information Centres at courthouses (recognizing that the MIP can be accessed online) may be a disincentive for certain users to seek these programs out voluntarily or to find them helpful, depending on how early in the process they are looking for help. Legal Aid Ontario's Family Law Information Program has many advantages but it is less likely to come to the attention of people if they are not inquiring into availability of legal aid, a later stage in the process than those who are trying to find information to begin the process.

Various sources of information have benefits, but it remains that it is almost if not actually overwhelming for many people looking for help. The proliferation of online information, while again of great benefit to certain groups, is also difficult to access for people lacking literacy, language or computer literacy skills, as well as people in parts of the province where dial-up access is still predominant. Going forward, the benefits of these various sources of information may be heightened and focused by leveraging the talent and expertise of all major stakeholders that develop information through the creation of a partnership or collaboration. The tasks are three: to restructure the sources of information to mesh with each other, taking the best from all the sources (this will reduce it, as well); designing it to flow more readily from the earliest to the later stages of the process; and indicating at various stages where appropriate assistance in understanding and applying it can be obtained.

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A partnership or collaboration to develop a "hub" would appropriately include, for example, the Attorney General, Legal Aid Ontario, the Law Society and CLEO. Each of these stakeholders has made clear that they appreciate the importance of family law information and they have expertise to contribute to developing seamless and coordinated legal information in the following ways:

- The Ministry of the Attorney General has the mandate to develop and deliver family law services and has expertise in the rules and forms.
- Legal Aid Ontario has expertise in developing and delivering services to low-income Ontarians. Moreover, the Trebilcock Report underscored the need for Legal Aid Ontario to make itself more salient to middle-class citizens of Ontario.<sup>339</sup> Taking a prominent role in a collaborative effort to improve the dissemination of legal information to all Ontarians is one way to fulfill this need.
- The Law Society's mandate includes protecting the public, ensuring competence of its members and promoting access to justice. It can provide valuable information for the public about what to expect from legal services providers and can help to fulfill its "access to justice" mandate.
- CLEO has expertise in developing public legal information, as well as the cultural translation of information.<sup>340</sup>

Any collaborative effort to improve the dissemination of legal information (which includes information about both process and substantive law) needs to address cultural and language issues in order to address the diversity of Ontarians. As we referred to previously, organizations such as CLEO and FLEW provide information directed at particular communities or for particular purposes and often in several languages. The response of the Toronto Lawyer's Association to the Interim Report highlights the need for information in multiple languages:

TLA notes this task [providing legal information] is a more significant one for Toronto than for other areas of the province, because of the size and diversity of its population. Funding to create the on line and pamphlet format of information must be adequate to address the diverse language and cultures in Toronto in order to provide fair access to justice for all of its systems.

Women who are fleeing violent relationships also require specialized information. Indeed, one aspect in which many current sources do respond to need is that they either provide

or link to information specifically about domestic violence, whether in different-sex or same-sex relationships.<sup>341</sup> The existing information for survivors of violence should also be available from the hub.

There is limited information available for children who are in the midst of their parents' separation or divorce. As noted, the public body available to assist children whose parents are separating or divorcing is the Office of the Children's Lawyer. While the mandate of the OCL to provide client service is limited by the provisions of the *Courts of Justice Act*, its expertise in dealing with children could contribute to developing age appropriate information for children.

The objective of more accessible and easily understood information is to increase the ability of individuals, at the early stage of their family problems, to make a preliminary decision about whether to address the potential issues arising from their family breakdown or what the next step should be. Increasing the availability of information in different languages and formats speaks to the challenges faced by Ontario's diverse population. Creating an easy path toward the information, with assistance as needed, allows those who have a limited or no ability to pay for the services of a lawyer to be able to have a basic understanding of the issues, enabling an individual to make decisions about next steps. To the extent possible, the involvement of persons with the characteristics of those who need to use the information can make it more likely that it will be effective.

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## **2. Improving Self-Help Tools**

Good and accessible information is important regardless of the next step someone with a family dispute takes. The next step many people will take, especially if they cannot afford – or believe they cannot afford – a lawyer, will be to turn to additional materials intended to help people undertake their own resolution of the dispute, that is, self-help materials. Included in these materials are forms that individuals can complete online to file an application with the court or to calculate child support, for example.<sup>342</sup> As with information more generally, however, it may be necessary to provide some form of facilitation for many users of self-help tools. According to *Listening to Ontarians*, many people want to solve legal problems on their own: one in three respondents among low and middle-class Ontarians said they prefer to resolve their legal needs by themselves with legal advice but not necessarily with the assistance of a legal professional.<sup>343</sup> While studies have identified a number of concerns with the appropriateness of self-help for certain individuals, these same studies may promote the use of self-help materials under the right circumstances for the "right" users.<sup>344</sup> We need a better understanding of how people use and benefit from self-help materials.

We believe that provided self-help tools and services are one of a range of options available, they can be useful to certain classes of unrepresented litigants, particularly if facilitated (that is, users have access to assistance in understanding or using them). These materials appear to be most effective if they are delivered in coordination with supports such as community based organizations with knowledge or experience with self-help services; trained in-person support workers; and educational and literacy experts.<sup>345</sup>

Given our focus on persons who have not yet entered or will not enter the court system, the assistance provided at the courts will not necessarily help. These unrepresented individuals will require knowledgeable assistance elsewhere. Legal actors such as the Ministry of the Attorney General, Legal Aid Ontario and CLEO all have experience in the development of the tools required for people in family disputes who are still trying to decide how to resolve their dispute.

At present the number of self-help tools and services in Ontario is limited. There are, however, other jurisdictions where self-help services have a longer history and could

provide valuable guidance to Ontario. The increasing number of unrepresented litigants gave rise in the United States to programs catering to their needs. California<sup>346</sup> and New York<sup>347</sup> have been recognized as national leaders and innovators in developing and delivering services for those without legal counsel and their programs have been used as models in other jurisdictions. A variety of services and strategies instituted in the United States to help unrepresented people include courthouse concierge desks; self-help websites; partnerships with law libraries; educational materials (e.g., written materials, videos, and PowerPoint presentations); court-based self-help initiatives; partnerships with public libraries and community centers; community education; and mobile self-help centers. Websites are seen as a relatively low-cost and high-impact option that allow resources to be publicly available, regularly updated and adapted for specific regions or groups (e.g., people whose primary language is not English).<sup>348</sup> Selfhelpsupport.org, which is coordinated by the Self Represented Litigation Network (SRLN), has been described by many as a particularly helpful website. It is a clearinghouse of information on self-representation that offers free membership to practitioners assisting unrepresented litigants. The site has an extensive resource library, webinars, and reports from numerous American self-help centers.<sup>349</sup>

Although little empirical information exists about the distinct impacts self-help tools have on their users or the justice system, many believe that they are equipping self-represented people with more and better information, increasing individuals' preparedness for engagement in the justice system, and increasing the efficiency of the courts. Greater guidance for the unrepresented in California has resulted in reductions in the frequency of unproductive court appearances and increased collegiality, as litigants have a better sense of the court procedures, and an increase in settlements being reached by litigants who used self-help programs. Such litigants were also found to be more likely to obtain "clear [and more easily enforceable] written orders regarding child custody, visitation, and domestic violence."<sup>350</sup> Self-help centres have been found to raise litigant satisfaction through the provision of information.<sup>351</sup> In California, enthusiasm for the use of these tools has come from self-represented people, court staff and members of the judiciary and the bar.<sup>352</sup> Equipped with better information and able to navigate the justice system more efficiently, litigants are also able to minimize absences from work and other important commitments.

The California Judicial Council's Task Force on Self-Represented Litigants, created in 2001, stated that the model self-help center is court-based and "staffed and supervised by court attorneys."<sup>353</sup> The SRLN also found that self-help centres are most effective not only when they "[a]re located in the courthouse or as near to the courthouse as possible", but also when they are integrated into the broader community of legal service providers. The SRLN has also noted that supervision by experienced lawyers, the presence of legally trained staff, and the clear definition and communication of staff roles to users and staff have also increased the effectiveness of these centres.<sup>354</sup>

However, the SRLN also acknowledges that many of the materials available in court-based self-help centers "can also be used in flexible and accessible outside environments", such as community centres or public libraries. The provision of services at non-court affiliated locations is seen as especially important where they address geographical, language and technological literacy barriers to entry points to the justice system. Additional assistance to overcome these barriers may be available at community centers while it may not be offered at court-based self-help sites. Such external locations have been observed to be most effective when they are accessible by a wide variety of people and employ helpful staff or volunteers who have received some legal training on issues affecting the community being served.<sup>355</sup> The California Task Force similarly noted that court-based centers should not be seen as a full answer to problems faced by self-represented litigants because some issues require legal representation. In those cases, it recommends that centres collaborate with legal professionals so that referrals can be made when necessary.<sup>356</sup>

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Where resources may be available, before choosing to increase self-help materials rather than allocating resources to other options, it would be helpful to have a better measure of how effective they are, preferably among different communities and/or in different settings. CLEO has funding from the Law Foundation of Ontario for the preliminary stages of a study of the effect of self-help which when completed could be useful in designing self-help materials and determining when facilitated self-help materials are required.<sup>357</sup>

For reasons we discussed in Part One, such as literacy levels, language, disabilities, or low levels of education, many people will require assistance with self-help materials, even for simple cases. The challenge is to find appropriate facilitators who will be able to serve the diverse individuals who will need their help and can do it without cost or at a minimal cost to the client. Below we discuss the value of trusted intermediaries to address this issue as well as perform other functions which could help improve access to the justice system.

### **3. Enhancing the Role of the “Trusted Intermediary”**

In the Interim Report, we discussed the value of “trusted intermediaries.” Trusted intermediaries include

organizations that focus on social services, services to people with disabilities, immigrant settlement, health care, education, advocacy or a particular faith or ethno-cultural group. They also include agencies that serve the public generally such as libraries, community centres, information and referral services, and hotlines.<sup>358</sup>

*Trusted intermediaries have the potential to be an important linchpin in addressing the barriers that we have identified in accessing the justice system. Because of their ties with the communities they serve, they have a knowledge of and sensitivity to the challenges posed by the diverse needs of their constituents.*

Trusted intermediaries serve an important role as conduits for the delivery of legal services to their constituents, both in helping disputants deal with certain aspects of their problems and in alerting them to appropriate resources. They can also be an integral element in increasing the effective provision of information and self-help materials.

Community organizations know the needs of their communities and clients and are often experts in outreach. Particularly in urban areas, community agencies may also have staff and volunteers who can help people in their first language. Collaboration with settlement agencies and other organizations has become one of the most important ways for legal services to reach communities of non-official language speakers.<sup>359</sup>

Trusted intermediaries have the potential to be an important linchpin in addressing the barriers that we have identified in accessing the justice system. Because of their ties with the communities they serve, they have a knowledge of and sensitivity to the challenges posed by the diverse needs of their constituents. A good example of an organization that could act as a trusted intermediary is India Rainbow Community Services of Peel, which is a non-profit, charitable, community based organization. It provides “culturally and linguistically appropriate services to the Peel immigrant community [a largely South Asian community], enabling integration and supporting their settlement, social services, health, and educational needs”.<sup>360</sup> Its objective is to provide services to all new immigrants in the Peel region, as well as both help immigrants integrate into mainstream society and inform the mainstream community about “the value system of first generation Canadians”. One of its specific objectives is “to provide family counselling and/or referral services in family crisis situations”. We have referred in Part One to other organizations that provide integrated services in areas other than law that could also serve as intermediaries with respect to entering the family legal system.

The ability of trusted intermediaries to provide assistance in the area of family law is, however, often circumscribed by their lack of training and education. Providing appropriate information and training could give them the ability to play a larger role in helping clients facing family breakdown that would have the advantage not only of addressing challenges such as language or culture, but also a less costly way of providing

needed help. Litigants who are better informed, have some understanding of their own case and have some preparation for participating in the legal system benefit the system, as well as themselves. An important initiative, funded by the Law Foundation of Ontario, is currently underway to facilitate this type of training. The “Connecting Communities Consortium” of legal and non-legal organizations such as health centres and settlement organizations is intended to improve the ability of non-legal organizations to provide basic legal information and referrals to their clients.<sup>361</sup> The Consortium, guided by a committee of community and legal workers, advances training projects and is intended to establish a provincial network for community and legal workers “to help share information, research and innovative approaches to providing community legal education and information”.<sup>362</sup> To date the LFO has funded three projects aimed at increasing information about housing rights, consumer rights and workers’ rights respectively for the target groups.<sup>363</sup>

Although the four pillars reform speaks of providing opportunities to identify issues and direct parties to appropriate and proportional services, a comprehensive triaging function of clients is not being performed unless the client is represented by a lawyer. Trusted intermediaries offer great potential to play this role in the system. The benefits of providing training to trusted intermediaries does not replace the necessity of legal advice and assistance; however, such training may help to minimize the time and associated expense of using a lawyer to perform these tasks. In particular, as will be discussed more fully below, in a multidisciplinary entry point, trusted intermediaries can be the liaison between the client and the provider of legal services and ensure smooth and timely transitions for the client.

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#### **4. More Affordable Legal Services**

##### **a) Introduction**

It is unrealistic to think that everyone with a family problem will have access to a lawyer or will be able to have access to a lawyer through their entire case. Although many proposals for reform focus on increasing state funding for legal services, as one observer noted, in most jurisdictions, increased funding “looks very unlikely to happen, not least because justice (especially civil justice) tends to compete poorly with other demands on the public purse, most notably health, defence, education and transport”.<sup>364</sup> Yet the current model serves increasingly fewer people. As Chief Justice McLachlin observed, although Canada’s justice system is strong, healthy and a model for other countries, “[t]he problem is that it is not accessible for far too many Canadians. In my view, access to justice is the greatest challenge facing the Canadian justice system”.<sup>365</sup> The Chief Justice noted that although Canada ranks at a high level in regard to the rule of law on the Rule of Law Index, “the index ranks Canada 9th out of 12 wealthy Western European and North American countries. The most problematic areas, according to the index, are access to legal counsel and unreasonable delay in civil justice.”<sup>366</sup> The Index assesses 97 countries and makes intra-country comparisons on several indicia. For example, although Canada’s score for “Civil justice is free of improper government influence” is .84, for “People can access and afford civil justice”, it is .64.<sup>367</sup>

Although there are many unrepresented (those who would prefer to be represented) and self-represented (those who choose to represent themselves for reasons other than financial) litigants in the system, the theoretical presumption remains that a full service model provided by a lawyer is the way in which family matters should be addressed. None of the reform efforts we have discussed previously in Part One adequately tackles the lack of affordability of legal services for a large segment of the population.

Addressing the needs of self-represented litigants without a significant infusion of state funding to pay for lawyers requires creativity and a willingness to examine critically the validity of the arguments for or against service delivery models which deviate from the

traditional model of full scope representation by a lawyer. In this section, we consider resources currently in existence which may be redeployed to provide people with legal services to help them. Delivering legal services differently may mean that lawyers do not provide full-service delivery or do not provide them through private practice; it may mean alternative billing arrangements or “a limited scope retainer” (also known as “unbundled services”). Delivering services through different people may mean paralegals, if they are given authority to do so, or students, both within prescribed parameters.

We note here that our analysis of options set out below is limited to the consideration of how to create legal services at entry points. This means both legal and strategic advice, assistance either directly or through a trusted intermediary with the preparation of materials and providing advice on negotiated settlements. We are specifically not analyzing the effectiveness of the options described in matters which will require the services of a barrister in court. None of the solutions that we discuss below is meant to replace legal representation before a judge in family courts, an issue that remains open for further consideration.

### **b) Providing Greater Support for Unbundled Services**

As indicated in Part One, the Law Society has recently amended the Rules of Professional Conduct to recognize limited scope retainers as an acceptable form of practice, while acknowledging the difficulties that have been associated with them. Limited scope retainers or “unbundling” are viewed as 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>368</sup>

*... “[U]nbundling creates an important halfway house between the unrepresented and the represented.”*

- Samreen Beg and Lorne Sossin

In response to the Interim Report and the recommendations regarding unbundling contained therein, the Law Society of Upper Canada advised that it had completed its review of its Licensing Process Competencies that form the basis for the development of Licensing Process examinations. Knowledge of limited scope retainers will be tested in licensing examinations. The Law Society pointed to LawPRO’s web site as a useful source of information to reduce a lawyer’s exposure to claims in cases of limited scope retainers. It further advised that it is consulting with the Civil and Family Rules Committees with respect to the development of court rules with additional ethical guidance in the Rules of Professional Conduct on limited scope retainers in a litigation setting. It was the Law Society’s view that in light of this activity there is no justification to consider a two-year moratorium on lawyers’ ability when commencing a family law practice to provide limited scope services as we recommended in our Interim Report. The Law Society pointed out,

In the Law Society’s experience with complaints filed against lawyers, there appears to be no difference between more and less experienced lawyers acting on limited scope retainers. With respect to mentoring and advice, the existing Law Society services for members are sufficient to address issues arising from limited scope retainers should lawyers and paralegals seek those member services. As noted above, dialogue with the Courts has begun in order to address issues relevant to limited scope services in advocacy. Finally, LawPRO maintains information about claims related to limited scope retainers that will be helpful in assessing the effectiveness of such retainers.

The Law Society has incorporated Continuing Professional Development about limited legal services in sessions on specific topics, such as Creative Billing and Collecting and the Family Law Summit, as well as other sessions not related to family law particularly. Diana Miles, the Director of Professional Development and Competence at the Law Society, advises that very few of the 7,000 calls to the practice management helpline that the Society receives every year have been about limited scope retainers.<sup>369</sup>

In its response to the LCO’s Interim Report, The Advocates’ Society noted that “unbundling of legal services could have a meaningful impact on assisting parties to reach negotiated or

mediated resolutions”, since lawyers could provide independent legal advice on the proposed agreement. The Advocates’ Society supported a discrete independent legal advice process for individuals who reach agreement in mediation but underscored the need for lawyers to be protected in this context against liability issues. The Toronto Lawyers Association in its response expressed the need for further study before determining the appropriate training required before lawyers be permitted to provide limited scope services.

In January 2012 LawPRO Magazine warned of the risks inherent in limited scope retainers and highlighted a case where a lawyer’s actions were found to fall below the standard of care.<sup>370</sup> However, the training contemplated by the Law Society may help to diminish the potential for problems arising out of an increased use of limited scope retainers, particularly in often emotionally charged family cases.

Limited scope services already exist. Not only do some lawyers offer them, but Legal Aid Ontario has been delivering limited scope services for many years. It provides duty counsel for the financially eligible as well as provides the Advice Lawyer in the Family Law Information Centres.<sup>371</sup> As discussed in Part One, LAO is transforming its service delivery model in the area of family law and is experimenting with a variety of models of delivery. For the last several years, LAO has critically examined its modes of service delivery in order to provide the best services to the widest number of people. This work has entailed identifying what services are required by family law clients and determining how to provide them in the most cost-effective manner possible. LAO’s goal is to tailor services such that they are directly proportional, to the greatest degree possible, to the needs of the client.

We believe that the provision of unbundling services may provide assistance to people who face family breakdown and cannot afford a full service lawyer and would also pave the way for the establishment of legal services at family justice entry points, as long as concerns about the vulnerability of clients are taken into account.

*The last time eligibility [for legal aid certificates] occurred in 1996 when eligibility was reduced by 22 per cent. . . Eligibility for a legal aid certificate is below every Statistics Canada low income threshold.*

### **c) Extending Affordable Legal Services**

One critical issue to be addressed in the creation of legal services at entry points is how these services are to be funded. In the few instances where legal services are offered in a community location, these are usually provided by Legal Aid Ontario and are limited to those who meet its financial eligibility criteria. LAO is currently exploring ways to increase financial eligibility. The purpose of legal aid is to “promote access to justice throughout Ontario for low-income individuals”.<sup>372</sup> Financial eligibility for services is set out in three documents available from LAO.<sup>373</sup> LAO has different eligibility guidelines for the following services: certificates; duty counsel and summary legal advice; community legal clinics; and big case management (BCM) cases.

The last time eligibility was changed for certificates occurred in 1996 when eligibility was reduced by 22 per cent.<sup>374</sup> Statistics Canada’s Low Income Cut Off (LICO) is the most common measure of low-income in Canada.<sup>375</sup> Eligibility for a legal aid certificate is below every Statistics Canada low income threshold. LAO’s certificate financial eligibility has eroded against all major benchmarks. The recent value for money audit of Legal Aid Ontario noted with concern that although it spends more on legal aid support per capita than any other province, it has one of the lowest income eligibility thresholds.<sup>376</sup> “Low-income Ontarian” is a far wider category than the eligibility criteria permit. LAO has identified the following risks of not increasing eligibility:

- Fewer and fewer people will be eligible for legal aid, calling into question the relevance of the program.
- There will be more unrepresented litigants in all courts and tribunals, including family courts.

- There will be more court delays.
- There will be more court-ordered counsel.
- There will be more hardship and less access to justice for poor Ontarians and families.<sup>377</sup>

In 2012 LAO convened a Financial Eligibility Study Group to examine ways in which LAO might be able to expand its services. It examined the following issues:

- Client needs and financial eligibility in specific areas of law;
- Funding instruments/potential partners;
- Cross-jurisdictional initiatives; and
- Potential pilot projects<sup>378</sup>

It is clear that without a significant infusion of funds, LAO would not be in a position to expand its traditional service delivery model to encompass a wider socio-economic group. However, one way Legal Aid Ontario could expand its services into the middle class is by acting as a broker for lower cost legal services. There have been attempts both in Ontario and elsewhere to create services for people who do not qualify for legal aid but cannot afford to retain a lawyer. 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 \$59,000.00, who do not qualify for legal aid. It also operates in the area of family law.<sup>379</sup> It is, however, not clear how many lawyers actively participate and how many persons find a lawyer. It may be difficult to persuade enough lawyers to represent clients at a lower hourly rate to make a significant contribution to addressing the lack of legal representation.

In 2010, with a budget of \$250,000.00, the Law Society of Manitoba launched the Family Law Access Centre, a pilot project to improve access to family law services for the middle class. The Law Society acts as a brokerage house and purchases legal services at a discount from private bar lawyers who are paid below market at rates from \$100 an hour for lawyers with fewer than five years at the Bar to \$160 for lawyers with more than 10 years. It then makes these services available to those who meet its financial eligibility criteria. The Law Society handles client billing and guarantees payment to participating lawyers. Eligibility depends on financial criteria, ranging from a maximum of \$35,000 gross income per annum for one person to \$60,000 for a family of six or more persons.<sup>380</sup>

This model has yet to be evaluated but it contains within it many promising elements. The hourly rates are significantly better than legal aid rates. Although they may be lower than market rates, the fact that the Law Society of Manitoba deals with the management and administration of the service, guarantees payment and assumes responsibility for collecting from the client eases the often significant burden of business management on the lawyer.

Arguably Legal Aid Ontario has both the expertise and the infrastructure already in place to act as the broker in the way that the Law Society of Manitoba does. In particular, it has many years' experience managing relationships with the private bar and also has experience in collecting money from clients who are required to contribute to the cost of their legal services through contribution agreements. This initiative would have to be far larger in Ontario, given the considerably greater population (over 13 million people compared to Manitoba's some 1.2 million people). LAO is a province wide organization with the responsibility to deliver its services through the entire province. Accordingly, it has a network of connections and resources that may be useful in establishing an initiative such as this one.

With respect to the provision of services by lawyers, we merely point out efforts to create more innovative ways to provide the services for further consideration. For example, Noel Semple argues that liberalizing regulation could permit the offering of legal services by large

corporations not owned exclusively by lawyers, as has occurred in the United Kingdom.<sup>381</sup> Sample suggests that “[a] large corporation opening a legal services business might find many family lawyers eager to become employees, and benefit from the attendant division of labour, economies of scale, and work-life balance options. A larger and more satisfied Canadian family law bar would redound to the benefit of consumers.”<sup>382</sup>

Legal insurance is also one way to fund legal services.<sup>383</sup> However, despite the widespread use of legal insurance in Europe, it is not often applicable to family matters or its applicability is limited.<sup>384</sup> In Canada, the CAW has long had a legal insurance program for its members, although it too has had limited applicability to family matters.<sup>385</sup> In Quebec, legal insurance covers family law information, but not litigation.<sup>386</sup> A number of pre-paid legal insurance providers operate in Canada, but offer very limited services in the area of family.<sup>387</sup>

## **5. Moving Beyond Service Delivery by Lawyers**

### **a) The Contribution of Students: A “Win-Win”**

Law students may provide certain legal services through law school legal clinics, as well as when they are employed as summer and articling students.<sup>388</sup> Clinical training is a highly valued component of their education for many law students and at the same time, they are able to assist people needing help in accessing the system. Generally, however, clinics do not provide family law services. As discussed in Part One, Downtown Legal Services is the only student legal aid clinic in Ontario to deliver family law services. Under the supervision of review counsel, the students are able to provide full scope representation. As also explained in greater detail in Part One, Pro Bono Students Canada (PBSC), has delivered family law services since 1997. They could offer not only more of the same services, but other services, such as helping to draft documents in locations other than the court, meeting with women living in shelters and providing them with services other than in the courts, as occurs in New Brunswick.<sup>389</sup>

*Given the great need for legal services in family law and the need for future lawyers to be trained, additional initiatives to provide students with the opportunity to engage in providing limited family law services with appropriate supervision are worth considering.*

Given the great need for legal services in family law and the need for future lawyers to be trained, additional initiatives to provide law students with the opportunity to engage in providing limited family law services with appropriate supervision are worth considering. In this regard, we note that the Law Society of Upper Canada Articling Task Force in its Final Report stated, “One of the goals of the co-op work placement program would be to provide the co-op placements in areas where access to justice needs can also be served,” including “sole and small law firms providing services in areas such as family law”.<sup>390</sup>

We referred in Part One to the JusticeCorps Program in California under which undergraduate (not law) students provide services to self-represented litigants in a court setting. Students provide information to litigants about options and make referrals to services in or outside courts, help litigants complete forms and procedures one-on-one or in group workshops, and observe court proceedings and give information to litigants afterwards. Judges have assessed the students’ participation positively, the students’ participation has enabled the lawyers to focus on complex cases and the students have also been able to communicate with clients in languages other than English.<sup>391</sup>

In Part One, we also discussed the articling positions funded by the Law Foundation of Ontario, Legal Aid Ontario’s hiring of a considerable number of students to help expand its reach to a greater number of people, including in family law, the public interest requirement at Osgoode Hall Law School and Osgoode’s efforts to provide a more coherent experiential learning experience through the creation of an Office of Experiential Learning.

In its response to the LCO’s Interim Report in this project, the Advocates’ Society expressed some concern about the use of students, particularly with respect to their ability to identify and respond to domestic violence. In our view, however, concerns can

be addressed by appropriate training, care in selecting their assignments and supervision.<sup>392</sup> Applied to the family law context, student experiential opportunities of various kinds contribute to two mutually reinforcing objectives: they can facilitate the provision of legal help at the early stages of people's family law dispute, and can bring a distinctive perspective to students' legal education.

### **b) A Potential Role for Paralegals in Providing Limited Family Law Services**

While licensed paralegals may provide legal services in several areas of law, they are not allowed to provide any kind of family law services independently (and were therefore not part of our discussion of the current system in Part One). They can provide some services under the supervision of a lawyer, but this does not include appearing in court on family matters. In our Interim Report, we recommended that 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 as well as recommendations regarding training and their role in providing limited scope services. We would modify that view to recognize that it is important to determine whether there are any aspects of family law to which paralegals could make a useful contribution.

Groups representing the interests of lawyers strongly opposed a recommendation to even examine the issue. The Toronto Lawyers Association wrote the following in response to our Interim Report:

*...[I]t is important to determine whether there are any aspects of family law to which paralegals could make a useful contribution.*

The TLA is strongly opposed to recommendations 14, and part of 27, which suggest the Law Society of Upper Canada explore ways in which paralegals can contribute in the family law system, including limited scope retainers and in multidisciplinary and multi function centres. The TLA first voiced its concern, with other professional associations, about paralegals being involved in the practice of family law, before the 2010 Annual General Meeting of the Law Society of Upper Canada, when a group of paralegals brought a motion regarding expanding their scope of practice to family law matters. The motion was withdrawn after strong response from the profession. Our position included the following comments, which we continue to stress in opposition to paralegals entering the practice of family law:

Family law lawyers alone are qualified to steer families and children through the constantly evolving interplay between complex legislation, case law, a unique set of court rules and precedent to arrive at comprehensive family law solutions. Family law has lifelong consequences for families and children. Family lawyers strive to protect the vulnerable members of society especially children and to facilitate overarching solutions. **Family law is not the practice of filling out forms.** (emphasis in original)

The Law Society of Upper Canada has been regulating paralegals since the passage of the *Access to Justice Act* in 2006. The then Treasurer reported to Convocation on recent developments in the Law Society's Legal Needs Analysis in April 2012, after consultation with lawyers and paralegals, saying that respondents "collectively have significant concern in seeing the access to justice issues and gaps identified, through the clarification and/or expansion of the scope of practice of independent paralegals or through an appropriately managed integration into new practice areas".<sup>393</sup> The Treasurer's Report stated that there are foundational issues that need to be addressed before "any potential modification of practice". These issues are the following:

- a. competency of legal services providers (both new and experienced practitioners and both lawyers and paralegals);
- b. underlying systemic issues in the administration of justice;
- c. barriers to access to justice;
- d. public awareness with respect to the justice system and service providers; and
- e. evolution and maturation of the paralegal profession.<sup>394</sup>

Pursuant to section 63.1 of the *Law Society Act*, the Law Society was required to complete a review of paralegal regulation after five years.<sup>395</sup> According to its response to our Interim Report,

The Law Society has undertaken this review with the goal of establishing a framework for a broad consultation with paralegals, lawyers, the courts and others concerned with the provision of legal services.<sup>396</sup>

The Law Society presented its report to the Attorney General on June 28, 2012.<sup>397</sup> The Report concluded that “[t]he implementation of the regulation of paralegals in Ontario has been a success, and has provided consumer protection while maintaining access to justice.” It notes that the Law Society is considering whether it would be appropriate to make changes to the scope of practice of paralegals.<sup>398</sup> The next phase of the review commenced with the Attorney General’s appointment of David Morris (neither a lawyer nor a paralegal, as required by the terms of the review) to continue the process.<sup>399</sup> Mr. Morris stated that the five year period should be considered the “introduction” of paralegal regulation, finding that “by any objective measure, the introduction has been an unqualified success”.<sup>400</sup> He noted that preparing family law documents and drafting uncontested divorces were among areas identified by paralegals in connection with a broader scope of practice. However, he was reluctant to recommend broadening the scope of practice in light of concerns expressed to him about “the current paralegal education and training regime and standards of professional conduct”.<sup>401</sup>

*There may be many tasks that a lawyer performs in a family law matter that can be competently done by a paralegal with training and experience, either in a stand-alone fashion or in some form of symbiotic relationship with lawyers.*

Commentators at the 2012 annual conference of L’Association des jurists d’expression française de l’Ontario (AJEFO) which considered the LCO’s Interim Report noted that they had difficulty imagining which parts of a family law claim could be done without knowledge of many other areas of the law, such as pension, tax and property law, among other areas, but that the LSUC regulation of paralegals in other areas is seen as having produced good results in small claims courts matters. They cautioned that if paralegals were to practice in the family law area, they ought to be closely regulated since errors of law are frequent and they should be specialized, that is, they cannot do traffic one day and a separation agreement the next. Indeed, as one commentator said, “amateurs” in family law are often the primary culprits of bad advice.<sup>402</sup>

Lawyer organizations raise a valid concern about the extent to which a person not trained as a lawyer can provide meaningful assistance in the case of family breakdown. Paralegals, however, can and do play a well-developed role in providing access to justice. Currently, they provide representation in small claims court, traffic court, tribunals such as the Landlord and Tenant Board or the Workplace Safety and Insurance Board and they can represent individuals in the Ontario Court of Justice on minor criminal charges.<sup>403</sup> In a number of these areas, they must be familiar with a number of different statutes and regulations to properly represent their clients. Moreover, some of the administrative tribunals that paralegals work in are as complex in their structure and procedural rules as a court. Some of the work they do engages issues which have grave consequences for the welfare of their clients. In landlord and tenant matters, a person’s housing is at stake. In social benefits matters, the success or failure in a matter will make a tangible difference to the quality of life of the claimant. Paralegals also can work closely with lawyers which can reduce the cost to the client.

It would be helpful if lawyers, paralegals, and other stakeholders consider what role paralegals can play, if any, in the family justice system by analyzing the kind of legal services a family law client may require and the qualifications required to deliver those services.<sup>404</sup> There may be many tasks that a lawyer performs in a family law matter that can be competently done by a paralegal with training and experience, either in a stand-alone fashion or in some form of symbiotic relationship with lawyers. Semple proposes that “[t]he scope of paralegal practice should be defined in a way that balances

the benefits of competition and innovation against the need to protect consumers".<sup>405</sup> From the perspective of entry or access points to the system, we cautiously suggest, in light of the concerns expressed by Mr. Morris in his report, that it would be beneficial to consider whether paralegals may be able to make a useful contribution to the public in the early stages of (our "entry points" to) the family legal system, and if so, how.

### **C. Assessing Identified Improvements against the Benchmarks**

We have discussed possible improvements to the provision of information and for the use of self-help materials; an increased role for trusted intermediaries; more limited provision of services by lawyers; and increased access to students and possibly paralegals, legally trained, but not lawyers. Each of these individually and all of them grouped together meet a number of the benchmarks for improving access to the family justice we identified above.

Distributing initial information to locations such as the YW/YMCA, medical offices, supermarkets, malls and libraries, among others, in different languages provides access when people are actually thinking about their family problems in places they frequent. This preliminary information would identify the next incremental steps people could take to obtain more information. A single hub would make it easier for people unfamiliar with the system and the options to find the appropriate information for them. Some detailed print information would assist people without easy internet access or literacy to find what they need to move forward.

Increased access to trusted intermediaries, students and possibly paralegals can help those who have difficulty accessing, reading, understanding or applying the information at early stages. Appropriate trusted intermediaries with relevant training (although not only intermediaries) have or can develop the kind of experience and community knowledge to respond to different literacy levels and other kinds of circumstances that add to the difficulty of understanding and applying legal information.

Properly regulated and implemented, limited retainers provide greater access to lawyers by persons in a family dispute for specific aspects of a problem, such as initial consideration of the problem; however, many people will also need the continuing assistance of someone else to move forward effectively with their problem.

These initial steps should also help people realize whether they want to continue with a legal response to their problem, or whether it is actually a different kind of problem, requiring different assistance. These "helpers" should also begin the process of "triaging" the problem, assuming that the individuals want to continue with the legal process. At this point, existing forms of assistance may come into play. An increase in persons legally trained, but not lawyers, at these early stages will increase access to the system to those who cannot afford a lawyer and would otherwise rely on their own and friends' and families' efforts; with proper training, students, paralegals and trusted intermediaries will provide competent service within the parameters established for them, including helping to identify whether the individual needs the assistance of a lawyer.

It is important that students, trusted intermediaries and paralegals have access to other resources that are available to help people address non-legal aspects of their problem, whether financial, related to mental health or others; generally, this will be to provide information about these services and less often, to initiate a connection where necessary.

*An increase in persons legally trained, but not lawyers, at [the] early stages will increase access to the system to those who cannot afford a lawyer and would otherwise rely on their own and friends' and families' efforts...*

Enhancement of services provided by non-lawyers, albeit by those who are appropriately trained, will not be without some cost. However, the cost will be considerably less than increasing access to legal aid in a significant way which, however desirable, is not likely to occur in the near future. For the most part, although relying on volunteers (students and to some extent the trusted intermediaries), it is structured to maximize sustainability.

While they would satisfy some benchmarks at least to some extent, as discrete efforts to improve the system, these improvements do not provide the kind of “seamless” process that we believe is required for the system to be most effective. This is why we recommend the multidisciplinary, multifunction centres in Chapter III below.

### III. ADVANCING FROM DISCRETE CHANGES TO THE HOLISTIC APPROACH

#### A. Introduction

In the previous chapter, we referred to changes in accessing the family justice system that we believe might assist users who cannot afford a lawyer, who are not prepared for one reason or another to access the court system and who need help in using self-help materials. These changes focus on the role of community-based trusted intermediaries to assist those users of the family legal system who may need help for reasons of literacy, language, culture or lack of economic resources; easier access to information; improved access to self-help tools; properly regulated representation by lawyers trained to deliver less than full service; and service by legally trained persons other than lawyers. In this Chapter, we suggest that while these changes in and of themselves may improve access to the family justice system, delivering them in an integrated manner, linked to more advanced services, may help a person facing family difficulties move more effectively through to a resolution of their problems, to the benefit of both users and the system.

*Although a number of stakeholders in the family justice system appreciate that family breakdown gives rise to social and economic issues as well as legal issues, there have been limited efforts to date to provide integrated services.*

People in the midst of relationship breakdown face a number of challenges some of which are legal problems but many of which are not. Although a number of stakeholders in the family justice system appreciate that family breakdown gives rise to social and economic issues as well as legal issues, there have been limited efforts to date to provide integrated services. The result for many people is that they are required to devote a significant amount of time and energy, at a time of personal crisis, navigating a complex web of services.

In some respects, this problem is analogous to the difficulties with the health care system. One commentator has written about the health care system, “without a clearly identified entry point, it’s much harder to co-ordinate efforts.”<sup>406</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). There is no real gatekeeper for expensive services and little continuity in care. He further points out that interdisciplinary teams, which includes nurses, pharmacists and other health professionals (but not necessarily doctors) could provide continuity.<sup>407</sup> We discuss the interdisciplinary approach developing in health care below.

We believe that a similar interdisciplinary approach would be equally beneficial in dealing with family justice problems. Comprehensive or integrated entry points, “multidisciplinary, multifunction centres”, would offer information, counseling and services such as legal advice and assistance that would allow an individual to move smoothly through to a resolution of their matters whether through alternative dispute resolution (which could be provided on site) or, as appropriate, the courts. The primary purpose of the centres would be to improve access for those who cannot afford a lawyer; however, the implementation could be linked with private delivery to provide delivery on a cost basis, as private practitioners now might refer their clients to other services.

As we discuss below, these multidisciplinary, multifunction centres do not need to take a particular form in order to provide the services required to create effective entry points. Adherence to a particular form may not be practical for economic and other resource reasons and it also may not be optimal for all parts of the province. We discuss several models below. What needs to be common to them all, however, is that this single

entry or access point provides a wide range of legal and non-legal services (or easy access to the latter), provides a seamless path for users through the system that is responsive to their needs and allows flexibility as users wind their way through the system.

While collaboration is essential given that the responsibility for service delivery is diffuse among many stakeholders, it can take a variety of forms:

In the literature on human services organizations and inter-organisational relations, collaboration [means]...the formal joining of structures and processes between organizations. It is part of a spectrum ranging from the informal to the formal, beginning with cooperation (as an informal information exchange), through coordination (as in development of formal protocols) and ultimately, integration, which involves the formation of new organizational structures....<sup>408</sup>

*We believe that in the longer term, investments in an integrated access point 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.*

Family breakdown is a multi-faceted problem, the most effective resolution of which is multi-pronged possibly involving a number of organizations and service providers. All major stakeholders in the family justice system agree that early intervention and a timely resolution of disputes are better for families. Generally speaking, and where appropriate, negotiated resolution is more likely to be longer-lasting and satisfactory than one that is imposed, sometimes on a party who feel aggrieved by the result. A negotiated resolution may not be appropriate in some cases and this is accounted for by the system at the early stages, as we discuss in Part One. We believe, however, that integrated access to the system can contribute to more effective resolution at later stages. At present, there is no clear entry point into the family justice system which provides an integrated response. We believe that in the longer term, investments in an integrated access point 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 provide a more sustainable outcome which reduces the pressure on the system arising from families continuing to come to the courts as their needs and circumstances change. As Julie Macfarlane has noted,

In the family area, family clients can benefit from the combined expertise of lawyers, therapists, child and family counselors, child welfare specialists and financial planners. In each case the added value for clients who can afford a range of integrated services is that they are able to build comprehensive, long-term solutions to planning for uncertainties, crises, or conflicts instead of purchasing piecemeal advice, which may overlook opportunities for creative solutions or which may ultimately conflict or collide with advice from other professional consultants.<sup>409</sup>

We appreciate that not everyone agrees with our recommendation for the integrated access point, partly because there is an assumption that it will be costly, but also, more substantively, it is believed that the goals of the integrated access point are already being met. For example, the Advocates' Society suggested, in response to our Interim Report, that

Many of the objectives of the proposed "multi-disciplinary multi-functional" centre are already being implemented through the existing FLIC/IRC/MIP model. Expanded support and funding for the existing infrastructure is a more efficient and streamlined strategy than creating a new model of service delivery.

While we agree that the court based services referred to by the Advocates' Society are beneficial, they do not address the issues we have identified throughout this Report, namely that there has been no systemic approach to addressing diversity; that the existing combination of Family Law Information Centres, with Information and Referral Coordinators and Advice Lawyers, and the Mandatory Information Program does not provide sufficient affordable legal services; and while the IRCs are tasked with making referrals, they are in no position to provide a holistic response to all of the issues arising from family breakdown. Furthermore, although these services are not dependent on the individual's

having decided to make an application to the court, they are significantly linked to the courts. This is one of their advantages, but it also means that those at the earliest stage of thinking about their dispute or who for whatever reason are reluctant to enter the court system are less likely to receive help.

The submission we received from the Ontario Collaborative Law Federation, supported the concept of providing interdisciplinary resources outside the court system:

We agree that the resources for families (entry points) should not be tied to the court system and in particular parties should not have to start litigation to avail themselves of these resources. It is interesting to note that your interim report supports the need for families to be able to access mental health (family) professionals and neutral financial professionals as well as lawyers. This inter-disciplinary team approach is unique to the collaborative process.

...

A mental health or “family” professional (acting as a collaboratively-trained coach or a neutral facilitator or child expert is able to assist lawyers in screening for any power imbalances, personality issues or significant communication challenges. They often work with clients outside meetings to help address non-legal issues and to develop parenting plans. Collaborative professionals work together, not at cross purposes, and keep each other informed...Family law clients often need assistance with emotional and/or financial issues. Providing clients with the particular expertise they need helps expedite the time required to address their legal issues.

*Our health care system has been grappling with issues around lack of coordination in service delivery for a number of years and has identified “interprofessional care” as a model for effective patient-centred health care.*

## **B. Lessons from the Health Care Sector**

Our health care system has been grappling with issues around lack of coordination in service delivery for a number of years and has identified “interprofessional care” as a model for effective patient-centred health care:

The envisioned system would involve and be representative of the individuals and communities served. It would integrate a continuum of services encompassing health promotion disease prevention, wellness and health maintenance into community based, facility based and specialized institutional forms of care.

...

It would foster collaboration between professionals and communities as well as between health and other sectors.<sup>410</sup>

As with family law, where a large number of people do not have the assistance of a lawyer, in regard to health care, a growing number of people lacked access to a primary care physician. By 2005, 1.2 million Ontarians were without a family doctor.<sup>411</sup> A decade earlier, discussion about integrated medical delivery systems portrayed them as the way to respond to “fragmented decision making, with its attendant inefficiencies in meeting patient needs, managing and policy making” resulting from the organization of the health care system.<sup>412</sup> Integrated models may not cut across different specialties; however, the authors suggest that

“vertically integrated” systems appear to offer greater potential for success. These systems provide a broad range of services; clients can move quickly through the continuum of care. The most successful systems are those integrated in a local community to provide services for a specific population.<sup>413</sup>

Also similar to the legal profession, the medical profession as it existed did not initially widely support interprofessional collaborations. Jacobs and Jacobs note that the Ontario Medical Association originally opposed community health centres “on the grounds that they involved a practice of medicine that threatened the doctor-patient relationship both with regard to patient confidentiality and payment for service.”<sup>414</sup> On the other hand, the College of Physicians and Surgeons of Ontario stated a decade ago that “in order to

better meet patient needs, health care has evolved such that delivery of care no longer takes place through exclusive domains of practice but through multidisciplinary teams".<sup>415</sup> Other medical practitioners, such as the College of Midwives, are also committed to interprofessional care.<sup>416</sup>

The federal, provincial and territorial governments identified the development of interprofessional care as a priority for the renewal of the health care system in the 2003 and 2004 Health Accords.<sup>417</sup> A summit was held in 2006 to identify the priorities for advancing interprofessional care in Ontario.<sup>418</sup> The Ministry of Health and Long Term Care and the Ministry of Training, Colleges and Universities established an Interprofessional Care Steering Committee comprised of experts in the fields of policy, education, regulation and organizational structures who had played important roles to date in the development of interprofessional education and care. The Committee's mandate was to develop a Blueprint for Action to Advancing Interprofessional Care and it developed the following four recommendations to provide an effective framework for implementing interprofessional care:

- **Building the foundation:** The building process begins with the education system, which needs to prepare current and future caregivers to work within interprofessional care models. This is to include curriculum development, training and professional development programs.
- **Sharing the responsibility:** This involves reviewing standards of practice with a view to integrating interprofessional collaborative, team-based care approaches.
- **Implementing systemic enablers:** Legislation and liability coverage for all health care providers should be reviewed with a view to defining professional responsibility and accountability within team-based structures.
- **Leading sustainable cultural change:** Requires leadership to integrate interprofessional care into existing strategies and to create incentives for the adoption of interprofessional care.<sup>419</sup>

The Blueprint for Action recommended concrete actions for the implementation of this framework. Notably, the Blueprint does not promote a specific model of interprofessional care. Rather, interprofessional care is an approach to delivering services. The recommendations contained in the Blueprint represent systemic changes to the health sector. It was designed to be a springboard for a variety of stakeholders, including individual organizations, healthcare workers educators patients and families to incorporate interprofessional care and education efforts in their workplaces and educational institutions.

Following the release of the Blueprint, the Minister of Health and Long Term Care approached the Health Professions Regulatory Advisory Council (the Council), an independent agency which provides advice on matters related to the regulation of health professionals in Ontario to recommend mechanisms to facilitate and support interprofessional collaboration. This resulted in changes to the *Regulated Health Professions Act*, including the following:

- expanding scopes of practice to 12 professions;
- requiring the health colleges to work together to develop common standards of knowledge, skill, and judgment in areas where their professions may provide the same or similar services; and
- making team based care a key component of health college quality assurance programs to ensure the ongoing competence of registered health professionals.<sup>420</sup>

Following extensive stakeholder consultations over a period of two years, the Interprofessional Care Strategic Implementation Committee produced a report that

“provides an overview of interprofessional education models, concepts and resources to guide the implementation of IPC in various settings”.<sup>421</sup> The Implementation Committee established the Interprofessional Education Curriculum Working group which prepared a guide for teaching interprofessional competencies in colleges and universities. The Ministry of Training Colleges and Universities and the Ministry of Health and Long Term Care provided financial support to six Ontario Academic Health Science Centres to assist in the development of interprofessional education.<sup>422</sup> The Implementation Committee established a Core Competency Working Group to develop the competencies and values needed for all health care givers to teach and practice interprofessional care. The working group developed these competencies after extensive stakeholder consultation. It also developed a Charter which is intended to “support a multi-level strategy for collective leadership, initiating dialogue and facilitating empowerment and accountability within and across the health care system....”<sup>423</sup>

In order to make Interprofessional Care actionable and sustainable, the Implementation Committee developed a dissemination strategy to advance interprofessional education and to provide incentives to use the materials developed and support the application of the tools. It also recommended leveraging Ontario’s Local Health Integration Network (LHIN) structure as a springboard to launch Interprofessional care.<sup>424</sup>

We note that the interprofessional health care approach relates (at least primarily) to health care providers, but also includes professions such as social workers and dietitians. Other developments arising from this initiative include the *Regulated Health Professions Statute Law Amendment Act, 2009* which extended the scope of practice of certain professions, such as pharmacists.<sup>425</sup> Other related activities have included a summit attended by “80 leaders and decision-makers in the education and collaborative practice sectors of Ontario’s health human workforce” with the objectives of

build[ing] on current best practices and utiliz[ing] the experiences and expertise of IPE/IPC leaders and decision-makers within the health, academic and education sectors, as well as government across Ontario in order to identify key priorities for health and education system changes that will further enhance and sustain the integration of IPE/IPC initiatives.<sup>426</sup>

We recognize that the analogy of the family justice system with the health care system is not perfect. Health care is considered and is for the most part a publicly funded system, although patients may pay a fee for certain services and must pay for others themselves or through additional health plans. Certain health services (such as dental care) are provided privately. Nevertheless, most services required by most people are funded publicly and there is a closer relationship between service providers and the government and a greater need to work together with the government to provide solutions. The fact that health care is publicly funded and operated also facilitates the logistics of implementation. As noted above, the LHINs offer a platform for the development of interprofessional care models.

By comparison, the provision of legal services for the most part remains a private enterprise and the ability of government to influence policy decisions around practice is more limited. Yet much of the family justice system is also publicly funded: the provision of information, the courts, some mediation and the provision of legal services under some circumstances.

Furthermore, the commitment of the public to health care is greater as health care is viewed as an essential service and the relationship of the primary service provider to patient is intended to be long term. The need for family justice services, although high, is by no means universal and the need for them is not usually life-long.

The interprofessional health care project is meant to address the health care system writ large, while in this project we have focused only on the family law system, and only part of that, access or entry points. The health care project is also more ambitious than our proposal, since it encompasses education, based on the assumption that to function differently, professionals must be trained differently. We are not suggesting that our holistic approach incorporate collaborative education; however, there may well be lessons learned from health care in this regard that could be explored should the occasion arise in the future. Changes in legal education practice could be an exciting and revolutionary contribution to a new way of offering legal services.

We also want to be clear that our proposal for an integrated approach to accessing family justice includes other professions who work is not necessarily related to the legal system, as well as a range of legal actors; indeed, this is a major reason for our proposal. This is less the case with the health care project, although it includes a wide range of professionals directly responsible for health care.

Perhaps the most critical difference, however, is that the principal players in the justice system are largely independent of one another which will make the development and implementation of these centres more difficult. Although there is confidentiality in the doctor-patient relationship, solicitor-client privilege has few exceptions. More significantly, it has been said that the constitutional principle of judicial independence and lawyers' "professional autonomy", and the independence of "the Law Society of Upper Canada, university-based law schools, community legal clinics and [Legal Aid Ontario] itself...as well as the provincial and federal governments", "allows each of them, to a greater or lesser extent, to avoid shouldering responsibility for reforming the system."<sup>427</sup> Change requires, just as in the health care sector, the willingness of all entities to work together, something that each has recognized at different times.

Of interest are partnerships or collaboration between the legal and health care professions. In British Columbia, for example, the assumption underlying a planned program, RICHER, is the opposite to the assumption underlying our recommendation for integrated centres, that legal problems may also reflect other kinds of problems. RICHER recognizes that health problems may have a legal component or legal consequences.<sup>428</sup> Pro Bono Law Ontario runs two programs (at Sick Kids in Toronto and at Children's Hospital at London's Health Sciences Centre) that help low income families address legal problems that may interfere with their care for their child.<sup>429</sup>

Notwithstanding the differences between health care and family justice, the process by which the concept of interprofessional care evolved from an academic idea to a policy imperative for the provincial government and finally its implementation across the province is a useful example of how stakeholders who support the idea of multidisciplinary centres for family justice clients can approach their development. Furthermore, many of the services which would be found in a multi-disciplinary centre are already being provided by a variety of service providers across the province. Some of these services are government funded and operated and some of them are delivered by not for profit organizations, as we explain below.

*...[T]here may well be lessons learned from health care [with respect to collaborative legal education] that could be explored should the occasion arise in the future. Changes in legal education practice could be an exciting and revolutionary contribution to a new way of offering legal services.*

## C. Examples of Multidisciplinary, Multifunction Services in the Legal System

There are a number of organizations that could be involved in a variety of ways to create a model of service delivery that makes sense for the geographical location as well as the community it is meant to serve. While in some cases this could mean, if and when resources are available, a fully government funded, government operated facility, in other cases, the resources already being delivered by a variety of organizations could be leveraged to create a cohesive entry point. We reiterate that comprehensive multidisciplinary, multifunction services, although intended to provide similar integrated services,<sup>430</sup> do not need to assume the same form in each case.

Comprehensive services can be delivered at a physical location, virtually or in combination. Different parts of the province may benefit from different arrangements. What needs to be common to them all, however, is that this single entry point provides a wide range of legal and non-legal services (or easy and systematic access to the latter), provides a seamless path for users of the system through the system that is responsive to their needs and allows flexibility as users wind their way through the system.

Below we examine a number of different models of providing multiple services to clients. These range from a consortium of service providers working together for a common purpose to a co-location/integration model of different stakeholders to a government funded government run centre. Some of them deliver family law services and others are geared to different areas of law. All of them contemplate the development of partnerships and collaboration between service providers to varying degrees. We believe that all these models could be used in the family law area, as appropriate, given available funding, geographic location and other factors. To be effective, they also need to be developed in a systematic, rather than *ad hoc*, way, and linked to other parts of the system.

...[C]omprehensive multidisciplinary, multifunction services, although intended to provide similar integrated services, do not need to assume the same form in each case.

### 1. A Consortium of Service Providers

A consortium model envisions a group of local legal and non-legal organizations and provincial bodies working together to develop a coherent service delivery system for clients. This model does not assume an actual co-location of services, rather, the services are coordinated at a centralized hub for assessment information and referral activities. The Ottawa region is currently piloting this model with funding from the Law Foundation of Ontario.<sup>431</sup> Over 30 agencies are working together, with the South Ottawa Community Legal Services as the lead agency. The goal of this consortium is to provide integrated legal and non-legal services to Ottawa's linguistic minorities. The purposes include

build[ing] capacity within the community health and social services sectors to identify legal issues and provide basic legal information and timely referral for persons who speak neither English nor French and for persons who have a significant communication difficulty as the result of a sensory impairment or a speech or language disorder

and "promot[ing] collaboration among legal services and community health and social service organizations".<sup>432</sup>

A consortium model is premised on the presence of several organizations in the community who are able to provide a variety of services. It is the least expensive of the models. The budget submitted for the Ottawa project was in the range of \$280,000.00 annually.<sup>433</sup>

### 2. Different Service Providers under One Roof: Family Justice Centres

Family Justice Centers (FJs) originated in San Diego, California in 2002 as a response to the needs of victims of domestic violence. Although numerous agencies and services

responding to domestic violence already existed in San Diego, effectively navigating these services was tremendously difficult for traumatized victims.<sup>434</sup> Community advocates and service providers developed the idea to combine criminal/civil justice services with social service providers into a one-stop center where victims of domestic violence could be “wrapped” in services.<sup>435</sup> The San Diego Family Justice Center opened in October 2002, housing the Police Department’s Domestic Violence Unit, the City Attorney’s Domestic Violence Unit and staff from approximately 20 other non-profit community agencies.<sup>436</sup> Today, these services include legal advice, counseling, food, clothing, spiritual support, medical assistance and other services.<sup>437</sup>

There are three Family Justice Centres currently operating in Canada, all in Ontario: Kitchener (Family Violence Project of Waterloo Region),<sup>438</sup> Oshawa (Durham Region’s Intimate-Relationship Violence Empowerment Network – DRIVEN)<sup>439</sup> and Brampton (Safe Centre of Peel: Collaborative Assistance for Victims of Abuse and Violence).<sup>440</sup> These centres may offer different services, as well as services in common. For example, the Kitchener centre offers medical support for victims of sexual assault and domestic violence. There are several agencies on site at DRIVEN, including the Durham Children’s Aid Society. The Peel centre offers immigration services and transportation.

The governing structure of individual FJCs varies from one government agency providing leadership for planning and implementation to the centre’s becoming a city department financed directly by government to a non-profit agency governed by an independent board of directors, the most common model chosen.<sup>441</sup> Some FJCs attempt to offer comprehensive services in one physical location while others operate more as a “service umbrella”, performing a triage function and referring clients to separate services either located onsite or elsewhere.

An example of this type of centre, the Peel Family Justice Centre, opened in October 2011 after a funding campaign spearheaded by Catholic Family Services Peel-Dufferin (CFSPD). CFSPD was interested in the FJC model and began to solicit funds for a building to house both an FJC as well as CFSPD’s head office. In spring 2010, the federal government committed \$2.2 million from the Infrastructure Stimulus Fund to the building project. Financial support was also received from the Ontario government (\$1,000,000), the Region of Peel (\$500,000 interest-free loan) and a private fundraising campaign (\$1,000,000).<sup>442</sup>

Shelina Jeshani, the former program manager responsible for planning and building support for the FJC, led a planning committee consisted of CFSPD and 15 other service providers.<sup>443</sup> Jeshani advised the LCO that the Family Justice Centre in Peel is not simply a co-location of service providers but an integrated service model. This means that there are common policies and protocols to which every service provider adheres. All service providers employ a common intake and triage tool and use the same risk assessment tool.

In the Family Justice Centre model, each service provider is delivering the services within their own budgets. The Centre provides a place for the services to be delivered and the visioning and strategic planning process allowed for deeper integration and the use of common tools and processes.

### **3. Government Funded Centres**

A network of Family Relationship Centres (FRCs) was introduced by the Australian government in 2005 as the centerpiece of a package of family law reforms designed in response to a House of Representatives Standing Committee report, *Every Picture Tells a Story*.<sup>444</sup> The family law reforms were intended to bring about a “cultural shift” in the management of parental separation “away from litigation and towards co-operative parenting”.<sup>445</sup>

*In the Family Justice Centre model, each service provider is delivering the services within their own budgets. The Centre provides a place for the services to be delivered and the visioning and strategic planning process allowed for deeper integration and the use of common tools and processes.*

The FRCs provide a single entry point to the family law system outside the courts, intended to provide supports to those in developing relationships and difficult relationships, as well as parents who are separating. They offer information, case assessment, screening, referrals, and practical advice and assistance to separating parents developing parenting plans. Dispute resolution services are available onsite and referrals to other mediation, counselling and specialist services are also available. These services can be delivered in three formats: at a Family Relationship Centre (65 are located throughout the country), over the telephone or through a web-based repository of information and support for those unable to access a FRC.<sup>446</sup>

In its 2005-2006 Budget, the Australian government allocated \$188.5 million AUD over four years to establish the FRCs.<sup>447</sup> The Department of Families, Housing, Community Services and Indigenous Affairs, responsible for administration of the program, contracts out the operation of FRCs to not-for-profit community-based service providers, similar to the contracting out by the Ontario government in relation to Family Court Support Workers and other family law programs. The FRCs employ a variety of service delivery models depending on their operator and geographic location. For example, some FRCs have been funded to provide Indigenous outreach services. These centres engage advisors to assist in service delivery. However, apparently it can be a challenge to find staff members with suitable qualifications.<sup>448</sup>

A primary function of FRCs is to help separating parents reach parenting agreements through a family dispute resolution process.<sup>449</sup> Under Australian law, dispute resolution must take place before parties may seek a parenting order from the court. Parents first go through an intake and assessment process before the dispute resolution process.

FRCs also offer information, education programs, advice and referrals.<sup>450</sup> They are directed to develop cooperative arrangements with other service providers, including legal service providers as well as community organizations. FRCs are often co-located with other services such as Post Separation Cooperative Parenting (PSCP) established in October 2008.<sup>451</sup> It is intended that FRCs receive referrals from the Child Support Agency and that there will be linkages to income support specialists to determine how parenting arrangements will affect Centrelink entitlements. As a result of this emphasis on cooperation and referral, FRCs have been likened to “aircraft control centres”.<sup>452</sup>

Originally, FRCs did not provide legal services directly because they were intended to emphasize post-separation parenting as a relationship rather than a legal issue. Instead, FRCs encouraged clients to seek legal advice and provided referrals where appropriate. This is still largely the case. FRCs are encouraged to forge links with legal service providers. However, the 2009 evaluation of the FRC program carried out by the Australian Institute of Family Studies (AIFS) revealed a considerable overlap between the use of family dispute resolution services and legal services.<sup>453</sup> It also indicated that, at least according to family lawyers, FRCs were not well integrated into the family law system. In June 2009, the Ministry of the Attorney General changed its policy and introduced the FRC Legal Assistance Partnerships Program to enable legal services to be provided as part of the FRC model. The Protocol developed leaves it up to individual FRCs to decide the role that legal services will play. However, according to an AIFS newsletter, services may include legal information sessions for parents, legal advice, assistance in drafting parenting plans and consent orders, lawyer-assisted family dispute resolution and training and mentoring.<sup>454</sup>

#### **4. Government Funded-Government Operated Centres: British Columbia Justice Access Centres**

In 2005, the British Columbia Family Justice Reform Working Group delivered a report recommending the creation of family justice information hubs for people entering the family law system.<sup>455</sup> These hubs would build on the existing family justice centre model

*[Family Resource Centres in Australia] provide a single entry point to the family law system outside the courts, intended to provide supports to those in developing relationships and difficult relationships, as well as parents who are separating.*

which had been in existence since 1992. They would serve as a clear entry point into the system and would provide information, assessment and referral, and would be located in various places, including, but not limited to, courthouses; services would also be available over the phone and by internet.

Emphasis was placed on integrated legal and non-legal services. The Family Justice Information Hubs would refer clients to other community service providers such as transition housing and victim service workers.<sup>456</sup> Resources were to be shifted from litigation and the courts to the “front end” of the system where consensual dispute resolution would be the norm (with litigation remaining an option where necessary). Governance would take place locally.<sup>457</sup>

Particular attention was paid to the needs of Aboriginal communities, both in ensuring access to services from remote reserve communities, and being respectful of cultural norms such as the role of the extended family when parents separate.<sup>458</sup> Immigrant women were also identified as requiring culturally appropriate services.<sup>459</sup>

In accordance with the New Justice System Report, in April 2007, the Ministry of the Attorney General (MAG) and the Legal Services Society (LSS) partnered to establish a new Family Justice Services Centre (FJSC) in Nanaimo, B.C., funded by MAG and LSS.<sup>460</sup> The new Centre was situated at the existing FJC but it offered expanded services from both MAG and LSS. MAG developed an expanded assessment and referral service with a needs assessment process covering five key areas (family violence, mental health and substance abuse issues, debt or financial issues, and child protection issues). LSS developed a staffed Resource Room and expanded its existing legal advice services. Community relationships with agencies such as the Nanaimo Violence against Women in Relationships Committee were reinforced. In 2007, the Nanaimo FJSC offered a full range of family justice services including screening and assessment, information counselling and courses, dispute resolution, Legal Aid intake, legal advice, child support assistance, legal information and resources.<sup>461</sup> A 2008 evaluation found that the Nanaimo FJSC was a success.<sup>462</sup>

*The Family Justice Information Hubs [recommended in BC] would refer clients to other community service providers such as transition housing and victim service workers. Resources were to be shifted from litigation and the courts to the “front end” of the system where consensual dispute resolution would be the norm....*

In June 2007, the B.C. Legal Services Society produced a detailed planning document which set out a service vision and program design for a civil hub model, encompassing both family law and non-family law problems.<sup>463</sup> In October 2008, the Nanaimo FJSC was reestablished as the Nanaimo Justice Access Centre (JAC). Another JAC opened in July 2010 in the Vancouver Law Courts building and it was announced in September 2012 that a third JAC would open in Victoria in mid-2013.<sup>464</sup>

In her study of unrepresented litigants referred to above, Julie Macfarlane has included unrepresented litigants from British Columbia who have used the FJSCs which have been described as “essentially drop-in centres for people without lawyers. Staff circulate and guide people as they work on their cases at computers.”<sup>465</sup> Macfarlane is quoted as saying, “It sounds like a small thing, but actually, it’s a big difference...That’s the kind of support that people need.”

We suggest that while some of the above examples of multidisciplinary or comprehensive access points are more limited in coverage (to women experiencing domestic violence or in relation to parenting issues, for example) than our understanding for Ontario envisions or currently, at least, not realistic financially, they illustrate the range of forms multidisciplinary, multifunction services can assume.

## IV. A COMPREHENSIVE APPROACH FOR ACCESSING FAMILY JUSTICE: MULTIDISCIPLINARY, MULTIFUNCTION CENTRES OR SERVICES

### A. The Approach

The government of Ontario has taken up the challenge to create better partnerships among service providers. Given that many service providers delivering public services are from the non-profit sector, the government is looking at ways to strengthen its relationship with this sector. In 2010, the Ontario government launched the Partnership Project, led by the Ministry of Citizenship and Immigration and the Trillium Foundation. A report in 2011 described the “conversation between Ontario’s not-for-profit sector and the Government of Ontario.”<sup>466</sup> The conversation focused on

- ways to improve collaboration between government and not-for profits;
- policy and legislative frameworks to enhance the effectiveness of the not-for-profit sector;
- funding mechanisms and new approaches to financing that would allow not-for-profits greater fiscal security and flexibility; and
- more effective methods of coordinating policy, research communication and practice.<sup>467</sup>

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The Partnership Project report contains the following recommendations:

- Promote a culture of respect and recognition within government and within the public by appointing a minister to be responsible for and accountable to the sector and by issuing an annual report on the state of the non-profit sector and the progress made in strengthening its relationship with government.
- Foster coordination and collaboration by providing the not-for-profit sector with an identifiable, central and authoritative point of contact within government.
- Build sector capacity through enhanced communication, avenues for greater collaboration in policy development and legislative and regulatory oversight, work with the sector to develop new approaches to funding, as well as appropriate performance measures and invest in projects which support intra-sector cooperation, communication and networks.
- Leverage technology to break down silos, increase transparency and share information.
- Invest in social innovation.<sup>468</sup>

In March 2011, the government announced the creation of the Partnership Advisory Group to Project Partnership Office to implement the Report’s recommendations.<sup>469</sup>

The Trillium Foundation has taken a great interest in the development of collaborative partnerships to help build greater capacity in the not-for-profit sector. Trillium’s granting program supports collaborative efforts through flexible, multi-year grants. In the past several years, 16 per cent of all grants have been to collaborative initiatives.<sup>470</sup> For example, through its Future Fund, it funded the environmental sector to build capacity by having larger organizations to partner with smaller groups.<sup>471</sup>

Some of the models described in the previous section are representative of the kind of partnership efforts envisioned by the Drummond Report,<sup>472</sup> the Ontario Government and the Trillium Foundation. Many of the costs which would need to be incurred to create a multidisciplinary centre are already being incurred. For example, in the Consortium Model, there would be some additional costs to co-ordinate the delivery of the services which are already being provided, but would not add significantly to the cost of providing

these services, yet would add the value of coordination. The principle of progressive realization promotes identifying a long-term goal, taking steps to achieve that goal as feasible, identifying the continued gaps and stating how the gaps would be filled. This approach could be taken to creating the centres.

The consortium approach might work well in urban centres with large populations and many service providers. In other parts of the province, it may be necessary for the services to be provided directly by the government either through the creation of centres or through the use of technology to create “virtual centres” as there are few services providers locally. Increasingly sophisticated ways of using technology make this more feasible than in the past where appropriate.<sup>473</sup> Over time, access to the internet will improve everywhere. However, the use of technology may not be optimum until all areas of the province have access to broadband internet or other means of access. In this regard, an interim measure might be mobile services that can provide in person assistance on a regular basis with access to virtual resources.

As stated above, the fact that the practice of family law remains largely a private enterprise is a challenge to the creation of multidisciplinary centres. The legal services provided in the Consortium model are provided by a community legal clinic and the legal services in the Family Justice Centres are provided by Legal Aid Ontario. A multidisciplinary centre operating as an entry point into the family justice system will need to find a way to deliver some legal advice and assistance historically provided by a lawyer for those that cannot afford legal services but do not qualify for legal aid. However, links can also be established between private practitioners and the centres. The ability to do this will improve if the stakeholders in the justice system move toward making the changes contemplated previously in Part Two intended to improve the accessibility of legal services. For example, a multidisciplinary centre could have a lawyer on retainer providing summary advice and other limited scope services to clients, as well as students and possibly paralegals, under the lawyer’s supervision. If Legal Aid Ontario provided some services to a broader number of individuals, then it could have a greater role to play in the development and delivery of the legal services component of a multidisciplinary centre.

*Many of the costs which would need to be incurred to create a multidisciplinary centre are already being incurred... The principle of progressive realization promotes identifying a long-term goal, taking steps to achieve that goal as feasible, identifying the continued gaps and stating how the gaps would be filled. This approach could be taken to creating the centres.*

## **B. Considerations in Implementing Multidisciplinary Multifunction Centres**

### **1. What are the Challenges?**

Perhaps the biggest concern about the establishment of these centres that we heard about is what they may cost to implement. In the Interim Report we recognized that the establishment of these centres may be aspirational given the current economic climate and we received responses which echoed this point. For example, the Ministry of the Attorney General underscored the need for considerable resources, including facilities costs, and the Advocates’ Society stated that funds could be better spent on improving the existing supports. However, as we have discussed above, there are various models of integrated service delivery, some of which do not involve a significant investment of public money or infrastructure.

Apart from the concern about cost, there are several practical and logistical challenges that would arise from the integration of services provided by different professionals and different organizations.<sup>474</sup>

A group of professionals working together in a team may have different professional obligations set out by their own regulator. Lawyers are able to offer services in conjunction with other professionals. However, rules that govern lawyers entering into a partnership

with other professionals designed to protect users of legal services make this a limited option today. These rules are of particular significance for our long-term recommendations about multidisciplinary centres.

Rule 6.10 of the Law Society of Upper Canada's Rules of Professional Conduct states, "A lawyer in a multi-discipline practice shall ensure that non-licensure partners and associates comply with these rules and all ethical principles that govern a lawyer in the discharge of his or her professional obligations."<sup>475</sup> Multidiscipline practices are governed by Law Society of Upper Canada By-law 7. It provides, among other things, that a "licensee" (under the *Law Society Act*) may provide the services to a client of someone "who practises a profession, trade or occupation that supports or supplements the licensed activity" and may enter into a partnership or association (that is not a corporation) in order to do so, as long as the entity satisfies certain conditions. The conditions include the following: the other professional abides by the Law Society's rules and would be under the "effective control" of the licensee; the licensee is responsible for ensuring that the other professional practices his or her profession with the "appropriate level of skill, judgement and competence" and that the other professional abides by the Law Society's rules; and that the licensee maintains insurance coverage for the other professional in the amount the licensee acquires for him or herself.<sup>476</sup> Our recommendations are not designed for private firms; however, the ease of structuring multidisciplinary centres in a way that is truly collaborative may be affected by these rules.

Other professionals have their own rules. For example, there are different professional obligations with respect to confidentiality and the duty to report. Lawyers in Ontario have a duty to maintain client confidentiality under Rule 2.03 of the Rules of Professional Conduct which is subject to the requirements of the law. Some professionals working in a multidisciplinary family centre may have a duty to report suspected physical or sexual abuse of children under section 72 of the *Child and Family Services Act*.<sup>477</sup> Lawyers are exempted from this requirement, however, which does not abrogate solicitor-client privilege.<sup>478</sup> This concern about confidentiality is acute for survivors of domestic violence. In its response to the Interim Report, Luke's Place supported the creation of multidisciplinary centres but cautioned that many women survivors of violence are concerned that their information be kept confidential.

Jacobs and Jacobs discuss other factors which suggest a "culture clash" between the professions that may be involved in resolving the issues arising from family breakdown. Macfarlane notes challenges in determining issues of control and role parameters as well as differences in practice methodology and philosophy. She observed that "[t]here is a tendency for each profession to value its particular expertise above others".<sup>479</sup> Those in the helping professions may regard lawyers as overly adversarial and skeptical of the judgments of others. There is concern that lawyers escalate conflict. Professionals may also have pre-conceived notions about the nature and value of work done by other professionals. Moreover, the perspective of what the appropriate outcome should be may be informed by the professional's perspective. For example, inconsistent behavior and memories may be understood differently by a social worker who is counseling a client as compared with a lawyer whose advice may change depending on the facts provided by the client. This last, at least, should be an advantage of multidisciplinary service provision if professionals are open to learning from others.

## **2. Meeting the Challenges**

While cost is an extremely important consideration, there must also be consideration for the heavy cost both directly and indirectly in continuing to operate a confusing family justice system primarily premised on services that many people cannot afford. Unrepresented litigants, including in family law, do not only endure their own cost in attempting to navigate a complex system, but also impose a cost on opposing clients and their

lawyers, as well as judges. While strengthening the court based services as has been done is a good idea, this will not address some of the issues which we have identified and discussed elsewhere in this Report that arise from the court's being the main entry point into the family justice system. These include the need to emphasize accessible alternative approaches to resolving family disputes, the recognition that family problems are often highly interrelated with problems of other kinds that have either led to or reinforce the legal problems and the importance of responding to the growing demographic diversity in Ontario.

Logistical challenges can be addressed. When Catholic Family Services established the Peel Family Justice Centre, these issues needed to be resolved. This involved a visioning exercise and strategic planning process including all the agencies in the partnership over the course of one and a half years. This culminated in the development of terms of reference and a conflict resolution process. We do not claim that this process will be easy. When we spoke with Shelina Jeshani, she advised that the centre did struggle with issues around confidentiality and by the time she left the organization, they were still fine-tuning the process.<sup>480</sup>

### **3. Quality Assurance**

With our view that multidisciplinary centres can be created in a variety of ways with the involvement of a number of stakeholders, it will become important to ensure that the centres are consistently providing high quality services. An oversight function is important. In the social service sector, the Family Service Association of Ontario provides support to family service agencies across the province. It provides several services to its member agencies, including advice and support and accreditation.<sup>481</sup>

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With respect to accreditation specifically, Family Service Ontario operates the Canadian Family Services Accreditation Program (CFSAP) which "is designed to provide an evaluation of the quality of services offered to families and individuals through the non-profit sector".<sup>482</sup> It promotes quality assurance among organizations serving families in Canada by providing an evaluation of a service provider's Governance and Administration, and an evaluation of a number of the programs offered. The web site sets out a detailed accreditation process and notes that the standards for accreditation are continuously updated, accreditation reviewers are well-selected and training policies and procedures are current and relevant. Given that the core element of our comprehensive services will remain "family law", it will be important to create a form of evaluation that assesses the quality of legal services and how well they have been integrated into the delivery of other relevant services and forms of assistance.

### **4. Linking the Centres with the Rest of the System**

A critical role to be played at the entry point is identification of the nature of an individual's legal and related problems and the range of available remedies. As others, we have described this function as "triaging".

Even though all stakeholders in the family justice system have identified the importance of early intervention in family law matters and the value of non-court based resolution of services, it is important to emphasize that in some cases, the courts will continue to be the most appropriate venue for the resolution of the dispute. Moreover, the court has an important role to play in the context of other forms of dispute resolution as the mechanism of final resort; many people might not willingly resolve their matters outside the court if the option of the other party to present their case to a court were not available. Dialogue is important and can facilitate a smooth transition. For example, Legal Aid Ontario operates a Family Law Service Centre close to the Ontario Court of Justice at 47 Sheppard Avenue East and the South Asian Legal Clinic of Ontario (SALCO) is located next door, "working independently but adding to the synergy of LAO's one-stop

resource for clients seeking information, support and legal services in the hub for all family law court matters in the Greater Toronto region".<sup>483</sup> As described above, the Family Law Service Centre provides services from the provision of summary advice to full scope legal representation. The staff of the Family Law Service Centre have forged strong links with the court and provide a clear link to the court when urgent judicial intervention is required, for example in cases of domestic violence where a restraining order is required.

It is important therefore that these "entry points" be seen as gateways to the appropriate remedy and not a barrier when the most appropriate remedy is the intervention of the court. These entry points therefore need to be seen and understood as being integrated with the family justice system and not operating outside it. They should be seen as part of a larger family-related system that includes community centres, women's shelters and other services, including those serving Aboriginal, ethno-cultural and disability communities, among others, and the courts. The other services should view the centres as the most effective place to refer clients who come to them first, and they should be integrated into the way the centres operate.

### **C. Satisfying the Benchmarks**

There will be many other challenges in addition to those discussed above that will need to be addressed but we believe that none is insurmountable. We urge the principal stakeholders of the family justice system to follow the example set by the stakeholders in the healthcare system to move toward developing a framework for creating multidisciplinary multifunction entry or access points into the family justice system which capitalize on existing resources as much as possible and leverage services already provided to various and diverse groups in Ontario.

Once a model or models have been designed and a strategic implementation plan developed, the province can establish a pilot or pilots. It might be most useful for two different pilots to be instituted in different areas of the province. As the development of the health care model showed, it can take up to two years to engage in the process. Yet this process can result in transformation of the family justice system in crucial ways.

The focus of the comprehensive services we are suggesting is the provision of legal services; other services complement the legal services. In that sense, unlike some of the examples above, legal services are not an adjunct to other services. A variety of services can be housed in one location, as in the family justice centres in the United States,<sup>484</sup> or legal and certain other services that are used more often can be provided in one location with easy access to others needed by fewer people or best provided off-site. The model can be more of a collaboration than a single entity providing services (with access to other more specialized services as needed), as in the Connecting Region Initiative. Individuals would have access to one individual who could provide information, make referrals (taking advantage of other expertise available as appropriate) and oversee the provision of other services as appropriate.

The services would be available to all individuals with family problems who require legal (and most likely other) assistance; this model would therefore differ from those that exist that are specifically directed to women who are victims of domestic violence, although this model would provide specialized services or ensure that victims of domestic violence had access to those services in a more appropriate location if necessary (in a community centre or a family justice centre, for example). The closest model of those described above is perhaps the British Columbia Justice Access Centres, although we are not suggesting that the model provide services for all civil matters.<sup>485</sup> Either in the centre or easily on call culturally relevant services would be provided, as would assistance for people with language or literacy difficulties, for example. The key element in all of these centres is that the

*It is important...that these "entry points" be seen as gateways to the appropriate remedy and not a barrier when the most appropriate remedy is the intervention of the court. These entry points therefore need to be seen and understood as being integrated with the family justice system and not operating outside it.*

services will be delivered in a way that is sensitive to client needs in order for the client to be able to move through to a resolution, whether at the stage of the centres or in the court system to which the centres have been linked.

While discrete attempts to improve access to the family law system can have a positive impact, it is crucial that they contribute to a coherent form of access to family justice. It is also important that access be meaningful for those whose financial circumstances do not allow them to retain a lawyer, or whose life experience does not readily respond to the mainstream system. Just as one can have “too much choice”, one can have access to too much information without knowing how to distinguish its value to one’s own circumstances. Less costly ways to increase access to justice include recognizing the value of law students and trusted intermediaries, and, possibly, paralegals. Greater reliance on these service providers, while not replacing lawyers, can, with appropriate training and supervision, be of great assistance to those who cannot afford a lawyer and yet have too many resources for legal aid. More limited retainers can also help. We believe all of these options have merit individually. We also believe, however, that a comprehensive integration of these services, as well as a recognition that for many people in family disputes, non-legal problems can be as important as or perhaps even more important than the ostensibly legal problems. Therefore we recommend the development, in a variety of forms, as appropriate and feasible, of comprehensive multidisciplinary, multifunction services constituting a “real” or “virtual” centre.

*While discrete attempts to improve access to the family law system can have a positive impact, it is crucial that they contribute to a coherent form of access to family justice [and] that access be meaningful for those whose financial circumstances do not allow them to retain a lawyer, or whose life experience does not readily respond to the mainstream system.*

The comprehensive approach to accessing the family law system that includes the suggestions we offered in Chapter II of this Part integrated into the multicultural, multifunction centres, properly linked with other relevant actors in the system, would meet the benchmarks we identified above, by

- Providing accessible initial information where people are likely to see it in places people regularly frequent;
- Providing more detailed information in print and on the internet through a single hub that allows people to decide whether they want to deal with their family problem through the legal system, with the assistance of trusted intermediaries including those who can address different educational and literacy levels; the presence of domestic violence and other factors such as cultural norms, Aboriginal status, gender, sexual orientation, age, language, disability, geographic location and similar factors that affect people’s interaction with the family legal system;
- Offering coordinated resources that helps people determine the actual nature of their problem in a timely way;
- Having programs that have been developed in consultation with affected communities;
- Responding to issues of financial capacity without compromising the quality of service through service provision by lawyers using different models and persons legally trained but not necessarily lawyers, with appropriate regulation and supervision ;
- Recognizing and responding to the multiple problems that accompany family problems through direct inclusion of or easy access to non-legal expertise;
- Offering a seamless process from early stages to final resolution through the comprehensive nature of the services systematically linked to later stages of the process; and
- Being based on a sustainable model developed in conformity with the principle of progressive realization.

## V. RECOMMENDATIONS

Based on our review of the existing system, assessments of the system by workers and users in the system, and with the interprofessional health care initiative as a helpful model, we have concluded that accessing the family justice system effectively requires a comprehensive multidisciplinary, multifunction approach that

- incorporates inclusivity,
- provides effective access to information and self-help tools,
- provides options for service delivery by lawyers,
- provides services from other legally trained persons,
- incorporates trusted intermediaries,
- recognizes that family law problems may be caused by, accompanied by or be exacerbated by problems of other kinds, and
- is systematically linked to later stages of the family law process.

### **The Law Commission of Ontario recommends that:**

1. The major stakeholders responsible for the delivery of services to be found at family justice entry points, including government actors, crown agencies, professional regulators and not for profit organizations, engage in a process to develop the concept of comprehensive multidisciplinary, multifunction service delivery and that the process include the following elements:
  - a) identification of relevant services to be offered that meet criteria of accessibility, diversity, timeliness, effectiveness, and other characteristics of the bench marks set out in this Report;
  - b) identification of the challenges and creation of a plan to address the challenges;
  - c) identification and leveraging of programs and services that already exist which could serve as a springboard for integration;
  - d) developing a process for accreditation of multidisciplinary service centres; and
  - e) development of a strategic implementation plan.
2. The plan outlined in Recommendation 1 incorporate both the principles of progressive realization and a method of evaluation.
3. The Ontario government facilitate the creation of two pilot projects in two areas of the province, one rural and one urban, that meet the benchmarks as appropriate, applying the lessons gained from previous experience with comprehensive services as discussed in this Report and meeting the criteria set out in the preamble to these Recommendations.

## APPENDIX A: ORGANIZATIONS AND INDIVIDUALS CONTRIBUTING TO THE PROJECT

### A. Organizations and Experts

The following list includes all organizations and experts who provided written submissions to one or more of the consultation papers or were interviewed by LCO staff. Some of the organizations listed participated in multiple ways over the course of the project.

The Advisory Group for this project was integral to its success. The members of the Advisory Group are listed at the front of this *Report*.

- Aboriginal Legal Services of Toronto
- Action ontarienne contre la violence faite aux femmes
- ADR Institute of Ontario
- The Advocates' Society
- African Canadian Legal Clinic
- Celine Allard, Family Law Lawyer
- Lori Alywin, Family Law Lawyer
- ARCH Disability Law Centre
- Professor Bernie Aron, Humber College
- Assemblée de la francophonie de l'Ontario
- Association for Better Care of Children
- Association of Community Legal Clinics of Ontario
- Association of Family and Conciliation Courts
- Julie Audet, Family Law Lawyer
- Professor Martha Bailey, Queen's University, Faculty of Law
- Professor Nick Bala, Queen's University
- Professor Becky Batagol, Monash University
- Steven Benmor, Family Law Lawyer
- Better Care of Children
- Professor Rachel Birnbaum, Western University
- Nathalie Boutet, Family Law Lawyer
- Burlington Counselling & Family Services
- Canadian Council for Muslim Women
- Canadian Equal Parenting Council
- Canadian Hearing Society
- Canadians for Family Law Reform
- Centre Colibri
- Centre de Justice de proximité Grand Montreal
- Centre for Addiction & Mental Health Sudbury
- Centre Francophone de Toronto
- Le Centre Passerelle pour femmes du Nord de l'Ontario
- Children's Aid Society of the County of Simcoe
- City of Greater Sudbury
- La Clé d'la Baie, Penetanguishene
- Clinique juridique communautaire Grand-Nord
- Community Advocacy and Legal Centre
- Community Legal Education Ontario
- Connecting Region Ottawa
- Sally Cozens
- Dalhousie Place

- Department of Justice Canada
- Disabled Women's Network Canada
- Professor Susan Drummond, Osgoode Hall Law School
- Downtown Legal Services
- Risa Ennis, Family Mediator
- Philip Epstein, Family Law Lawyer
- Ernestine's Women's Shelter
- Family Law Information Centres
- Family Law Service Centres
- Family Services Ottawa
- Family Services Toronto, Families in Transition Program
- FCJ Refugee Centre
- Fédération de la jeunesse franco-ontarienne
- Findhelp Information Services/211 Toronto
- Halton Women's Place
- Income Security Advocacy Clinic
- Institute for Research on Public Policy
- Jewish Family and Child Service of Toronto
- Kelly Jordan, Family Law Lawyer
- Keewaytinok Native Legal Services
- Robert Klotz, Klotz Associates
- LawPro
- Law Society of Upper Canada
- Professor Robert Leckey, McGill University, Faculty of Law
- Legal Aid Ontario
- LGBTQ Parenting Network
- Carolyn Lloyd, Family Law Lawyer
- Luke's Place
- Roland Luo, Family Law Lawyer
- Svetlana MacDonald, Family Law Lawyer
- Alfred Mamo, Family Law Lawyer
- Manitoulin Legal Clinic
- Mimi Marrello, Family Law Lawyer
- Mary-Jo Maur, Family Law Lawyer
- Eric McCooeye, Family Law Lawyer
- The Mediation Centre of Simcoe County
- Metro Action Committee on Violence Against Women and Children
- Metro Toronto Chinese & Southeast Asian Legal Clinic
- Ministry of the Attorney General
- Mississauga Community Legal Services
- Professor Mary Jane Mossman, Osgoode Hall Law School
- Mouvement des Intervenant.e.s en Communication Radio de l'Ontario (MICRO)
- Multilingual Community Interpreter Services
- Professor Roxanne Mykitiuk, Osgoode Hall Law School
- Native Women's Resource Centre of Toronto
- Northwestern Ontario Women's Centre
- Office of the Children's Lawyer
- Ontario Association for Family Mediation
- Ontario Association of Social Workers
- Ontario Bar Association
- Ontario Collaborative Law Federation
- Ontario Court of Justice
- Ontario Federation of Indian Friendship Centres
- Ontario Native Women's Association
- The Ontario Network for the Prevention of Elder Abuse

- Ontario Works, Greater Sudbury
- Peel Family Justice Centre
- Pro Bono Law Ontario
- Pro Bono Students Canada
- Tanya Road, Family Law Lawyer
- Professor Carol Rogerson, University of Toronto, Faculty of Law
- Linda Irvine Sapiano, Family Law Lawyer
- Karen Selick, Family Law Lawyer
- Christopher Spear, Family Law Lawyer
- Superior Court of Justice of Ontario
- Nicole Tellier, Family Law Lawyer
- Toronto Police Service
- Toronto-based group of transitional and housing support workers
- Professor Michael Trebilcock, University of Toronto
- Vanier Community Service Centre
- Lisa Wice, Mediator
- Lois Winstock
- Lorne Wolfson, Family Law Lawyer
- Women's Community House

## **B. Commissioned Research Papers**

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

**Lesley Jacobs and Brenda Jacobs**, *Multidisciplinary Paths to Family Justice: Professional Challenges and Promising Practices*, June 2010. Available online at <http://www.lco-cdo.org>

**Noel Semple**, *Cost-Benefit Analysis of Family Service Delivery: Disease, Prevention and Treatment*, June 2010. Available online at <http://www.lco-cdo.org>

## APPENDIX B: LIST OF ACRONYMS

ADR - Alternative Dispute Resolution  
 AIFS - Australian Institute of Family Studies  
 AJEFO - L'Association des jurists d'expression française de l'Ontario  
 CFSAP - Canadian Family Services Accreditation Program  
 CFSPD - Catholic Family Services Peel-Dufferin  
 CLEO - Community Legal Education Ontario  
 CMA - City metropolitan area  
 DRIVEN - Durham Region's Intimate-Relationship Violence Empowerment Network  
 DVC - Domestic Violence Court  
 FJC - Family Justice Centre  
 FJSC - Family Justice Services Centre  
 FLEW - Family Law Education for Women  
 FLIC - Family Law Information Centre  
 FLIP - Family Law Information Program  
 FLP - Family Law Programs  
 FRC - Family Relationship Centre  
 FSO - Family Service Ontario  
 ILA - Independent legal advice  
 IPC - Interprofessional Care  
 IRC - Information and Referral Coordinator  
 JAC - Justice Access Centre  
 LAO - Legal Aid Ontario  
 LCO - Law Commission of Ontario  
 LHIN - Local Health Integration Network  
 LICO - Statistics Canada's Low Income Cut Off  
 LRCC - Law Reform Commission of Canada  
 LSS - Legal Services Society  
 MAG - Ministry of the Attorney General  
 MIP - Mandatory Information Program  
 OACCS - Ontario Association of Credit Counselling Services  
 OAITH - Ontario Association of Interval and Transition Houses  
 OCL - Office of the Children's Lawyer  
 OECD - Organization for Economic Cooperation and Development  
 OPS - Ontario Public Service  
 PBSC - Probono Students Canada  
 PSCP - Post Separation Cooperative Parenting  
 SALCO - South Asian Legal Clinic of Ontario  
 SRL - Self-represented litigants  
 UFC - Unified Family Court

## ENDNOTES

1. Chief Justice Warren K. Winkler, Presentation to County of Carleton Law Association - Civil Litigation CLE Program (November 19, 2010), online: [http://www.ontariocourts.ca/coa/en/ps/speeches/ccll\\_civil\\_litigation\\_cle\\_program.htm](http://www.ontariocourts.ca/coa/en/ps/speeches/ccll_civil_litigation_cle_program.htm). Chief Justice Winkler returned to this view in "Family Law and Access to Justice: A time for Change", Remarks by Chief Justice Warren K. Winkler, 5<sup>th</sup> Annual Family Law Summit, The Law Society of Upper Canada (June 17, 2011), online: <http://www.ontariocourts.ca/coa/en/ps/speeches/2011-Family-Law-Access-Justice.htm>. He acknowledged then that the Attorney General was instituting some "important changes in services", but that he "remain[ed] committed to the notion that more fundamental change is needed".
2. Ontario Civil Legal Needs Project, *Listening to Ontarians: Report of the Civil Legal Needs Project* (The Ontario Civil Legal Needs Project Steering Committee, May, 2010), 57 (*Listening to Ontarians*), online: [http://www.lsuc.on.ca/media/may3110\\_oclnreport\\_final.pdf](http://www.lsuc.on.ca/media/may3110_oclnreport_final.pdf).
3. Law Commission of Ontario (LCO), *Voices from a Broken System: Sharing Consultation Results*, online: <http://www.lco-cdo.org/family-law/family-law-process-consultation-results.pdf>.
4. Alfred A. Mamo, Peter G. Jaffe, Debbie G. Chiodo, *Recapturing and Renewing the Vision of the Family Court* (2007), online: <http://www.learningtoendabuse.ca/sites/default/files/Family%20Court%20Study%202007.pdf> [*the Mamo Report*].
5. OBA Family Law Section, ADR Institute of Ontario & OAFM, *Home Court Advantage: Creating a Family Law Process that Works - Final Report* (September 2010), online: [http://www.adrontario.ca/media/Family%20Law%20Process%20Reform%20Report\\_final\\_web.pdf](http://www.adrontario.ca/media/Family%20Law%20Process%20Reform%20Report_final_web.pdf).
6. Ontario Superior Court of Justice, *Family Strategic Plan*, online: <http://www.ontariocourts.on.ca/scj/en/famct/familylawstrategicplan.htm>. The Court's Strategic Plan includes an emphasis on the needs of children: *Prioritizing of Children Initiative - Statement of Objectives* (December 2012), online: <http://www.ontariocourts.ca/scj/en/famct/prioritizing-children.pdf>.
7. Ontario Court of Justice, *Biennial Report 2006-2007*, 54, online: <http://www.ontariocourts.ca/ocj/files/annualreport/ocj/2006-2007-EN.pdf>.
8. The University of Toronto Faculty of Law, The Middle Income Access to Justice Initiative, online: <http://www.law.utoronto.ca/about/giving-back-our-communities/access-justice-initiative>.
9. We note that many areas of law require the use of "experts" to assist in legal determinations. For example, the evaluation of property under the *Family Law Act*, R.S.O. 1990, c. F.3 requires the use of evaluators and accountants to address the division of pensions or jewellers to help determine the value of jewellery; and s.30(1) of the *Children's Law Reform Act*, R.S.O. 1990, c. C.12, allows a judge to appoint "a person who has technical or professional skill to assess and report to the court on the needs of the child and the ability and willingness of the parties or any of them to satisfy the needs of the child." Our reference to the use of experts other than legal experts is slightly different, however: we mean the need of experts in other disciplines to consider the non-legal problems faced by family disputants as a way of understanding the part those problems play in relation to the legal dispute and how addressing those problems can either reduce the legal dispute or focus the legal dispute or help prevent the parties returning to court again and again.
10. Professor Julie Macfarlane has been completing a study in which she and her team interviewed 250 unrepresented litigants in three provinces, including Ontario, and 100 "upfront" workers, such as those at the court counter and duty counsel (Conversation with the LCO, November 27, 2012). The study was at the pre-analysis stage; however, Macfarlane says that the "pattern is very clear". Also see Don Butler, "Self-represented litigants 'treated with contempt' by many judges, study finds" *Ottawa Citizen* (January 1, 2013), online: <http://www.ottawacitizen.com/mobile/story.html?id=7762754>. This article also refers to the Macfarlane study and her findings.
11. Anne-Marie Ambert, *Divorce: Facts, Causes and Consequences* (3<sup>rd</sup> ed) (Vanier Institute of the Family, November 2009), online: <http://www.vanierinstitute.ca/include/get.php?nodeid=190>. In 2008, about 42 per cent of marriages in Ontario were projected to end in divorce before the couples' thirtieth wedding anniversary: Human Resources and Skills Development Canada, *Indicators of Well-being in Canada: Family Life - Divorce*, online: <http://www4.hrsdc.gc.ca/.3ndic.1t.4r@-eng.jsp?iid=76>. Our report does not address divorce proceedings or differentiate between separation and divorce, since its focus is on the early stages at which family law disputants seek assistance. Also see Noel Semple, *Cost-Benefit Analysis of Family Service Delivery: Disease, Prevention, and Treatment* (June 2010) (Commissioned by the LCO) 3, online: <http://www.lco-cdo.org/family-law-process-call-for-papers-semble.pdf>.
12. Some 80 per cent of divorces are uncontested: Mary Bess Kelly, "Divorce cases in civil court, 2010/2011" *Juristat* (Statistics Canada, March 12, 2012) 5, online: <http://www.statcan.gc.ca/pub/85-002-x/2012001/article/11634-eng.pdf>. Kelly points out that divorce rates have declined approximately 2 per cent per year over the period 2006/2007 and 2010/2011: 9.
13. Ab Currie, *The Legal Problems of Everyday Life: The Nature, Extent and Consequences of Justiciable Problems Experienced by Canadians* (Government of Canada, 2009) 34, online: [http://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr07\\_la1-rr07\\_aj1/rr07\\_la1.pdf](http://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr07_la1-rr07_aj1/rr07_la1.pdf). Over 81 per cent said that it was "extremely important" to resolve their family breakdown problems.
14. LCO, *Voices from a Broken System*, note 3, 31. As we explained in the results of the consultations, the children had been "brought together by a counselling service with which they had been involved. The children and their parents signed written consents to participate in this consultation. The head of this counselling service, who has significant experience providing services to youth and their parents, co-facilitated the meeting." A review of the family law system in the U.K. reported similar findings: UK Ministry of Justice, *Family Justice Review Interim Report* (March 2011) 151-52, online: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/162316/family-justice-review-interim-rep.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/162316/family-justice-review-interim-rep.pdf). The Final Report was released in November 2011, online: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/162302/family-justice-review-final-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/162302/family-justice-review-final-report.pdf). The U.K. study addressed state child proceedings, as well as their role in private proceedings, and was concerned with all stages of the process.
15. 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 11, 24.
16. UK Ministry of Justice, *Family Justice Review Interim Report*, note 14, 151.
17. Molly Dragiewicz and Albert DeKeseredy, *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) 50, online: <http://www.lukesplace.ca/pdf/Study-on-the-Experiences-of-Abused-Women.pdf>.
18. Semple, note 11, 17.
19. Semple, note 11, 18-19.
20. Semple, note 11, 34-35.
21. Dragiewicz and DeKeseredy, note 17.
22. Currie, note 13, 19.
23. Currie, note 13, 16 and 19.
24. Currie, note 13, 46.
25. Michael Trebilcock, *Report of the Legal Aid Review* (Ministry of the Attorney General, 2008) vi, 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).
26. The Vanier Institute reports that of all working people in Canada, female lone-parents between 25 and 44 years of age work on average the longest hours. This amounts to nearly 11 hours of paid and unpaid work per day over a 7-day week: Roger Sauvé, *Family Life and Work Life: An Uneasy Balance* (Vanier Institute of the Family,

- 2009) 16. 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. This was 227 per cent compared to 170 per cent for couple families with children: Matt Hurst, *Debt and Family Type in Canada* (Statistics Canada, April 2011) 44, online: <http://www.statcan.gc.ca/pub/11-008-x/2011001/article/11430-eng.pdf>.
27. According to Statistics Canada, “23% [of spousal homicides] were against separated spouses and 2% were against divorced spouses”. Statistics Canada, *Family Violence in Canada: A Statistical Profile 2011* (Ministry of Industry, 2011) 33, online: <http://www.statcan.gc.ca/pub/85-224-x/2010000/part-partie4-eng.htm>. Although there has been a decline in spousal homicides (44 per cent lower than 30 years ago), “the rate of spousal homicides against females has consistently been about three to four times higher than that for males” and “female victims of spousal homicide were more likely than male victims to be killed by a partner from whom they were separated (26% versus 11%)”. The same pattern has been observed with regard to non-lethal separation assault: Dragiewicz and DeKeseredy, note 17, 12-13. In its 2011 Report, the Domestic Violence Death Review Committee noted that in cases reviewed between 2003 and 2011, “74% of all cases...involved a couple where there was a history of domestic violence” and “72% of the cases involved a couple with an actual or pending separation”: Domestic Violence Death Review Committee: 2011 Annual Report (Office of the Chief Coroner of Ontario, September 2012) iii, online: <http://www.mcscs.jus.gov.on.ca/stellent/groups/public/@mcscs/@www/@com/documents/webasset/ec160943.pdf>.
28. Macfarlane, note 10. Also see Rachel Birnbaum and Nicholas Bala, “Experiences of Ontario Family Litigants with Self-Representation” (NJL, February 2012), online: <http://www.probonostudents.ca/wp-content/uploads/2011/08/Jan-13-Birnbaum-Bala-Family-Litigants-Access-to-Justice-NJL-Feb-20121.pdf>
29. Macfarlane, note 10.
30. Michael McKiernan, “Self-represented opponents: Case highlights difficulties of facing litigants without lawyers”, *Law Times* (June 18, 2012) 11. This article also refers to the difficulties judges face when parties are unrepresented. On this, also see Rachel Birnbaum, Nicholas Bala, and Lorne Bertrand, “The Rise of Self-Representation in Canada’s Family Courts: the Complex Picture Revealed in Surveys of Judges, Lawyers and Litigants” (2012) (CBR in press).
31. Law Commission of Ontario, *Research Priorities Report* (April 2007) (*Sossin Report*), online: <http://www.lco-cdo.org/SossinResearchReport.pdf>. The LCO Board of Governors had asked Professor Lorne Sossin of the University of Toronto Faculty of Law (now Dean of Osgoode Hall Law School) to recommend potential projects for the new Law Commission of Ontario.
32. Law Commission of Ontario, *Division of Pensions upon Marital Breakdown Final Report* (January 2009), online: <http://www.lco-cdo.org/en/pensions-final-report>.
33. 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), online: [http://www.ontla.on.ca/web/house-proceedings/house\\_detail.do?Date=2009-02-19&Parl=39&Sess=1&locale=en](http://www.ontla.on.ca/web/house-proceedings/house_detail.do?Date=2009-02-19&Parl=39&Sess=1&locale=en).
34. Law Commission of Ontario, *Family Law [Project] Options Consultation Paper* (January 2009), online: <http://www.lco-cdo.org/en/family-law-options-consultation-paper>.
35. Law Commission of Ontario, *Best Practices at Family Justice Entry Points: Needs of Users and Responses of Workers in the Justice System* (September 2009), online: <http://www.lco-cdo.org/en/family-law-process-consultation-paper>.
36. LCO, *Voices from a Broken System*, note 3.
37. Brenda Jacobs and Lesley Jacobs, *Multidisciplinary Paths to Family Justice, Professional Challenges and Promise Practices* (June 2010), online: <http://www.lco-cdo.org/en/family-law-process-call-for-papers-and-Semple>, note 11.
38. See Ontario Work’s Directive: “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 [sic], may be entitled.” Ministry of Community and Social Services, Ontario Works Directives, 5.5 Family Support, online: <http://www.mcscs.gov.on.ca/documents/en/mcscs/social/directives/ow/0505.pdf>.
39. See Ontario Disability Support Program’s policy about support and similar payments: “An ODSP applicant/recipient must make reasonable efforts to obtain compensation or realize any financial resource to which he/she or his/her dependant may be entitled. The Director must be satisfied that a person is taking action, where appropriate, to obtain support payments. Eligibility does not depend on the actual receipt of support payments, but on the efforts being made to obtain support. Efforts being made may include attending court appointments and providing the ODSP office with current information.” Ministry of Community and Social Services, Ontario Disability Support Program – 5.15 Income Support Directives, online: [http://www.mcscs.gov.on.ca/en/mcscs/programs/social/directives/directives/ODSPDirectives/income\\_support/5\\_15\\_ODSP\\_ISDirectives.aspx](http://www.mcscs.gov.on.ca/en/mcscs/programs/social/directives/directives/ODSPDirectives/income_support/5_15_ODSP_ISDirectives.aspx).
40. See Art. 12 of the *Convention on the Rights of the Child*, which gives the child capable of forming his or her own views the right to express these views in a legal proceeding. United Nations Human Rights – Office of the High Commissioner for Human Rights, *Convention on the Rights of the Child*, Article 12: 1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. 2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law, online: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>.
41. We spent time with children in our consultation process and found that they had many concerns arising from family disputes, including their participation in their families and their interactions with their lawyers. They were frank about the impact disputes within their family had on them. See LCO, *Voices from a Broken System*, note 3, especially at 8 and 28ff. The U.K. study on the family law system there found children had similar concerns: for comments from the children themselves, see *Interim Report*, note 14, 48ff. The final recommendations placed considerable emphasis on ensuring the system was responsive to children’s needs and concerns: *Final Report*, note 14.
42. Submissions to the Interim Report are available on file at the LCO.
43. This “ordering” of the benchmarks (initial information, advice, more complex advice) is for convenience, since different individuals will enter the system at different points (for example, one person will speak to friends or relatives or an advisor informally before looking for information, while another will search the internet for information, and yet another will make an appointment with a lawyer).
44. Sustainability refers primarily to financial support; but it also refers to structuring a program based on expectations that the services will be provided when they need to be provided. We believe that a system cannot be built on volunteers, even though the willingness of many lawyers and others to contribute their time to various programs is to be applauded. However, it is difficult to sustain a system and to ensure it meets standards when important functions of the system, functions that become integrated as an expected part of the system, are performed only or primarily by volunteers. Nevertheless, we do recognize that it may be necessary to rely on volunteers if people are to receive the help they need. Eventually, based on the availability of financial resources and the importance of the particular service, governments or other bodies may decide to fund services provided by volunteers, making them therefore

- more sustainable. We also recognize that financial sustainability is never guaranteed.
45. Law Commission of Ontario, online: <http://www.lco-cdo.org/en/content/family-law-reform>.
  46. Roderick A. MacDonald, "Access to Justice in Canada Today: Scope, Scale and Ambitions", Julia Bass, W.A. Bogart and Frederick Zemans, eds., *Access to Justice for a New Century, The Way Forward* (Toronto: Law Society of Upper Canada, 2005) 19, 23.
  47. Faisal Bhabha, "Institutionalizing Access-to-Justice: Judicial, Legislative and Grassroots Dimensions" (2007) 33 Queen's L.J. 139, 149.
  48. University of Toronto Faculty of Law, note 8.
  49. Michael Trebilcock, Anthony Duggan and Lorne Sossin, eds., *Middle Income Access to Justice* (Toronto: University of Toronto Press, 2012).
  50. Membership of the NAC has been described as "broadly representative of the legal community across Canada, including judges, the organized Bar, legal regulators, legal aid plans, pro bono plans, court administrators, academics, and the deputy justice ministers for Alberta and Canada": Cristin Schmitz, "Access to justice initiative builds: Committee creating blueprint for change" *Lawyers Weekly* (August 24, 2012), online: <http://www.lawyersweekly.ca/index.php?section=article&articleid=1720>.
  51. Canadian Judicial Council, *A Strong, Effective and Efficient Judiciary: Annual Report 2010-2011*, online: <http://www.cjc-ccm.gc.ca/cmslib/ar10-11>.
  52. Law Commission of Ontario, *A Framework for the Law as It affects Older Adults: Advancing Substantive Equality for Older Persons through Law, Policy and Practice Final Report* (Toronto: April 2012) 13, online: <http://www.lco-cdo.org/older-adults-final-report.pdf>.
  53. The reforms and planned reforms are discussed in Ministry of the Attorney General, *Court Services Division Annual Report 2010-2011*, online: [http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/courts\\_annual\\_10/Court\\_Services\\_Annual\\_Report\\_FULL\\_EN.pdf](http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/courts_annual_10/Court_Services_Annual_Report_FULL_EN.pdf). The reforms identified there have all been implemented and are discussed later in this final report. Also see Ministry of the Attorney General, *Family Law Reform in Ontario: Background*, online: <http://www.attorneygeneral.jus.gov.on.ca/english/news/2011/20110311-dv-bg.asp>.
  54. LCO, *Voices from a Broken System*, note 3.
  55. LCO, *Voices from a Broken System*, note 3. A woman from an interpretation service explained that a woman sharing her ethnic background came to the service to seek help with her family problem because she did not know where to get help: 44. A culture and language specific legal clinic (that did not offer family services) told us about a Chinese woman who was unable to speak English and whose telephone discussion with Chinese-speaking lawyers left her thinking that lawyers could not help her: 45. Sometimes, family members can provide crucial on-going support, although they may not be able to provide reliable advice other than in a personal sense. For example, one participant in our consultations commented that her sister had accompanied her at different stages of the process and reviewed documents with her over a period of three years: 12.
  56. CLEO, *Your Legal Rights: Family Law*, online: <http://yourlegalrights.on.ca/family-law>.
  57. Ministry of the Attorney General, *A Guide to Procedures in Family Court* (2010, rev. 2012), online: <http://www.attorneygeneral.jus.gov.on.ca/english/family/guides/fc/>.
  58. Ministry of the Attorney General, *What You Should Know about Family Law in Ontario* (1999, rev. Nov. 2012), online: <http://www.attorneygeneral.jus.gov.on.ca/english/family/familyla.pdf>. 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, 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). It is possible to call a phone number to obtain information in over 170 languages. For family law, see Ministry of the Attorney General, *Family Law*, online: [http://www.attorneygeneral.jus.gov.on.ca/english/justice-ont/family\\_law.asp](http://www.attorneygeneral.jus.gov.on.ca/english/justice-ont/family_law.asp).
  59. Department of Justice, *Family Law*, online: <http://www.justice.gc.ca/eng/fund-fina/famil/fjic-vidf.html>. This website has a number of publications, as well as information, including resources for children.
  60. Government of Canada, *Canada Benefits, Divorce and Separation*, online: <http://www.canadabenefits.gc.ca/f.1.2cl.3st@.jsp?catid=14&lang=en&geo=99>. This website provides access to relevant federal programs in each province.
  61. Legal Aid Ontario, *Family Law Information Program*, online: <http://www.legalaid.on.ca/en/getting/flip.asp#>.
  62. *Your Law: Family Law in Ontario*, online: <http://yourontariolaw.com/>.
  63. The Law Society's portal's website explains, "Your Law: Family Law in Ontario provides you with information and access to resources on the emotional, financial, legal and social considerations relating to child custody, access and child support and will help you make the best decisions for you and your family": I, note 62.
  64. Community Legal Education Ontario (CLEO), *Resources and Publications*, online: [http://www.cleo.on.ca/en/resources-and-publications/pubs?language=en&field\\_legal\\_topic\\_tid\\_i18n=87](http://www.cleo.on.ca/en/resources-and-publications/pubs?language=en&field_legal_topic_tid_i18n=87).
  65. Family Law Education for Women (FLEW), *All Women: One Family Law*, online: <http://www.onefamilylaw.ca>.
  66. LCO in conversation with Julie Matthews, Executive Director of CLEO, on April 11, 2012.
  67. Information provided to the LCO by Julie Matthews, Executive Director of CLEO, in an e-mail dated April 27, 2012.
  68. Ontario Ministry of the Attorney General, "Family Law Information Centres (FLICs)", online: <http://www.attorneygeneral.jus.gov.on.ca/english/family/infoctr.asp>.
  69. Ontario Ministry of the Attorney General, "Mandatory Information Programs (MIPs)", online: [http://www.attorneygeneral.jus.gov.on.ca/english/family/family\\_justice\\_services.asp#mip](http://www.attorneygeneral.jus.gov.on.ca/english/family/family_justice_services.asp#mip). The MIP is provided for in Rule 8.1 of *Courts of Justice Act*, R.S.O. 1990, c. C.43, *Family Law Rules*, O. Reg. 114/99, online: [http://www.e-laws.gov.on.ca/html/regs/english/elaws\\_regs\\_990114\\_e.htm#s8p1s1](http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_990114_e.htm#s8p1s1). Also see County of Carleton Law Association, "Notice to the Public: Mandatory Information Program (MIP)", online: <http://www.ccla-abcc.ca/uploadedFiles/Notice%20to%20the%20Public%20-%20Mandatory%20Information%20Program.pdf> and MIP Flowchart, online: <http://www.ccla-abcc.ca/uploadedFiles/Mandatory%20Information%20Program%20-%20Flowchart.pdf>.
  70. *Ministry of the Attorney General Court Services Division Annual Report 2011-2012*, 41, online: [http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/courts\\_annual\\_11/Court\\_Services\\_Annual\\_Report\\_FULL\\_EN.pdf](http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/courts_annual_11/Court_Services_Annual_Report_FULL_EN.pdf).
  71. Alfred A. Mamo, Peter G. Jaffe and Debbie G. Chiodo, *Recapturing and Renewing the Vision of the Family Court ("The Mamo Report")*, online: <http://www.learningtoendabuse.ca/sites/default/files/Family%20Court%20Study%202007.pdf>.
  72. *The Mamo Report*, note 71, 55 and 56.
  73. *The Mamo Report*, note 71, 8.
  74. LCO, *Voices From a Broken System*, note 3, 61.
  75. LCO, *Voices From a Broken System*, note 3, 50.
  76. LCO, *Voices From a Broken System*, note 3, 46-48.
  77. See, for example, IRC availability in Barrie (Monday to Friday 9:00 am to 3:30 pm), Bracebridge (9:00 to 11:00 am on Tuesday and Friday) and Orillia (2:00 to 5:00 pm Tuesdays): <http://www.themediationcentre.com/family/family-law-information-centres-flic>. This is the website of The Mediation Centre which provides the IRC.
  78. Jacobs and Jacobs, note 37, 29 and 30.
  79. Jacobs and Jacobs, note 37, 29 and 30.
  80. LCO, *Voices from a Broken System*, note 3, 50 and 51.
  81. Ontario Ministry of the Attorney General, "Family Law Information Centres (FLICs)" states, "See the listing of FLIC offices throughout Ontario", note 68. This takes the individual to Ontario Ministry of the Attorney General, "Service Provider by Family Court Location", online: [http://www.attorneygeneral.jus.gov.on.ca/english/family/service\\_provider\\_by\\_family\\_court\\_location.asp](http://www.attorneygeneral.jus.gov.on.ca/english/family/service_provider_by_family_court_location.asp). Clicking on the particular location identifies a mediation services provider rather

- than information about the full services provided by the FLIC for someone looking merely for information or advice, for example.
82. Ontario Ministry of the Attorney General, "Family Law Information Centre (FLIC) Locations", online: [http://www.attorneygeneral.jus.gov.on.ca/english/family/infoctr\\_locations.asp](http://www.attorneygeneral.jus.gov.on.ca/english/family/infoctr_locations.asp).
  83. For example, the information for the FLIC for London and Middlesex County is available on the site Information London, online: <http://info.london.on.ca/details.asp?id=12962>. Information about the FLIC in Kingston can be found on the site KFL&A Community Resources Database: Record Details, online: <http://kingston.cioc.ca/record/KGN2370>.
  84. With the approval of a judge, Legal Aid Ontario's Family Law Information Program can be completed online as a substitute for the MIP: LAO, *Family Law Information Program*, note 61.
  85. Individuals can arrange to attend a MIP session through their family mediation and information service provider: Ministry of the Attorney General, "Mandatory Information Programs (MIPs)" (March 2012), online: <http://www.attorneygeneral.jus.gov.on.ca/english/family/parentinfo.asp>
  86. Comment made at the 2012 Conference of L'Association des juristes d'expression française de l'Ontario (AJEFO).
  87. This view was echoed by lawyers in Birnbaum and Bala's study of lawyers and unrepresented litigants: "Views of Ontario Lawyers on Family Litigants without Representation" (2012) 63 UNBLJ 99, 118-119.
  88. Rachel Birnbaum and Nicholas Bala, "Experiences of Ontario Family Litigants with Self-Representation", 12, online: <http://www.probonostudents.ca/wp-content/uploads/2011/08/Jan-13-Birnbaum-Bala-Family-Litigants-Access-to-Justice-NJI-Feb-20121.pdf>
  89. Birnbaum and Bala, "Experiences of Ontario Family Litigants", note 88, 13. Litigants also reported their experiences with the MIP, the Legal Aid toll free hotline and the Advice Lawyer at the FLIC.
  90. *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*, note 2, 28.
  91. LCO, *Voices from a Broken System*, note 3, 58.
  92. OECD, *The Future of the Family to 2030 – A Scoping Report* (December 2008) 61, online: <http://www.oecd.org/dataoecd/11/34/42551944.pdf>. The comments are primarily about "e-government", described in the report as mostly about the one-way provision of information by government. 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". Mary Stratton, *Alberta Self Represented Litigants Mapping Project* (Canadian Forum on Civil Justice, January 2007), 17 and 18, online: <http://www.cfcj-fcjc.org/sites/default/files/docs/2007/mapping-en.pdf>.
  93. In the International Adult Literacy and Skills Survey (IALSS), "prose literacy" refers to "the knowledge and skills needed to understand and use information from texts including editorials, news stories, brochures and instruction manuals" and "document literacy" refers to "the knowledge and skills required to locate and use information contained in various formats, including job applications, payroll forms, transportation schedules, maps, tables and charts". See Lynn Barr-Telford, François Nault and Jean Pignal, *Building on our Competencies: Canadian Results of the International Adult Literacy and Skills Survey* (2003) (Human Resources and Skills Development Canada, Statistics Canada, November 2005) 13, online: <http://www.statcan.gc.ca/pub/89-617-x/89-617-x2005001-eng.pdf>. The IALSS "is the Canadian component of the Adult Literacy and Life Skills program" carried out by "governments, national statistical agencies, research institutions and multi-lateral agencies" providing "internationally comparable measures" in four forms of literacy: 12. The study involved over 23,000 individuals 16 and over from across Canada.
  94. Barr-Telford, *et al*, note 93, 28 and 121. The IALSS uses five levels of prose literacy, with level 1 referring to the ability to "read relatively short text, locate and enter a piece of information into that text, and complete simple, one-step tasks such as counting, sorting dates or performing simple arithmetic". Other relevant skills include integrating two or more pieces of information (level 2), integrating information "from dense or lengthy text" or "multiple pieces of information" (level 3), making inferences from lengthy or complex passages and related tasks "to find solutions to abstract problems" (level 4) and searching for information "in dense text...to make high-level inferences or use specialized background knowledge" (level 5). Each level also refers to ability to understand mathematics.
  95. Barr-Telford, *et al*, note 93, 121. Level 1 document literacy means the individual can "locate a piece of information based on a literal match or enter information from person knowledge onto a document"; level 2 means the individual is able to locate information, even though "distracters" are present, is able to do so on the basis of low level inferences, "cycle through information in a document or...integrate information from various parts of a document".
  96. Barr-Telford, *et al*, note 93, 45.
  97. Ontario Forms Assistant, online: <https://formsassistant.ontariocourtforms.on.ca/Welcome.aspx?lang=en>. The forms assistant asks a series of questions, the answers to which may lead to other questions. The answers allow the automatic completion of the form which must be submitted at the courthouse in person (that is, not electronically).
  98. The literature regarding litigants who represent themselves often draw a distinction between "unrepresented litigants", those who would like to have a lawyer but are unable to hire one, and "self-represented litigants", those who are in a position to hire a lawyer but choose not to. We have not drawn a distinction between these two groups in considering the use of information and self-help forms. It is difficult to determine how many unrepresented – or self-represented – litigants in family cases there are: Rachel Birnbaum and Nicholas Bala, "Views of Ontario Lawyers on Family Litigants without Representation", note 87, 101.
  99. University of Toronto Faculty of Law, *Middle Income Access to Justice Initiative*, "Background Paper" 19, online: [http://www.law.utoronto.ca/documents/conferences2/AccessToJustice\\_LiteratureReview.pdf](http://www.law.utoronto.ca/documents/conferences2/AccessToJustice_LiteratureReview.pdf).
  100. Anne-Marie Langan, "Threatening the Balance of the Scales of Justice", (2005), 30:2 Queen's LJ 825, 825, online: [www.carters.ca/news/2005/QueensLJ/langan.pdf](http://www.carters.ca/news/2005/QueensLJ/langan.pdf).
  101. Langan, note 100, 861, 862.
  102. On unrepresented litigants expectations about the impact of lack of representation on settlement, see for example, Birnbaum and Bala, "Experiences of Ontario Family Litigants", note 88.
  103. Dragiewicz and DeKeseredy, note 17.
  104. Birnbaum and Bala, "Views of Ontario Lawyers", note 87, 109.
  105. Birnbaum and Bala, "Experiences of Ontario Family Litigants", note 88, 22-23.
  106. Trevor C.W. Farrow, *et al*, *Addressing the Needs of Self Represented Litigants in the Canadian Justice System* (Association of Canadian Court Administrators, March 27, 2012, 16, online: <http://www.cfcj-fcjc.org/sites/default/files/docs/2012/Addressing%20the%20Needs%20of%20SRLs%20ACCA%20White%20Paper%20March%202012%20Final%20Revised%20Version.pdf>. (Citations omitted.)
  107. *Listening to Ontarians*, note 2, 22.
  108. Alison Brewin with Lindsay Stephens, *Legal Aid Denied: Women and the Cuts to Legal Aid Services in BC* (West Coast Leaf and Canadian Centre for Policy Alternatives (BC Office), September 2004) 19, online: [http://www.westcoastleaf.org/userfiles/file/legal\\_services.pdf](http://www.westcoastleaf.org/userfiles/file/legal_services.pdf).
  109. Birnbaum and Bala, "Views of Ontario Lawyers", note 87, 8ff. This does not mean that the outcome was necessarily better for the represented party: 113
  110. *The Mamo Report*, note 4, 92.
  111. UK Ministry of Justice, *Family Justice Review Interim Report*, note 14, 155.
  112. Melina Buckley, *Moving Forward on Legal Aid: Research on Needs and Innovative Legal Approaches* (CBA, June 2010) 39, online:

- <http://www.cba.org/CBA/Advocacy/PDF/CBA%20Legal%20Aid%20Renewal%20Paper.pdf>.
113. *Listening to Ontarians*, note 2, 10.
114. Semple, note 11. Also see the amounts identified by a family lawyer who indicates that negotiations may range from \$2,000 to \$50,000 or more; a court case can cost at least \$10,000 with most in the range of \$15,000 to \$25,000 and “[i]f the case goes to trial, the costs can be two or three times higher”: Brian Galbraith, “What is the cost of separation or divorce in Barrie, Ontario?”, *Ontario Family Law Blog* (April 21, 2010), online: <http://www.ontariofamilylawblog.com/2010/04/articles/process-choices/what-is-the-cost-of-a-divorce-or-separation-in-barrie-ontario/>.
115. Semple, note 11, 16.
116. Semple, note 11, 63.
117. See Legal Aid Ontario, “Certificate Services”, online: [www.legalaid.on.ca/en/getting/certificate-services.asp](http://www.legalaid.on.ca/en/getting/certificate-services.asp). See Legal Aid, “Contribution Agreements”, online: <http://www.legalaid.on.ca/en/getting/client-contributions.asp>. The maximum income for two parents with three children or one parent with four children is \$43,000 annually for duty counsel and \$26,714 for a certificate (or if the total income is between \$26,714 and \$33,960, legal aid may be provided, but a contribution may be required).
118. Legal Aid Ontario, “Am I eligible for legal aid?”, online: [www.legalaid.on.ca/en/getting/eligibility.asp](http://www.legalaid.on.ca/en/getting/eligibility.asp).
119. Trebilcock, note 25.
120. Family Law Services Centres are located in Toronto, North York, Newmarket, Brampton, Chatham, Windsor and Sarnia: Legal Aid Ontario, “Family Law service Centres (FLSC)”, online: [http://www.legalaid.on.ca/en/getting/type\\_family\\_law\\_service\\_centres.asp](http://www.legalaid.on.ca/en/getting/type_family_law_service_centres.asp). The FLSC can provide assistance ranging from help with documents, referral to Advice Lawyer (provided by LAO) or to a private practice lawyer who does legal aid work (based on eligibility), mediation and settlement services, to full representation by a staff lawyer and referrals to other social service agencies.
121. Legal Aid Ontario, “Legal Aid at a Glance”, online: [http://www.legalaid.on.ca/en/about/fact\\_at\\_a\\_glance.asp](http://www.legalaid.on.ca/en/about/fact_at_a_glance.asp).
122. Law Society of Upper Canada, *Rules of Professional Conduct*, Rule 1.02, online: <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147486159>.
123. 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>.
124. *LawPro’s Submissions on Unbundled Legal Services*, note 123, 10 (emphasis in original).
125. LSUC, *Rules of Professional Conduct*, note 122, Rules 2.01, 2.02 and 6. These Rules address issues relating to competence, quality of service and communication.
126. See the list of ethics and professionalism competencies tested by the barristers’ licensing examinations: Law Society of Upper Canada, “Entry Level Barrister Competencies”, online: <http://www.lsuc.on.ca/BarristerCompetencies>. Also see the competencies tested by the solicitors’ licensing examinations: <http://www.lsuc.on.ca/SolicitorCompetencies>. The examinations are multiple choice, with some independent questions, other related to a case study.
127. Downtown Legal Services, online: <http://dls.sa.utoronto.ca/>. The clinic handles child custody, access and support, spousal support, and restraining orders. It does not handle child protection, divorce or division of property.
128. Downtown Legal Services, “Our Services”, online: <http://dls.sa.utoronto.ca/our-services/>; LCO conversation with Lisa Cirillo, Acting Executive Director of Downtown Legal Services, on April 17, 2012.
129. Pro Bono Students Canada, *PBSC National Family Law Program: Program Description* (July 2012) (on file with the Law Commission of Ontario). Also see PBSC, online: <http://www.probonostudents.ca/>. PBSC facilitates the volunteer services of students in other areas of law and in placements with non-profit organizations. The Access to Justice Fund is administered by the Law Foundation of Ontario.
130. PBSC, Court and Tribunal Program, online: <http://www.probonostudents.ca/programs/court-and-tribunal>. For the Osgoode first year and upper year programs, see Osgoode Hall Law School, Family Law Project, online: <http://www.osgoode.yorku.ca/pbsc/flp>; and the University of Toronto programs, online: <http://www.law.utoronto.ca/programs-centres/programs/pbsc-probono-students-canada/pbsc-family-law-project>.
131. William C. Vickrey, Nicole Claro-Quinn & Martha Wright, *Courts and Universities Partner to Improve Access to Justice for all Californians* (2011) 96, online: <http://ncsc.contentdm.oclc.org/cgi-bin/showfile.exe?CISOROOT=/accessfair&CISOPTR=234>.
132. Vickrey, *et al*, note 131, 97.
133. Vickrey, *et al*, note 131, 97-98.
134. Vickrey, *et al*, note 131, 98. Given the pool of students available, “on average each year’s class of Justice Corps members speaks 24 different languages either fluently or conversationally”.
135. LCO conversation with Nikki Gershbnain on June 11, 2012; LCO conversation with Lisa Cirillo, note 128.
136. Law Foundation of Ontario, “Law Foundation Public Interest Articling Fellowships”, online: <http://www.lawfoundation.on.ca/fellowships.php>.
137. Legal Aid Ontario, “LAO aims to recruit lawyers at every stage of their careers” (May 25, 2012), online: [http://www.legalaid.on.ca/en/news/newsarchive/1205-25\\_lawyerworkforstrategy.asp](http://www.legalaid.on.ca/en/news/newsarchive/1205-25_lawyerworkforstrategy.asp). For the 2012-2013 articling year, Legal Aid Ontario hired 51 articling students across the province who worked in a variety of locations, including as in court duty counsel, at staff offices and in the Provincial Office. It planned to hire a significant number of articling students for the 2013-2014 articling year, as well: information provided by LAO.
138. Law Society of Upper Canada, *Articling Task Force Final Report* (October 25, 2012) 17, online: <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147489848>.
139. Osgoode Hall Law School, *Osgoode Public Interest Requirement*, online: <http://www.osgoode.yorku.ca/opir>, and Osgoode Hall Law School, *Clinics and Experiential Learning*, online: <http://www.osgoode.yorku.ca/clinics-experiential>.
140. The Ontario Bar Association, the ADR Institute of Ontario and OAFM, *Family Law Process Reform: Supporting Families to Support their Children* (April 2009) 4 (*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). This same coalition held a three day summit in November 2009, which attracted over 120 participants including leaders from the bench, bar, government and mediation and collaboration fields. See the resulting report: *Home Court Advantage—Creating a Family Process That Works* (November 2009) (*Home Court Advantage*), 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).
141. In some instances, programs in some parts of the province have been expanded to other areas or throughout the province, while in other cases, there are new initiatives: *Ministry of the Attorney General Court Services Division, Annual Report 2011-2012*, note 70. The Annual Report states that courts have either heard more matters or the matters heard, while decreased, have decreased less than they would have, as a result of the implementation of the Mandatory Information Program: 31ff.
142. *Listening to Ontarians*, note 2, 57.
143. 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: Mary Bess Kelly, “Family court cases involving custody, access and support arrangements 2009/2010”, *Juristat*, (March 29, 2011) 7-8, 16 (“Family court cases”), online: <http://www.statcan.gc.ca/pub/85-002-x/2011001/article/11423-eng.pdf>.

144. The five year trends in the 2011-2012 *Annual Report of the Court Services Division* show that since 2007-2008, in all family courts, the total number of new proceedings had decreased by 5 per cent. In the Superior Court, the number of new proceedings decreased by 3.5 per cent, in the Family Court by 3 per cent and in the Ontario Court of Justice by 9 per cent. In all Ontario courts combined there were about 70,000 new family proceedings in 2011-2012, other than child protection proceedings. Note 70, 31-33. Of all family cases in Canadian courts, about 70 per cent are divorce and other family breakdown cases. The remaining 30 per cent involve adoption, child protection, civil protection, guardianship and other family matters: Kelly, "Family court cases", note 143, 17.
145. *Ministry of the Attorney General Court Services Division Annual Report 2011-2012*, note 70, 32-34.
146. According to its bi-annual report 2008-2009, almost 68 per cent of all family matters in the Ontario Court of Justice are custody, access and support matters: Ontario Court of Justice, *Biennial Report, 2008-2009*, 51, online: <http://www.ontariocourts.ca/ocj/files/annualreport/ocj/2008-2009-EN.pdf>.
147. Kelly, "Family court cases", note 143, 9.
148. Kelly, "Family court cases", note 143, 10.
149. Law Reform Commission of Canada, *Working Paper No.1, The Family Court* (Information Canada: Ottawa, 1974) 11, online: [https://archive.org/stream/familycourt00comm/familycourt00comm\\_djvu.txt](https://archive.org/stream/familycourt00comm/familycourt00comm_djvu.txt).
150. In May 2012, Attorney General John Gerretsen said that he hoped to expand the unified family court across the province and thought that it might be possible incrementally: Michael McKiernan, "Province-wide UFC finally coming to Ontario?" *Legal Feeds* (May 2012), online: <http://www.canadianlawyer.com/legalfeeds/851/Province-wide-UFC-finally-coming-to-Ontario.html>.
151. Ministry of the Attorney General, "Ontario's Family Court Structure", online: <http://www.attorneygeneral.jus.gov.on.ca/english/family/famcourts.asp>.
152. Department of Justice, *The Unified Family Court Summative Evaluation Final Report* (March 2009) iii-iv (*The UFC Evaluation*), online: <http://www.justice.gc.ca/eng/pi/eval/rep-rap/09/ufc-tuf/ufc.pdf>.
153. Department of Justice, *The UFC Evaluation*, note 152, i.
154. Family Law Rules, note 69.
155. Mary Lou Benotto, "The Family Law Rules: Why?" (Winter 2004) 23 *Advocates' Soc. J.* 6, 6.
156. Single judge case management means that one judge is assigned the case at the case conference stage and follows the family up to and including the trial management conference. Other members of the judiciary are assigned the trials.
157. Superior Court of Justice, *Family Law Strategic Plan*, note 6 (emphasis in original).
158. *The Superior Court of Justice: Mapping the Way Forward, 2010-2012 Report*, 24-25, online: <http://www.ontariocourts.on.ca/scj/en/reports/annualreport/10-12.pdf>. On Information and Referral Coordinators, see Ministry of the Attorney General, Family Law Information Centres (FLICs), note 68. The IRC is able to "provide information on alternative dispute resolution options, issues related to separation and divorce and community resources".
159. On DROs, see Superior Court of Justice, "Dispute Resolution Officer Program Pilot Project in the Superior Court of Justice in Brampton, Milton, Newmarket, Barrie and Durham", online: <http://www.ontariocourts.on.ca/scj/en/notices/pd/dispute-resolution-2012.htm>. The Court issued a new Practice Direction effective January 1, 2013 to apply to all DRO Programs: Superior Court of Justice, Dispute Resolution Officer Program Pilot Project in the Superior Court of Justice: Practice Direction, online: <http://www.ontariocourts.on.ca/scj/en/notices/pd/dispute-resolution-officer-program.htm>.
160. LCO conversation with Chief Justice Heather F. Smith on July 4, 2012.
161. Department of Justice, *Summary of Activities for the Child-Centered Family Justice Fund 2003-2009*, Family Justice Initiatives (Part 1), 17, online: <http://www.justice.gc.ca/eng/rp-pr/fl-lf/famil/ccjf-fdfe/index.html>.
162. *Evaluation of the Ottawa Family Case Manager Pilot Project—Year Two (Ottawa Report)*, online: [http://www.ccla-abcc.ca/uploadedFiles/Year\\_Two\\_Evaluation.pdf](http://www.ccla-abcc.ca/uploadedFiles/Year_Two_Evaluation.pdf). The pilot is continuing.
163. 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, online: <http://canlii.ca/t/1ntb>.
164. *Ottawa Report*, note 162, 8-9.
165. *Family Law Act*, note 9; *Children's Law Reform Act*, note 9. For a summary of the amendments, see Ministry of the Attorney General, *Family Law Reform in Ontario*, online: <http://www.attorneygeneral.jus.gov.on.ca/english/news/2011/20110311-dv-bg.asp>.
166. Ministry of the Attorney General, "Domestic Violence Court", online: <http://www.attorneygeneral.jus.gov.on.ca/english/about/vw/dvc.asp>.
167. Ministry of the Attorney General, *Family Court Support Workers 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). For a list of services, see Ministry of the Attorney General, "Family Justice Services", online: [http://www.attorneygeneral.jus.gov.on.ca/english/family/family\\_justice\\_services.asp](http://www.attorneygeneral.jus.gov.on.ca/english/family/family_justice_services.asp).
168. Legal Aid Ontario, "Settlement conferences help resolve Children's Aid cases faster", online: [http://www.legalaid.on.ca/en/news/newsarchive/1205-31\\_settlementconferences.asp](http://www.legalaid.on.ca/en/news/newsarchive/1205-31_settlementconferences.asp). As this communication indicates, settlement conferences in non-Children's Aid cases are available across the province. However, this service is not listed on LAO's list of family services on its website: Legal Aid Ontario, "Family Law", online: [http://www.legalaid.on.ca/en/getting/type\\_family.asp](http://www.legalaid.on.ca/en/getting/type_family.asp).
169. For example, see Legal Aid Ontario, Family Law Service Centre, Toronto North, online: <http://centralontario.cioc.ca/record/MET0091>. Also see re mediation services offered by Legal Aid in Milton: Legal Aid Ontario, Family Law Information Centre (FLIC), online: [http://www.legalaid.on.ca/en/getting/type\\_familylawinformationcentre.asp](http://www.legalaid.on.ca/en/getting/type_familylawinformationcentre.asp).
170. For example, The Mediation Centre was awarded a contract to undertake mediation services in the Barrie Family Court in 1995. See online: <http://www.themediationcentre.com/>.
171. Ministry of the Attorney General, "Family Mediation Services", online: <http://www.attorneygeneral.jus.gov.on.ca/english/family/mediation.asp>. The website provides a link to a site which providing information about mediation services at all Family Court locations. Clicking on a location may produce information about the mediation services at that location or at another location, or may simply provide an email address. See Ministry of the Attorney General, "Family Service Provider by Family Court Location", online: [http://www.attorneygeneral.jus.gov.on.ca/english/family/service\\_provider\\_by\\_family\\_court\\_location.asp](http://www.attorneygeneral.jus.gov.on.ca/english/family/service_provider_by_family_court_location.asp).
172. Ministry of the Attorney General, "Family Mediation Services", note 171.
173. LCO, *Voices from a Broken System*, note 3, 25.
174. 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 subject to a fee scale according to which parties pay for the subsidized mediation on the basis of income and number of dependents. In practice, there may be some flexibility as long as sufficient progress is made. The client's contribution begins at \$5 per hour for persons with low incomes. See the User Fee Schedule online: <http://mediate393.ca/wp-content/uploads/2011/08/User-Fee-Schedule-2011-14.pdf>.
175. In Ontario there are two organizations which provide standards for mediation: the Ontario Association for Family Mediation (OAFM) and the ADR Institute of Ontario: see <http://www.oafm.on.ca/> and <http://www.adrontario.ca/>, respectively. In addition, there is Family Mediation Canada: see <http://www.fmc.ca/>.
176. For example, "participants mentioned that there are many competent family mediators in Ontario and if it was better regulated, advertised and made financially accessible, there would be no reason why mediation should not be used more often in

- solving family disputes”: *Voices from a Broken System*, note 3, 14.
177. Ministry of the Attorney General, “Family Mediation”, online: <http://www.attorneygeneral.jus.gov.on.ca/english/family/divorce/mediation/>.
178. Rene L. Rimelspach, “Mediating Family Disputes in a World with Domestic Violence: How to Devise a Safe and Effective Court-Connected Mediation Program”, 17:1 *Ohio St. J. Disp. Resol.* 95 (2001-2002). Rimelspach reviews the arguments supporting the view that mediation is never appropriate for victims of domestic violence and those supporting the view that it can sometimes be appropriate.
179. Chief Justice Warren Winkler, “Access to Justice—Mediation: Panacea or Pariah?” (2007) 16:1 *Canadian Arbitration and Mediation Journal* 5, 6, online: <http://www.adrcanada.ca/resources/documents/CAMJournalFall2007.pdf>.
180. In the context of family arbitration, see Ministry of the Attorney General, “Independent Legal Advice”, online: [http://www.attorneygeneral.jus.gov.on.ca/english/family/arbitration/independent\\_legal\\_advice.asp](http://www.attorneygeneral.jus.gov.on.ca/english/family/arbitration/independent_legal_advice.asp). Also see, more broadly, the Law Society of Upper Canada, “When Independence Legal Representation or Advice Required”, online: <http://www.lsuc.on.ca/IndependentLegalAdviceOrRepresentationRequired/>; and “Tips for Providing Independent Legal Advice”, online: <http://www.lsuc.on.ca/TipsforProvidingIndependentLegalAdvice/>.
181. LawPRO, “ILA Checklists”, online: <http://www.practicepro.ca/practice/ILAChecklist.asp>.
182. See, for example *LeVan v. LeVan* (2008), 90 OR (3d) 1.
183. Ron Stewart, *The Early Identification and Streaming of Cases of High Conflict Separation and Divorce: a Review*. (Ottawa: Department of Justice Canada, 2001) 21, online: [http://www.justice.gc.ca/eng/rp-pr/fl-lf/divorce/2001\\_7/pdf/2001\\_7.pdf](http://www.justice.gc.ca/eng/rp-pr/fl-lf/divorce/2001_7/pdf/2001_7.pdf).
184. Trebilcock, note 25, 80.
185. Karen Cohl and George Thomson, *Connecting Across Language and Distance: Linguistic and Rural Access to Legal Information and Services* (Law Foundation of Ontario, December 2008) 48, 52, 86, online: <http://www.lawfoundation.on.ca/wp-content/uploads/The-Connecting-Report.pdf>.
186. *Listening to Ontarians*, note 2, 45.
187. LCO, *Voices from a Broken System*, note 3, 27.
188. Jacobs and Jacobs, note 37, 14.
189. Jacobs and Jacobs, note 37, 15.
190. *Supporting Families*, note 140, 7ff. The authors suggested that there would be cost savings elsewhere in the system that could help fund expanded FLICs and that there could be a small increase to filing fees marriage licence fees: 21.
191. Family service centres offer a wide range of services, sometimes to a particular community, and may have been in existence for many years. See, for example, Somali Centre for Family Services, online: <http://www.somalifamilyservices.org/> and Family Services Ottawa, online: <http://familyservicesottawa.org/about-family-services-ottawa/>. The Somali Centre has been in existence since 1991, the Ottawa Centre since 1914 (see <http://www.shopinottawa.com/Family-Service-Centre-Of-Ottawa-Carleton/318217.htm>, which links to the Ottawa Centre).
192. Ontario Council of Agencies Serving Immigrants, *What is Family Counselling?* (1 March 2010), online: [http://www.settlement.org/sys/faqs\\_detail.asp?faq\\_id=4000363](http://www.settlement.org/sys/faqs_detail.asp?faq_id=4000363).
193. Stewart, note 183, 31.
194. See, for example, Immigrant Women Services Ottawa, online: <http://www.immigrantwomenservices.com/> and Windsor Women Working with Immigrant Women, online: <http://www.wwwwiw.org/>. WWWWIW began in 1983 because the existing family service centre was not providing the kinds of services to immigrant women they thought necessary. On a visit by the LCO Executive Director to WWWWIW in November 2009, staff talked about how, although women might come for employment assistance, they often raised family concerns as well.
195. Stewart, note 183, 23.
196. Stewart, note 183, 31.
197. Stewart, note 183, 41.
198. Family Service Ontario, online: [www.familyserviceontario.org/](http://www.familyserviceontario.org/).
199. Family Service Toronto, “Our Programs, Services and Areas of Expertise”, online: <http://www.familyserVICetoronto.com/programs.html>.
200. Ontario Association of Credit Counselling, online: <http://www.oaccs.com/main.html>. OACCS is a network of accredited credit counselling agencies and certified credit counsellors. There are 36 OACCS member agencies with 52 locations across Ontario.
201. Jacobs and Jacobs, note 37, 30.
202. These are all discussed in Jacobs and Jacobs, note 37. The range of possible services is illustrated by the Schlifer Clinic which offers specialized legal services (in family, immigration and criminal law), counselling services in several languages and interpreter services for non-English speaking immigrant and refugee women; the Clinic liaises with shelters, community centres, health services, legal services and housing services. Although the range of services is broad, it is intended for women who have experienced violence: Barbra Schlifer Commemorative Clinic, online: <http://schliferclinic.com/>. Also see Family Violence Project of Waterloo Region, online: <http://www.fvpwaterloo.ca/en/> and Durham Region’s Intimate-Relationship Violence Empowerment Network (DRIVEN), online: <http://www.durhamdriven.com/>.
203. Jacobs and Jacobs, note 37, 48.
204. Stewart, note 183, 39ff. Stewart identifies risk factors for children such as significant changes in where they live or go to school, the loss of relationships, the introduction of new relationships when their parents find new partners, the emotional cost of their parents’ hostility and the presence of domestic violence, among others.
205. LCO, *Voices from a Broken System*, note 3, 32.
206. *Courts of Justice Act*, note 69, ss. 89 and 112. The Children’s Lawyer may either act as counsel for the child, or prepare a report, or a combination of both.
207. Information provided by the OCL office to the LCO on May 8, 2012.
208. In 2010, those earning high incomes were more likely to use the internet; 94 per cent of persons earning at least \$87,000 used the internet compared with about 60 per cent of persons earning \$30,000 or less, according to Statistics Canada. Usage also varied between urban (82 per cent usage at least) and rural (about 76 per cent) residents. About half of “seniors” used it and among those not using the internet, nearly 40 per cent were living in low-income. The reasons for not using the internet were the lack of skills (22 per cent), finding computers too difficult (22 per cent), lack of access (12 per cent) and cost (9 per cent). See Statistics Canada, “Individual Internet use and E-Commerce” *The Daily* (October 12, 2011), online: <http://www.statcan.gc.ca/daily-quotidien/111012/dq111012a-eng.htm>.
209. Law Commission of Ontario, *Modernization of the Provincial Offences Act: Final Report* (Toronto: August 2011), 126, online: <http://www.lco-cdo.org/en/provincial-offences-final-report>. In November 2012, the Ministry of the Attorney General announced that the government was establishing a steering committee to improve access to justice in the official language of choice: “Making it Easier to Access Justice in French” (November 20, 2012), online: <http://news.ontario.ca/mag/en/2012/11/making-it-easier-to-access-justice-in-french.html>.
210. Law Commission of Ontario, *A Framework for the Law as It Affects Older Adults*, note 52, 107; Law Commission of Ontario, *A Framework for the Law as It Affects Persons with Disabilities: Advancing Substantive Equality for Persons with Disabilities through Law, Policy and Practice* (Toronto: September 2012), 96, online: <http://www.lco-cdo.org/en/content/persons-disabilities>. As we say on p.107 of our older adults report, “A progressive realization approach involves concrete, deliberate and targeted steps implemented within a relatively short period of time with a view to ultimately meeting the goal of full implementation of the principles.”
211. *Canadian Charter of Rights and Freedoms*, ss.15 and 28, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c.11.
212. *Human Rights Code*, R.S.O. 1990, c. H.19.

213. For example, in June 2012, Ontario's *Human Rights Code* was amended to add gender identity and gender expression to the list of protected grounds: Ontario Human Rights Commission, "Human Rights and gender identity and gender expression", online: <http://www.ohrc.on.ca/en/human-rights-and-gender-identity-and-gender-expression>. How broad these protections are in fact will depend on how the terms are interpreted.
214. About 72 per cent of families consist of married couples (above the Canadian figure of 67 per cent) and over 10 per cent live in common law relationships (about the same as the Canadian average). Statistics Canada reports that nationally the number of common law relationships was higher than the number of lone-parent families for the first time in 2011. Statistics Canada, *Portrait of Families and Living Arrangements in Canada: Families, households and marital status, 2011 census of population*, (Ottawa: Ministry of Industry, 2012), 5, online: <http://www12.statcan.gc.ca/census-recensement/2011/as-sa/98-312-x/98-312-x2011001-eng.pdf>.
215. The growth in male lone-parent families was just over 16 per cent compared to 6 per cent for female headed lone-parent families). However, there are nearly 13 per cent female-headed lone parent families compared to 3.5 per cent male lone-parent families. Statistics Canada, *Portrait of Families and Living Arrangements in Canada*, note 214.
216. *Civil Marriage Act*, S.C. 2005, c. 33. The enactment of the *Civil Marriage Act* by Parliament followed the recognition of the right of same-sex couples to legally marry by several courts in the provinces. In Ontario, the Court of Appeal found limiting marriage to a man and a woman was discriminatory: *Halpern v. Canada* (Attorney General) (2003), 65 OR (3d) 161.
217. According to Statistics Canada, "45.6% of all same-sex couples in Canada live in Toronto, Montréal and Vancouver, compared to 33.4% of opposite-sex couples". Statistics Canada, *Portrait of Families and Living Arrangements in Canada*, note 214, 8. As Statistics Canada reports, "Between 2006 and 2011, the number of same-sex married couples nearly tripled (+181.5%), while opposite-sex married couples experienced more modest growth (+2.9%)." Yet "[t]he number of same-sex common law couples increased by 15.0%, slightly higher than the 13.8% growth for opposite-sex common-law couples."
218. While there were over 43 per cent of couples with children living at home and just over 40 per cent without children in 2001, by 2006, for the first time, there were slightly more couples without children at home (nearly 43 per cent) than there were with children (just over 41 per cent): Statistics Canada, *Portrait of Families and Living Arrangements in Canada*, note 214. The gap increased in 2011 (there were slightly more than 39 per cent of couples with children and over 44 per cent of couples without children): Statistics Canada, *Portrait of Families and Living Arrangements in Canada*, note 214.
219. Statistics Canada, *Portrait of Families and Living Arrangements in Canada*, note 214, 8. Just over 47 per cent of opposite-sex couples had children at home, compared to over 9 per cent of same sex couples, with nearly five times the percentage of female same-sex couples with children at home (16.5 per cent) than male same-sex couples (3.4 per cent). Of same-sex couples with children at home, about 80 per cent were female couples. Also see Anne Milan, Leslie-Anne Keown and Covadonga Robles Urquijo, *Families, Living Arrangements and Unpaid Work* (Ottawa: Minister of Industry, December 2011), Component of Statistics Canada, *Women in Canada: A Gender-Based Statistical Report*, 6<sup>th</sup> ed., 10, online: <http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11546-eng.pdf>: In 2006, 49 per cent of women in opposite-sex unions, 16 per cent of women in same-sex couples and nearly 3 per cent of men in same-sex couples had children aged 24 and under present in the home.
220. Compare the results of a poll taken in 2005 just before Parliament voted on the change to the definition of marriage (52 per cent of respondents disagreed with the change) and a poll in 2012 showing 59 per cent of respondents agreed with the definition of marriage: CBCnews, "Canadians deeply split on same-sex marriage, poll suggests" (April 10, 2005), online: <http://www.cbc.ca/news/canada/story/2005/04/10/gay-marriage-050410.html> and Angus Reid Public Opinion, "Australians Support Same-Sex Marriage More Than Americans and Britons" (March 3, 2012), online: <http://www.angus-reid.com/polls/44437/australians-support-same-sex-marriage-more-than-americans-and-britons/>, respectively.
221. Meg Luxton, *Changing Families, New Understandings* (Vanier Institute of the Family, June 2011) 11, online: <http://www.vanierinstitute.ca/include/get.php?nodeid=164>.
222. In step families, the children are some combination of being the biological or adopted children of only one partner of the couple or of one or more children being the biological or adopted children of both parents and other children being the biological or adopted children of one or the other parent. In 2011, 10 per cent of children lived in step families. About 63 per cent of these children were actually step-children: Statistics Canada, *Portrait of Families and Living Arrangements in Canada*, note 214, 14.
223. Statistics Canada, *Portrait of Families and Living Arrangements in Canada*, note 214, 11. The proportion of step families was lowest in Ontario (11 per cent) and in Ontario, was lowest in Toronto (nearly 8 per cent).
224. In 2011, just over 63 per cent lived with married parents; however, this was a decrease from 2001 when about 68 per cent lived with married parents: Statistics Canada, *Portrait of Families and Living Arrangements in Canada*, note 214, 13.
225. Statistics Canada, *Portrait of Families and Living Arrangements in Canada*, note 214, 14.
226. Just over 3 per cent of children lived with grandparents in 2001 and nearly 5 per cent per cent in 2011: Statistics Canada, *Portrait of Families and Living Arrangements in Canada*, 14. A very small number (.5 per cent) of children 14 or under live only with one or both grandparents (these are called "skip generation" families): 15.
227. Bill 67, *Children's Law Reform Amendment Act (Relationship with Grandparents)*, 2012, 1<sup>st</sup> Sess., 40<sup>th</sup> Parl., 2012, (passed second reading 31 May 2012 and ordered referred to Standing Committee). The Bill, sponsored by MPPs from each of the parties, had passed to the Standing Committee on Regulations and Private Bills before prorogation on October 15, 2012. The Bill would have amended the *Children's Law Reform Act* to provide that a custodial parent is not to pose barriers to the relationship between the child(ren) and grandparent(s) and to include among the factors relevant to the best interests of a child for purposes of determining custody, the willingness of a parent to facilitate contact between the child(ren) and the grandparent(s). The Nova Scotia Law Reform Commission has released a report on access by grandparents to their grandchildren: Nova Scotia Law Reform Commission, *Grandparent-Grandchild: Access, Final Report* (April 2007), online: <http://www.lawreform.ns.ca/Downloads/GrandparentFinal.pdf>. The Commission recommended that "the *Maintenance and Custody Act* be amended to provide that an application for access may be made by grandparents with the leave of the court, as would be the case of anyone other than a parent or guardian. Grandparents can apply for custody of or access to their grandchildren in all jurisdictions in Canada, but are not distinguished from other "strangers" who may seek custody to or access in most jurisdictions, including Ontario.
228. This has been the case with families from countries from which immigrants have long emigrated, such as Italy, but it is also true of immigrants from more recent source countries. In the latter case, grandparents may have come to Canada as part of the family reunification immigration program. However, recent and planned changes are intended to reduce the backlog in the program, while providing for relatively long term but nevertheless impermanent stays (up to two years) for parents and grandparents through a "Super Visa" program: Citizenship and Immigration Canada, "News Release — Canada welcomes largest number of parents and grandparents in almost twenty years", online: <http://www.cic.gc.ca/english/department/media/releases/2012/2012-11-05.asp>; The terms of the Super Visa, available as of December 1, 2012, can be found at Citizenship and Immigration Canada, online: <http://www.cic.gc.ca/english/department/media/releases/2012/2012-11-05.asp>

- cic.gc.ca/english/visit/supervisa-who.asp.
229. See Sauvé, note 26, 10.
230. Cara Williams, *Economic Well-being* (Ottawa: Minister of Industry, December 2010), Component of Statistics Canada, *Women in Canada: A Gender-Based Statistical Report*, 6<sup>th</sup> ed., 8, online: <http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11388-eng.pdf>. There has generally been a decline in the wage gap among all ages. There are many reasons for the decline and for the differences relating to levels of education and the type of work younger women have achieved or do, but another reason is that men's economic position has decreased somewhat over the past few years.
231. OECD, *The Future of the Family to 2030 – A Scoping Report*, (December 2008), note 92, 10; Luxton, note 221, 4.
232. Erin Anderssen, "With 'the end of men,' a new beginning", *Globe and Mail* (December 26, 2012) L2. See Jacques Barrette, *Work/Family Balance: What do we Really Know?* (Vanier Institute for the Family, January 15, 2009), online: <http://www.vanierinstitute.ca/modules/news/newsitem.php?ItemId=242#.UW8DKMrgh4I>. This study focuses on the conflict between family and work, but also discusses some broader trends.
233. Sauvé, note 26, 18. On the continued more vulnerable status of women in the workforce, see the Law Commission of Ontario's project on vulnerable workers and precarious work: Law Commission of Ontario, *Vulnerable Workers and Precarious Work Final Report* (December 2012), online: <http://www.lco-cdo.org/en/vulnerable-workers-final-report>.
234. Milan, *et al*, note 219, 21.
235. Milan, *et al*, note 219, 24.
236. Linda Duxbury and Christopher Higgins, *Revisiting Work Life Issues in Canada: The 2012 National Study on Balancing Work and Caregiving in Canada* (December 2012), online: <http://www.healthyworkplaces.info/wp-content/uploads/2012/11/2012-National-Work-Long-Summary.pdf>. This study is the third national study since 1991.
237. For a description of the composition of the female population, in many respects similar to that of the male population, see Covadonga Robles Urquijo and Anne Milan, *Female Population* (Ottawa: Minister of Industry, July 2011), Component of Statistics Canada, *Women in Canada: A Gender-Based Statistical Report*, 6<sup>th</sup> ed., online: <http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11475-eng.pdf>.
238. Statistics Canada reports that "[i]n 2006, 30% of Aboriginal women aged 15 and over, versus 47% of non-Aboriginal women, lived with a spouse." Seventeen per cent of Aboriginal women lived in common law relationships compared to 10 per cent of non-Aboriginal women: Vivian O'Donnell and Susan Wallace, *First Nations, Métis and Inuit Women* (Ottawa: Minister of Industry, July 2011), Component of Statistics Canada, *Women in Canada: A Gender-Based Statistical Report*, 6<sup>th</sup> ed., 19, online: <http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11442-eng.pdf>.
239. O'Donnell and Wallace, note 238, 20.
240. O'Donnell and Wallace, note 238, 21.
241. O'Donnell and Wallace, note 238, 37.
242. O'Donnell and Wallace, note 238, 27. There was less of a gap between Aboriginal men and women living on reserve; however, the rates for both groups were considerably lower than either off reserve Aboriginal men and women or non-Aboriginal men or women. On unemployment rates, see 30.
243. O'Donnell and Wallace caution that "unemployment" should not be read without taking into account "the complex work situation of Aboriginal people, especially those living in rural or remote communities. Official unemployment rates, for example, may not always reflect work that is carried out for which no payment is received. Work of this type is common in many Aboriginal communities where large amounts of time are spent fishing, trapping, hunting, sewing, and caring for children of friends and family members. Also, there is much seasonal work in many Aboriginal communities": O'Donnell and Wallace, note 238.
244. O'Donnell and Wallace, note 238, 34. In 2006, 30 per cent of Aboriginal women lived in low income, compared to 16 per cent of non-Aboriginal women and 26 per cent of Aboriginal men. However, 70 per cent of Aboriginal women's income came from employment sources.
245. Tina Chui, *Immigrant Women* (Ottawa: Minister of Industry, July 2011), 15, Component of Statistics Canada, *Women in Canada: A Gender-Based Statistical Report*, 6<sup>th</sup> ed., 9, online: <http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11528-eng.pdf>. The 2006 census indicated that "[t]he largest proportion of these immigrant women, 9%, reported the United Kingdom as their place of birth, followed by the People's Republic of China (8%), India (7%) and the Philippines (5%)." However, this refers to all immigrant women in Canada at the time of the census. A more telling figure is that "In 1971, Europe was the birthplace of 61% of recent immigrant women...; by 2006, recent immigrant women came mainly from Asia and the Middle East (59%)."
246. Chui, note 245, 10. Looked at another way, "In 1981, 55% of recent immigrant women were members of visible minorities...; by 2006, that proportion was 76% of all recent immigrant women."
247. Statistics Canada reports, "In 2006, 60% of all immigrant women and 66% of those who had arrived since 2001 were married, compared with 43% of Canadian-born women": Chui, note 245, 15. More immigrant men than Canadian born men were married (67 per cent and 45 per cent, respectively). Immigrant women also married younger than did Canadian-born women.
248. Milan, *et al*, note 219, 18. Also see Tina Chui and Hélène Maheux, *Visible Minority Women*, Component of Statistics Canada, *Women in Canada: A Gender-Based Statistical Report*, 6<sup>th</sup> ed., 15-16, online: <http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11527-eng.pdf>. They report that 51 per cent of visible minority women and 46 per cent of non-visible minority women live in married relationships, while nearly 4 per cent of visible minority women compared to 12 per cent of non-visible minority women live in common law relationships. Ten per cent of visible minority women were lone parents, compared to 2 per cent of visible minority men, while 8 per cent of non-visible minority women and 2 per cent of non-visible minority men were lone-parents. They note, "the shares [of lone-parents] were higher for women who were Black (24 per cent), Latin American (14 per cent) and Southeast Asian (12 per cent)."
249. See Chui and Maheux, note 248, 18: 35 per cent of visible minority women aged 25 to 54 (the core working age group) had a university degree, while this was the case for 23 per cent of non-visible minority women in the same age group.
250. Chui, note 245, 8.
251. O'Donnell and Wallace, note 238, 40. The 2009 study was done by telephone; many homes on reserves and in settlements may not have landlines.
252. O'Donnell and Wallace, note 238, 41.
253. All information taken from Statistics Canada, *Aboriginal Peoples in Canada in 2006: Inuit, Métis and First Nations, 2006 Census*, online: <http://www12.statcan.ca/census-recensement/2006/as-sa/97-558/pdf/97-558-XIE2006001.pdf>.
254. Aboriginal Affairs and Northern Development Canada, "Ontario Region", online: <http://www.aadnc-aandc.gc.ca/eng/1100100020284/1100100020288>.
255. Legal Aid Ontario (LAO), *The Development of Legal Aid Ontario's Aboriginal Strategy* (June 20, 2008) 2, online: [http://www.legalaid.on.ca/en/publications/downloads/0807-29\\_DiscussionPaper\\_public.pdf](http://www.legalaid.on.ca/en/publications/downloads/0807-29_DiscussionPaper_public.pdf).
256. Mary Stratton, "Our Children are Gone": *Aboriginal Experiences of Family Court* (Canadian Forum on Civil Justice, January 2007), online: <http://cfcj-fcjc.org/docs/2007/stratton-ourchildrenaregone.pdf>. Efforts to address these issues cannot ignore First Nations protests that transcend specific aspects of the system, as evident in manifestations occurring as this Report is being written: Idle No More, online: <http://idlenomore.ca/>. For an example of a report, see CBCnews, "Idle No More protests held across Canada" (January 11, 2013), online: <http://www.cbc.ca/news/canada/story/2013/01/11/idle-no-more-protests.html>.

257. Barr-Telford, *et al*, note 93, 56.
258. Ontario Ministry of Aboriginal Affairs, "Aboriginal Education", online: <http://www.aboriginalaffairs.gov.on.ca/english/services/datasheets/education.asp>. Also see the Canadian Federation of Students-Ontario "Fact Sheet: Indigenous Education in Ontario" which states that about 28 per cent of the Indigenous population in Ontario has no diploma or other credential, online: <http://cfsontario.ca/downloads/CFS-Indigenous%20Education%20factsheet.pdf>.
259. For example, division of property assets is not covered by provincial legislation as it is for the rest of the population. See *Derrickson v. Derrickson* [1986] 1 S.C.R. 285. Efforts to change this have been ongoing: see Bill S-2: *Family Homes on Reserves and Matrimonial Interests or Rights Act* which was passed by the Senate and as of the date of this Report had received first reading in the House of Commons on December 8, 2011, online: <http://www.parl.gc.ca/LegisInfo/BillDetails.aspx?Language=E&Mode=1&billid=5138145>.
260. *First Nations Land Management Act*, S.C. 1999, c. 24, s. 17.
261. LAO, *The Development of Legal Aid Ontario's Aboriginal Strategy*, note 255, 11.
262. LAO, *The Development of Legal Aid Ontario's Aboriginal Strategy*, note 255, 16.
263. Legal Aid Ontario, "Aboriginal Justice Strategy", online: [http://www.legalaid.on.ca/en/about/fact\\_aboriginaljusticestrategy.asp](http://www.legalaid.on.ca/en/about/fact_aboriginaljusticestrategy.asp).
264. Statistics Canada, *Population Growth in Canada: From 1851 to 2061: Population and Dwelling Counts, 2011 Census*, online: [http://www12.statcan.gc.ca/census-recensement/2011/as-sa/98-310-x/98-310-x2011003\\_1-eng.pdf](http://www12.statcan.gc.ca/census-recensement/2011/as-sa/98-310-x/98-310-x2011003_1-eng.pdf). The Report projects that by 2031, immigration could account for 80 per cent of Canada's population growth: 4. If that is the case, approximately 25 per cent of Canada's population would be foreign-born: Anne Milan, *Migration: International 2009* (Statistics Canada, July 2011) 3, online: <http://www.statcan.gc.ca/pub/91-209-x/2011001/article/11526-eng.htm>.
265. Tina Chui, Kelly Tran and Hélène Maheux, *Statistics Canada, 2006 Census: Immigration in Canada: A Portrait of the Foreign-Born Population, 2006 Census: Findings* (Ottawa, 2006), online: <http://www12.statcan.ca/census-recensement/2006/as-sa/97-557/index-eng.cfm>. In Ontario, slightly more than 40 per cent of immigrants originated from Asia and the Middle-East (including India, Philippines, China, Pakistan, Iran and Iraq) and just less than 40 per cent originated from Europe. In urban centers like Toronto, there were a greater proportion of immigrants from Asia and the Middle East and, in smaller centres, there were a greater proportion of immigrants from Europe: Maggie El Dakiky and John Shields, "Immigration and the Demographic Challenge: A Statistical Survey of the Ontario Region" (2009) 38 *Ceris: Policy Matters* 1, 8-11, online: [http://www.ceris.metropolis.net/wp-content/uploads/pdf/research\\_publication/policy\\_matters/pm38.pdf](http://www.ceris.metropolis.net/wp-content/uploads/pdf/research_publication/policy_matters/pm38.pdf).
266. Milan, note 264, 4 and 5. However, Ontario received fewer immigrants in the period between 2006 and 2011 than previously and immigrants are increasingly settling in western Canada. The distribution of permanent residents to Ontario has decreased from 58 per cent in 2002 to 40 per cent in 2011: Citizenship and Immigration Canada, *Immigration Overview: Permanent and Temporary Residents 2011* (2012) 31, online: <http://www.cic.gc.ca/english/pdf/research-stats/facts2011.pdf>.
267. Although the 2011 census indicated that Ontario's population had increased since 2006, Ontario was one of only three provinces and territories in which the growth between 2006 and 2011 was less than between 2001 and 2006: Statistics Canada, "The Canadian Population in 2011: Population Counts and Growth", online: <http://www12.statcan.gc.ca/census-recensement/2011/as-sa/98-310-x/98-310-x2011001-eng.cfm>.
268. Ontario Immigration, *Cities & Towns*, (26 March 2012). Online: [http://www.ontarioimmigration.ca/en/living/OI\\_HOW\\_LIVE\\_CITIES.html](http://www.ontarioimmigration.ca/en/living/OI_HOW_LIVE_CITIES.html).
269. Chui, Tran and Maheux, note 265.
270. This included 6 per cent from the South Asian community, nearly 5 per cent from the Chinese community and nearly 4 per cent from the "Black" community. Statistics Canada, *Visible minorities groups percentage distribution, for Canada, provinces and territories – 20 per cent sample data*, online: [http://www12.statcan.ca/census-recensement/2006/dp-pd/hlt/97-562/pages/page.cfm?Lang=E&Geo=PR&Code=](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)
- 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 per cent).
271. Statistics Canada, *Visible minority characteristics [of Toronto], 2006 Community profiles (2006 Census)* (Ottawa, March 13, 2007), online: <http://www.statcan.gc.ca/tables-tableaux/sum-som/I01/cst01/demo53c-eng.htm>.
272. Royson James, "Nearly a quarter of Toronto residents live in poverty", *The Toronto Star* (June 11, 2012), online: [http://www.thestar.com/news/gta/2012/06/11/nearly\\_a\\_quarter\\_of\\_toronto\\_residents\\_live\\_in\\_poverty\\_james.html](http://www.thestar.com/news/gta/2012/06/11/nearly_a_quarter_of_toronto_residents_live_in_poverty_james.html). Specifically on poverty among immigrants and racialized groups, see National Council of Welfare, *Poverty Profile: Special Edition* (2012), online: [http://publications.gc.ca/collections/collection\\_2012/cnb-ncw/HS51-2-2012S-eng.pdf](http://publications.gc.ca/collections/collection_2012/cnb-ncw/HS51-2-2012S-eng.pdf) and Citizens for Public Justice, *Poverty Trends Scorecard: Canada 2012*, online: <http://www.cpj.ca/files/docs/poverty-trends-scorecard.pdf>. For an overall summary of the "distribution" of low-income, see Brian Murphy, Xuelin Zhang and Claude Dionne, *Low-Income in Canada, a Multi-line and Multi-index Perspective* (Statistics Canada, March 2012), ch.3, online: <http://www.statcan.gc.ca/pub/75f0002m/75f0002m2012001-eng.pdf>.
273. Statistics Canada, *Religions in Canada, 2001 Census Analysis Series* (Minister of Industry, 2003), 8, 13, online: <http://www12.statcan.gc.ca/english/census01/Products/Analytic/companion/rel/pdf/96F0030XIE2001015.pdf>. About 35 per cent each fall within the categories of Protestant or Roman Catholic. Just over 3 per cent of the population is Muslim and about 5 per cent are "other Christians" or Christian Orthodox. The data also show an increase in the percentage of individuals answering "no religion". The 2006 census did not include questions about religion and the information from the 2011 census had not been released at the time of the approval of this Report.
274. Warren Clark and Grant Schellenberg, "Who's religious?" (Statistics Canada, nd), online: <http://www.statcan.gc.ca/pub/11-008-x/2006001/9181-eng.htm>. An index of "religiosity" was developed based on "the presence of religious affiliation, frequency of attendance at religious services, frequency of private religious practices and the importance of religion to the respondent". The data were found in the General Social Survey (up to 2004) and the 2002 Ethnic Diversity Study. Immigrants from South Asia, South East Asia and the Caribbean and Central and South America exhibited high "religiosity", while immigrants from East Asia, Western/Northern Europe and Eastern Europe were least likely to be highly religious.
275. Immigrants may not be "racialized persons" as that term is used in common parlance; they may be white. Similarly, racialized persons may not be immigrants, but may be second, third or more generation Canadians. However, changing immigration patterns have meant that an increasing number of immigrants are "racialized". Therefore, a brief note on terminology and classification may be useful. Immigrants are people who have emigrated from other countries throughout the world and, for our purposes, have settled in Ontario. "Racialization" has been defined as "the process by which societies construct races as real, different and unequal in ways that matter to economic, political and social life": Ontario Human Rights Commission, *Policy and Guidelines on Racism and Racial Discrimination* (2005, rev. 2009), online: [http://www.ohrc.on.ca/sites/default/files/attachments/Policy\\_and\\_guidelines\\_on\\_racism\\_and\\_racial\\_discrimination.pdf](http://www.ohrc.on.ca/sites/default/files/attachments/Policy_and_guidelines_on_racism_and_racial_discrimination.pdf). This process may affect the lives of immigrants from particular source countries from which greater numbers of immigrants have come in recent years.
276. For example, Janet Mosher's study of racialized youth in Ontario schools revealed that racialized youth involved in disciplinary proceedings in the schools felt that the law was a weapon used by those in authority: Janet E. Mosher, "Lessons in Access to Justice: Racialized Youths and Ontario's Safe Schools" (2008) 46:4 *Osgoode Hall LJ* 807. This view might well continue as they grow older and invoke or be brought into the family legal system.
277. The percentage of people who speak neither official language at

- home in the 2011 Census was unchanged from 2006 (6.5 per cent of the population): Statistics Canada, *2011 Census of Population: Linguistic Characteristics of Canadians*, online: <http://www.statcan.gc.ca/daily-quotidien/121024/dq121024a-eng.pdf>. Statistics Canada reported in 2006 that about 20 per cent of Canada's population spoke a language other than English or French at home, sometimes alone or in combination with one of those two languages. Most of these people spoke an "immigrant language", although "more than 213,000 people spoke an Aboriginal language, and nearly 25,000 reported using a sign language". About a third of these individuals spoke only a non-official language at home.
278. Statistics Canada, 2011 Census of Population, note 277. The 2001 figure was just about 15 per cent. See Statistics Canada, *Language(s) spoken at home, Toronto census metropolitan area (CMA)*, 2001, 2006 and 2011, online: <http://www12.statcan.gc.ca/census-recensement/2011/as-sa/98-314-x/2011001/tbl/tbl8-eng.cfm>.
279. Cohl and Thomson, note 185, 13.
280. Cohl and Thomson, note 185, 10.
281. O'Donnell and Wallace, note 238, 24-26. This was particularly true of Inuit women and less likely with younger women, although younger women evidenced an interest in learning Aboriginal languages and women on reserves were more likely to be able to speak an Aboriginal language than women living off-reserve.
282. Janice Gross Stein and Adam Cook, "Speaking the Language of Justice: A New Legal Vernacular", Bass, *et al*, note 46, 163.
283. 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* (Directorate General of Human Rights, Council of Europe, 2001) 45-48, online: <http://www.refworld.org/pdfid/49f17e212.pdf>.
284. For examples in Ontario, see *Children's Law Reform Act*, note 9, s.24(2), on ties with children; *Family Law Act*, note 9, s.1(1), on the intention of a parent to treat a child as a child of his or her family; and *Child and Family Services Act*, R.S.O. 1990, c. C11, s.1(3), on extended family. Also see the *Divorce Act*, R.S.C. 1985, c.3, s.8(3), on the intention with respect to separation.
285. See, for example, *Children's Law Reform Act*, note 9, ss.8(1), 10(1) and 20(1).
286. Luxton, note 221, 11.
287. Fareen Jamal, *Cultural Fluency for Family Lawyers*. Paper delivered at the 6<sup>th</sup> Annual Family Law Summit (May 10 and 11, 2012).
288. Julie Macfarlane, *The New Lawyer: How Settlement is Transforming the Practice of Law* (Vancouver: UBC Press, 2008), 184.
289. Barr-Telford, note 93, 66, 68.
290. Barr-Telford, note 93, 69.
291. Sarah V. Wayland, *Unsettled: Legal and Policy Barriers for Newcomers to Canada* (Community Foundations of Canada and Law Commission of Canada, 2006), 19ff, online: <http://www.cfc-fcc.ca/doc/LegalPolicyBarriers.pdf>.
292. Cohl and Thomson, note 185, 15-16.
293. Statistics Canada, *Participation and Activity Limitation Survey 2006: Analytical Report (PAL Survey)* (Ottawa: Minister of Industry, 2007) 16, online: <http://www.statcan.gc.ca/pub/89-628-x/89-628-x2007002-eng.pdf>.
294. Statistics Canada, *PAL Survey*, note 293, 10, 72, 70.
295. RHS National Team, *First Nations Regional Longitudinal Health Survey 2002/3: Results for Adults, Youth and Children Living in First Nations Communities* (Ottawa: Assembly of First Nations, 2007), 52 and 64, online: <http://www.rhs-ers.ca/sites/default/files/ENpdf/rhs2002-03reports/rhs2002-03-technicalreport-afn.pdf>.
296. Statistics Canada, *PAL Survey Part V*, 8-10, online: <http://www.statcan.gc.ca/pub/89-628-x/89-628-x2008011-eng.pdf>. The figures for persons 25 to 34, for example, are about \$33,000 for persons without a disability and approximately \$23,000 for persons with a disability.
297. The LCO's *A Framework for the Law as It Affects Persons with Disabilities* discusses ways in which persons with disabilities may have difficulty accessing the legal system: note 210.
298. Cam Schwartz and Mary Stratton. *The Civil Justice System and the Public: Communication and Access Barriers for those with Disabilities* (Canadian Forum on Civil Justice, January 2006) 2-3, online: <http://cfcj-fcjc.org/docs/2005/cjsp-barriers-en.pdf>.
299. Kerri Joffe, *Enforcing the Rights of Persons with Disabilities in Ontario's Development Services System*, Commissioned by Law Commission of Ontario (June 2010), 31, online: <http://www.lco-cdo.org/en/disabilities-call-for-papers-joffe>.
300. LCO, *A Framework for the Law as It Affects Persons with Disabilities*, note 210.
301. Schwartz and Stratton, note 298, 4-5.
302. Schwartz and Stratton, note 298, 7.
303. *Accessibility for Ontarians with Disabilities Act, 2005*, S.O. 2005, c.11 (AODA). The Ontario courts created a committee to make recommendations to meet the requirements that reported in 2006: *Making Ontario's Courts Fully Accessible to Persons with Disabilities* (December 2006), online: [http://www.ontariocourts.on.ca/accessible\\_courts/en/report\\_courts\\_disabilities.htm](http://www.ontariocourts.on.ca/accessible_courts/en/report_courts_disabilities.htm). A permanent committee was created in 2007, as well as a website with educational materials relevant to accommodation and removal of barriers in the legal system and by legal professionals: *Courts Disability Accessibility Education Project*, online: [http://www.oba.org/En/accessiblejustice/home\\_en/home.aspx](http://www.oba.org/En/accessiblejustice/home_en/home.aspx).
304. This is in conformity with the *Accessibility Standards for Customer Service*, O.Reg. 429/07, under the AODA. Specifically, see Ministry of the Attorney General, "Our Commitment to Accessibility", online: [http://www.attorneygeneral.jus.gov.on.ca/english/about/commitment\\_to\\_accessibility.asp](http://www.attorneygeneral.jus.gov.on.ca/english/about/commitment_to_accessibility.asp).
305. Schwartz and Stratton, note 298, 8.
306. The Ministry of the Attorney General has issued guidelines in this regard. See *Communication Access for People Who have Communication Disabilities: Guidelines and Resources on Communicating with People who have Communication Disabilities* (2009), online: [http://www.mcscs.gov.on.ca/documents/en/mcss/accessibility/DevelopingStandards/Communication\\_Access\\_ENG\\_no\\_ack.pdf](http://www.mcscs.gov.on.ca/documents/en/mcss/accessibility/DevelopingStandards/Communication_Access_ENG_no_ack.pdf).
307. See, for example, Literacy is for Life, "Factsheet #7: Literacy and Learning Disabilities", online: <http://www.nald.ca/library/research/mcl/factsht/learnidis/page1.htm>; Gregory S. McKenna, "Can Learning Disabilities Explain Low Literacy Performance?" (Human Resources and Skills Development Canada, September 2010), online: [http://publications.gc.ca/collections/collection\\_2011/rhdcc-hrsdc/HS38-22-2010-eng.pdf](http://publications.gc.ca/collections/collection_2011/rhdcc-hrsdc/HS38-22-2010-eng.pdf). One of the respondents to Birnbaum and Bala's study on litigants in the family system noted that she had a "reading disability" and found the materials at the FLIC hard to understand: Birnbaum and Bala, note 30.
308. Comments from the Community Advocacy and Legal Centre's meeting with the Canadian Hearing Centre, February 16, 2010, subsequently reported to the LCO.
309. Schwartz and Stratton, note 298, 4.
310. According to *A 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 per cent to over 13 per cent. It is predicted that the number of seniors will more than double by 2036 to nearly 10 million people or nearly 25 per cent of the population. Martin Turcotte and Grant Schellenberg, *A Portrait of Seniors in Canada* (Statistics Canada, 2007), online: <http://www.statcan.gc.ca/pub/89-519-x/89-519-x2006001-eng.pdf>.
311. Some of these issues are discussed in the Law Commission of Ontario's *Framework for the Law as It Affects Older Adults*, note 52.
312. Barr-Telford, *et al*, note 93, 37. In part, this is explained by education levels of the current older adult cohort. In each age group, other than those over 65, the largest

- proportion scores at Level 3. Level 3 is considered to be “the desired threshold for coping well in a complex knowledge society”:
37. It requires an individual to match the text and information provided or to make matches based on low-level inferences or otherwise “work” with the text. Level 3 document literacy involves, among other abilities, “integrating multiple pieces of information from one or more documents”: 16. At least low level Level 3 skills are needed to integrate one’s own information with that provided in legal information or to complete forms using one’s own information.
313. LCO, *A Framework for the Law as It Affects Older Adults*, note 52, 6.
314. LCO, *A Framework for the Law as It Affects Older Adults*, note 52, 157.
315. Statistics Canada, *Population, urban and rural, by province and territory (Ontario) [2011 Census]*, online: <http://www.statcan.gc.ca/tables-tableaux/sum-som/101/cst01/demo62g-eng.htm>.
316. Statistics Canada, *Population and dwelling counts, for census metropolitan areas and census agglomerations, 2011 and 2006 censuses*, online: <http://www12.statcan.gc.ca/census-recensement/2011/dp-pd/hlt-fst/pl/Table-Tableau.cfm?LANG=Eng&T=201&S=3&O=D&RPP=150>.
317. Cohl and Thomson, note 185, 32-35.
318. For example, in its submission on our Interim Report in this project, MAG explained that it “is developing an information program specifically for Aboriginal families [that] involves the development and translation of written materials, DVDs, an on-line interactive program and a training program”. As we have indicated, Legal Aid Ontario has also developed an Aboriginal strategy. There is also much material to assist women who have experienced domestic violence provided by many organizations involved in the legal system. These are merely examples, and we have referred to other initiatives in this Report.
319. Nancy Webb, “Diversity and Inclusion Considerations in Family Law”, Presented at the 6<sup>th</sup> Annual Family Law Summit (May 10-11, 2012).
320. Family Law Council, *Improving the Family Law System for Clients from Culturally and Linguistically Diverse Backgrounds* (Commonwealth of Australia, February 2012), online: <http://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Documents/Improving%20the%20Family%20Law%20System%20for%20Clients%20from%20Culturally%20and%20Linguistically%20Diverse%20Backgrounds.pdf>
321. Family Law Council, *Improving the Family Law System*, note 320, 31.
322. Family Law Council, *Improving the Family Law System*, note 320, 87.
323. Family Law Council, *Improving the Family Law System*, note 320, 48.
324. Alexandre Marc, *Delivering Services in Multicultural Societies* (The World Bank, 2010) 22, online: [http://siteresources.worldbank.org/EXTDEVDIALOGUE/Resources/537297-1265829764730/Del\\_Services\\_in\\_Multicultural\\_Societies.pdf](http://siteresources.worldbank.org/EXTDEVDIALOGUE/Resources/537297-1265829764730/Del_Services_in_Multicultural_Societies.pdf).
325. Marc, note 324, 40.
326. Marc, note 324, 41.
327. Faren Jamal, *Cultural Fluency for Family Lawyers*, Presented at the 6<sup>th</sup> Annual Family Law Summit (May 10-11, 2012).
328. Ontario Public Service Diversity, *2011 OPS Diversity Annual Report: Toward Inclusion* (2011) 1 [*Toward Inclusion*], online: [http://www.mgs.gov.on.ca/stdprodconsume/groups/content/@mgs/@aboutmin/documents/resourcelist/stdprod\\_088640.pdf](http://www.mgs.gov.on.ca/stdprodconsume/groups/content/@mgs/@aboutmin/documents/resourcelist/stdprod_088640.pdf).
329. *Toward Inclusion*, note 328, 1.
330. Shamira Madhany, “Team Nomination - Ontario: 2011 PSSDC Excellence in Public Service Delivery Award” (2011), online: <http://www.iccs-isac.org/wp/library/2012/09/Ontario-team-nomination-OPS-Diversity-Office.pdf>. The 17 dimensions are the following: Aboriginal status/heritage; age; care-giving responsibilities; citizenship status; disability; educational level; employment status; ethnicity; French language; gender; language; marital/family status; race; regional location; religion; sexual orientation; and socioeconomic status.
331. LCO, *A Framework for the Law as It Affects Older Adults*, note 52, and *A Framework for the Law as It Affects Persons with Disabilities*, note 210.
332. Ministry of Citizenship and Immigration, *Domestic Violence Action Plan for Ontario* (2005) 2, 3, online: [http://www.women.gov.on.ca/owd\\_new/english/resources/publications/dvap/dvap.pdf](http://www.women.gov.on.ca/owd_new/english/resources/publications/dvap/dvap.pdf).
333. Aboriginal Legal Services of Toronto, online: <http://www.aboriginallegal.ca>.
334. Patti MacDonald and Christa Big Canoe, *Learn, Grow, Connect: Practicing Community Legal Education in a Diverse Ontario, Conference Report* (February 2009) 20, online: <http://yourlegalrights.on.ca/sites/conference/content/docs/ConferenceReportFinal.pdf>.
335. LCO, *A Framework for the Law as It Affects Older Adults*, note 52, 45; Turcotte and Schellenberg, note 310, 212-215.
336. Armine Yalnizyan, “The Problem of Poverty Post-Recession” (Canadian Centre for Policy Alternatives: August 17, 2010) 6-7, online: <http://www.policyalternatives.ca/publications/reports/problem-poverty-post-recession>.
337. Cohl and Thomson, note 185, 57.
338. Birnbaum and Bala, “Experiences of Ontario Family Litigants”, note 88.
339. Trebilcock, note 25, 77.
340. Translation may involve more than simply “literal” translation from English into another language, or even the recognition of idiomatic expressions; it needs also to recognize that language may have different connotations in different communities. This is a complex process, since it needs to incorporate cultural differences while also communicating information about common circumstances.
341. Our references are to women who have experienced domestic violence because they are primarily the victims and men are primarily the perpetrators. To the extent men do experience domestic violence, it tends to be less serious and often in response to initiating abuse. Men and women in same sex relationships may be either victims or perpetrators. See, for example, University of Toronto Psychological and Counselling Services, “Abuse in Same Sex Relationships”, online: <http://www.caps.utoronto.ca/Services-Offered/Assault-Counselling/abuse-in-same-sex-relationships.htm>.
342. Ontario Forms Assistant, note 97.
343. *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 PBO’s Law Help Ontario: *Listening to Ontarians*, note 2, 4.
344. Cohl and Thomson, note 185, 15, 49ff; *Listening to Ontarians*, note 2, 56, 5. Cohl and Thomson note that self-help is not limited to appearing in court without representation, but may be used in connection with other assistance: 49.
345. University of Toronto Faculty of Law, *Middle Income Access to Civil Justice Initiative Background Paper*, note 99, 33.
346. For a review of U.S. self-help initiatives, see Self-Represented Litigation Network, *Best Practices in Court-Based Programs for the Self-Represented: Concepts, Attributes, Issues for Exploration, Examples, Contacts and Resources* (2008), online: [http://www.americanbar.org/content/dam/aba/migrated/legalservices/sclaid/atjresourcecenter/downloads/best\\_practices\\_7\\_08.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/legalservices/sclaid/atjresourcecenter/downloads/best_practices_7_08.authcheckdam.pdf). Information about California can be found at p. 9.
347. The Office of the Deputy Chief Administrative Judge for Justice Initiatives, *Expanding Access To Justice In New York State*, (March 2009) 20ff, online: [http://www.americanbar.org/content/dam/aba/migrated/legalservices/delivery/downloads/expanding\\_access\\_to\\_justice\\_in\\_new\\_york\\_state.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/legalservices/delivery/downloads/expanding_access_to_justice_in_new_york_state.authcheckdam.pdf).
348. *Best Practices in Court-Based Programs for the Self-Represented*, note 346, at 4.
349. *Selfhelpsupport.org*, online: [http://www.selfhelpsupport.org/help/item.Resources\\_for\\_SelfRepresented\\_Litigants](http://www.selfhelpsupport.org/help/item.Resources_for_SelfRepresented_Litigants).
350. Kathleen E O’Leary, “Lawyerless, But Not Alone: Self-Help Centers Build Better Communities” (2005) *California Courts Review* 14, online: [http://www.courts.ca.gov/documents/CCR\\_05Fall\\_051031.pdf](http://www.courts.ca.gov/documents/CCR_05Fall_051031.pdf).
351. *Best Practices in Court-Based Programs for the Self-Represented*, note 346, 8.
352. O’Leary, note 350, 15.
353. O’Leary, note 350, 16. The emphasis on a court-based system is perhaps not surprising given that the Judicial Council is composed of judges, a representative of the legislature and a representative of the bar and other persons related to the court system who are

- advisory members: California Courts, Judicial Council Members, online: <http://www.courts.ca.gov/4645.htm>.
354. *Best Practices in Court-Based Programs for the Self-Represented*, note 346, 8.
355. *Best Practices in Court-Based Programs for the Self-Represented*, note 346, 27.
356. O'Leary, note 350, 16.
357. Law Foundation of Ontario, Access to Justice Fund Grants Program, online: <http://www.lawfoundation.on.ca/atjf/>. The grant is described as follows: Community Legal Education Ontario (Toronto, ON) will conduct research to explore the value and effectiveness of public legal education services throughout the continuum of legal services delivery.
358. Cohl and Thomson, note 185, 44.
359. Cohl and Thomson, note 185, 44.
360. India Rainbow Community Services of Peel, online: <http://www.indiarainbow.org>.
361. See The Law Foundation of Ontario (LFO), "Connecting Communities", online: <http://www.lawfoundation.on.ca/what-we-do/the-connecting-project/connecting-communities>. This was recommended by Cohl and Thomson, note 185, 66.
362. CLEO, "Connecting Communities: Strengthening links between legal and community agencies" (June 2011), online: [http://www.cleo.on.ca/\\_oldweb/english/pub/onpub/PDF/boardmanual/connectingproject.pdf](http://www.cleo.on.ca/_oldweb/english/pub/onpub/PDF/boardmanual/connectingproject.pdf).
363. LFO, note 361.
364. Richard Susskind, *The End of Lawyers? Rethinking the Nature of Legal Services* (Oxford: Oxford University Press, 2008) 235.
365. Chief Justice Beverley McLachlin, Speech to the Council of Canadian Bar Association (August 2011), online: <http://www.ipolitics.ca/2011/08/16/beverley-mclachlin-address-to-the-council-of-the-canadian-bar-association/>.
366. McLachlin, note 365.
367. The World Justice Project, *Rule of Law Index 2012-2013, Canada*, online: <http://worldjusticeproject.org/country/canada>. The methodology for reaching the "score" is briefly described in The World Justice Project, "Methodology", online: <http://worldjusticeproject.org/methodology>; and in detail in Juan Carlos Botera and Alejandro Ponce, "Measuring the Rule of Law" (November 30, 2011), online: <http://ssrn.com/abstract=1966257> or <http://dx.doi.org/10.2139/ssrn.1966257>. Chief Justice McLachlin is an Honorary Chair of the Project.
368. Samreen Beg and Lorne Sossin, "Should Legal Services be Unbundled?" in Michael Trebilcock, *et al*, note 49, 193, 197.
369. E-mail from Diana Miles to the LCO (June 26, 2012).
370. Dan Pinnington, "Unbundled legal services: pitfalls to avoid", *LawPRO Magazine* 11:1 (January 2012) 6, 7, online: [http://www.practicepro.ca/LawPROmag/Unbundled\\_Legal\\_Services.pdf](http://www.practicepro.ca/LawPROmag/Unbundled_Legal_Services.pdf).
371. *Legal Aid Services Act, 1998*, S.O. 1998, c.26, O.Reg. 106/99. See ss.24(1) and (2) with respect to family law duty counsel and their functions.
372. *Legal Aid Services Act, 1998*, note 371, s.1.
373. These documents are "Financial Eligibility Criteria for Certificates: Policies and Procedures Manual", "Duty Counsel: Financial Eligibility Test" and "CFC Policy Guidelines on Financial Eligibility" (this last for clinics): *Legal Aid Services Act, 1998*, note 371, O.Reg. 107/99. See ss.1(2)(3)(4) of the Regulation.
374. Trebilcock, note 25, 72.
375. Statistics Canada, "Low income cut-offs" (June 3, 2012), online: <http://www.statcan.gc.ca/pub/75f0002m/2009002/s2-eng.htm>.
376. Office of the Auditor General, *2011 Annual Report* (Queen's Printer Ontario, 2011) 204, online: [http://www.auditor.on.ca/en/reports\\_en/en11/2011ar\\_en.pdf](http://www.auditor.on.ca/en/reports_en/en11/2011ar_en.pdf).
377. Legal Aid Ontario, Power point presentation prepared for Legal Aid Ontario's Financial Eligibility Study Group (LAO's policy department, March 6, 2012).
378. Legal Aid Ontario, Power point presentation to Financial Eligibility Study Group (30 May 2012).
379. JusticeNet, online: <http://www.justicenet.ca>.
380. Law Society of Manitoba, "Family Law Access Centre," online: <http://www.lawsociety.mb.ca/for-the-public/family-law-access-centre>.
381. Noel Semple, "Regulatory Reform for Access to Justice", Paper prepared for the National Family Law Program (July 16, 2012). Semple refers to the launching of a "legal services operation" by the Co-operative Group Limited, offering internet, toll free telephone lines and storefront office services. It offers some family law services: <http://www.co-operative.coop/legalservices/family-and-relationships>. Co-operative Legal Services Limited is licensed by the Solicitors Regulation Authority: <http://www.sra.org.uk/solicitors/firm-based-authorisation/abs-register/567391.page>. Although the "co-op" has been in existence in England for many years, with roots in the 1800s; providing services such as grocery stores and financial services, the provision of legal services is a far more recent development.
382. Semple, "Regulatory Reform for Access to Justice, note 381, 25-26..
383. Sujit Choudry, Michael Trebilcock and James Wilson, "Growing Legal Aid Ontario into the Middle Class: A Proposal for Legal Expenses Insurance", Trebilcock, *et al*, note 49, 385 and Paul A. Vayda and Stephen B. Ginsberg, "Legal Services Plans: Crucial-Time Access to Lawyers and the Case for a Public-Private Partnership", Trebilcock, *et al*, note 49, 246. Also see CBA PracticeLink, Sheldon Levy, "Meet the legal service delivery vehicle of the 21st century: Judicare", online: [http://www.cba.org/CBA/practicelink/National\\_articles/3.aspx](http://www.cba.org/CBA/practicelink/National_articles/3.aspx); Luis Millan, "Legal insurance: While Europeans have embraced the concept, Canadians remain cool to pre-paid legal services", *The Lawyers Weekly* (May 2009), online: <http://www.lawyersweekly.ca/index.php?section=article&articleid=908>; Michael McKiernan, "Legal-costs insurance needs official boost, says longtime provider", *Law Times* (July 18, 2010), online: <http://www.lawtimesnews.com/201007197223/Headline-News/Legal-costs-insurance-needs-official-boost-says-longtime-provider>. This last article suggests that the Law Society of Upper Canada believes that legal insurance might be a way to provide legal services more affordably.
384. For example, legal expense insurance (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; however, family law is usually at best only partially covered or covered at a very high premium. 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).
385. CAW Legal Services Plan, Benefits Schedule, online: <http://www.cawfsp.com/BENEFIT%20SCHEDULE%202008.pdf>. (Although dated 2008, the Benefits Schedule is current to January 2011.)
386. In Quebec, it has been promoted by the Barreau du Québec, the legal regulator: Barreau du Québec, "L'Assurance juridique", online: <http://www.legalinsurencebarreau.com/protection/situations/index.html>. It does not appear to cover family law matters.
387. Legal Shield, a legal services plan available in Ontario does not cover family matters: Legal Shield, online: <https://www.legalshield.com>. DAS Canada, a world-wide provider of pre-paid legal insurance, including in Canada, offers only very limited family law advice: <http://www.das.ca/Products-Services/How-We-Can-Help.aspx>; the website explains, "Although family law is not covered in any policies, DASliving policyholders can receive legal advice regarding family law matters from the Legal Advice Helpline", online: <http://www.das.ca/Products-Services/Frequently-Asked-Questions.aspx>.
388. Beginning in licensing year 2014-15, law school graduates in Ontario may article for ten months or complete a Law Practice Program composed of the four month LPP and a four month co-operative work placement (the latter option is being piloted for three years). Law Society of Ontario (LSUC), *Articling Task Force Final Report* (October 25, 2012), online: <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147489848>. Convocation approved the hybrid pilot in November 2012: Law Society of

- Upper Canada, Convocation Decisions (November 2012), online: <http://www.lsuc.on.ca/with.aspx?id=2147490043>.
389. LCO conversation with Nikki Gershman and Lisa Cirillo (April 17, 2011). See Pro Bono Students Canada, Family Law Project (FLP) by Province, online: <http://www.probonostudents.ca/programs/court-and-tribunal/flp-by-province>. The students' work in New Brunswick is supervised by volunteer private bar lawyers. We note, however, that the FLP is not partnered with legal aid in New Brunswick or other "official" body.
390. Law Society of Upper Canada, *Articling Task Force Final Report*, note 388, 3.
391. Vickrey, *et al*, note 131, 96-98.
392. The LCO has issued a report on law school curriculum modules designed for teaching and learning about violence against women, recognizing that all lawyers should be aware of the issues this raises regardless of the area of law in which they practice. Lawyers, and consequently, students may find any client has been a victim of domestic violence or has been accused of committing it, thus potentially affecting how the lawyer or student can most effectively interact with or represent the client. See Law Commission of Ontario, *Curriculum Modules in Ontario Law Schools: A Framework for Teaching about Violence against Women* (August 2012), online: <http://www.lco-cdo.org/en/violence-against-women-modules>.
393. Law Society of Upper Canada, *Treasurer's Report to Convocation: Update on the Law Society's Legal Needs Analysis* (April 26, 2012) (*Update on Legal Needs Analysis*), 3, online: <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147487345>.
394. *Update on Legal Needs Analysis*, note 393, 3-4.
395. *Law Society Act*, R.S.O. 1990, c. L 8 s 63.1.
396. Law Society of Upper Canada Policy Secretariat, *Report to Convocation: Treasurer's Report* (26 April 2012) 2, online: <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147487345>.
397. Law Society of Ontario, *Report to the Attorney General of Ontario Pursuant to Section 63.1 of the Law Society Act* (June 2012) (*Paralegal Report*), online: <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147488010>.
398. LSUC, *Paralegal Report*, note 397, 26, 27.
399. Law Society of Upper Canada, "David Morris selected to lead next phase of paralegal regulation review", online: <http://www.lsuc.on.ca/newsarchives.aspx?id=2147485737&cid=2147489388>.
400. *Report to the Attorney General of Ontario: Report of Appointee's Five-Year Review of Paralegal Regulation in Ontario Pursuant to Section 63.1 of the Law Society Act* (November 2012) 10 (*Appointee's Paralegal Report*), online: [http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/paralegal\\_review/Morris\\_five\\_year\\_review-ENG.pdf](http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/paralegal_review/Morris_five_year_review-ENG.pdf).
401. *Appointee's Paralegal Report*, note 400, 19.
402. AJEFO Conference, note 86.
403. Law Society of Upper Canada, "Choosing the Right Legal Professional," online: <http://www.lsuc.on.ca/with.aspx?id=433>.
404. On this point, also see Semple, "Regulatory Reform for Access to Justice", note 381.
405. Semple, "Regulatory Reform for Access to Justice", note 381, 23.
406. André Picard, "Health-care system needs a front door," *The Globe and Mail* (November 8, 2011).
407. Picard, note 406.
408. Dorothy Scott, "Inter-organizational collaboration in family-centred practice: A framework for analysis and action" (2005) 58:2 *Austl. Social Work* 132, 132
409. Macfarlane, *The New Lawyer*, note 288,237.
410. John Marriott and Ann L. Mable, "Integration: Follow Your Instincts, Ignore the Politics, and Keep your Eyes in the Ideal Model" 89:5 *Canadian Journal of Public Health* Volume 293.
411. Ontario Medical Association, *The Ontario Physical Shortage 2005: Seeds of progress but resource crisis deepening*, *New OMA recommendations on Physical Workforce Policy and Planning 2005*, cited in *Proceedings Report for the Summit on Advancing Interprofessional Education and Practice* (June 14 and 5, 2006) 10, online: <http://www.healthforceontario.ca/upload/en/whatishfo/summitproceedingsreportfinal.pdf> [*Summit Report*].
412. Peggy Leatt, George H. Pink and C. David Naylor, "Integrated Delivery Systems: Has Their Time Come In Canada?", 154 (1996) *CMAJ* 803, 804, online: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1487797/pdf/cmaj00090-0061.pdf>. The authors were specifically referring to the organization of different provincial ministries responsible for different aspects of health care.
413. Leatt, *et al*, note 412, 804.
414. Peter Morgan and Lynne Cohen, "Community health centres: Do they pose a threat to fee-for-service medicine?" (1991) 144 *Canadian Medical Association Journal* 745, 745-747, cited in Jacobs and Jacobs, note 37, 17.
415. The College of Physicians and Surgeons, "Fostering Collaborative Relationships with Nurse Practitioners" (May 2003), online: <http://www.cpso.on.ca/policies/positions/default.aspx?id=1742> cited in Jacobs and Jacobs, note 37, 53. Also see a similar statement on the College of Physicians and Surgeons' website with respect to midwives: The College of Physicians and Surgeons, "Position statement: Joint statement from the College and the College of Midwives of Ontario: CPSO and CMO Statement on Interprofessional Collaboration" (June 2010), online: <http://www.cpso.on.ca/policies/positions/default.aspx?id=4152>.
416. College of Midwives of Ontario, "College of Midwives of Ontario Statement on Interprofessional Care" (November 2007), online: <http://www.cmo.on.ca/downloads/IPC%20Statement%20Jan%2008.pdf>.
417. Health Canada, *2003 First Ministers Accord on Health Care Renewal*, online: <http://www.hc-sc.gc.ca/hcs-sss/delivery-prestation/fptcollab/2003accord/index-eng.php>. Also see *Summit Report*, note 411.
418. *Summit Report*, note 411. The summit was organized by the Ontario Ministry of Health and Long Term Care together with the Office of Interprofessional Education at the University of Toronto and the Ministry of Training, Colleges and Universities. The participants in the Summit included leaders and workers in health and social services.
419. Interprofessional Care Steering Committee, *Interprofessional Care: A Blueprint for Action in Ontario* (July 2007), online: <http://www.healthforceontario.ca/UserFiles/file/PolicyMakersResearchers/ipc-blueprint-july-2007-en.pdf>.
420. Interprofessional Care Strategic Implementation Committee, *Final Report: Implementing Interprofessional Care in Ontario* (May 2010) 4 [*Implementing Interprofessional Care in Ontario*], online: <http://www.healthforceontario.ca/UserFiles/file/PolicyMakersResearchers/ipc-final-report-may-2010-en.pdf>.
421. Ontario Health Human Resources Network, "New report sheds light on provincial interprofessional care initiatives," online: [http://rorrns-ohhrrn.ca/index.php?option=com\\_content&view=article&id=56:new-report-sheds-light-on-provincial-interprofessional-care-initiatives&catid=10:latest-news&Itemid=8&lang=en](http://rorrns-ohhrrn.ca/index.php?option=com_content&view=article&id=56:new-report-sheds-light-on-provincial-interprofessional-care-initiatives&catid=10:latest-news&Itemid=8&lang=en).
422. George Brown's Centre for Health Sciences, for example, offers an interprofessional program; it does not, of course, include students training to be physicians: George Brown College, *Interprofessional Education IPE in Action*, online: [http://www.georgebrown.ca/ipe/in\\_action.aspx](http://www.georgebrown.ca/ipe/in_action.aspx).
423. *Implementing Interprofessional Care in Ontario*, note 420, 19.
424. *Implementing Interprofessional Care in Ontario*, note 420.
425. *An Act to amend various Acts related to regulated health professions and certain other Acts*, S.O. 2009, c.26.
426. Queen's University, Office of Interprofessional Education & Practice: *Advancing Health Care through Collaborative Learning* (June 2012), online: [http://healthsci.queensu.ca/assets/oipep/Quarterly\\_Reports/OIPEP-QReport-June-2012-Final.pdf](http://healthsci.queensu.ca/assets/oipep/Quarterly_Reports/OIPEP-QReport-June-2012-Final.pdf).
427. Choudry, *et al*, note 383, 390.
428. Jean Sorensen, "Medical-legal partnership makes community RICHER" (July 2012) *Canadian Lawyer* 11, online: <http://www.canadianlawyermag.com>. As of January 2013, the RICHER website at the BC Children's Hospital does not include reference to this service: <http://www.bcchildrens.ca/AboutUs/default.htm>.
429. PBLO, LawHelpOntario.org, "Children's Hospitals Projects", online:

- <http://www.lawhelpontario.org/childrenshospitals>.
430. While all the “centres” would provide legal and other related services and would undertake processes to ensure as much as possible that users would take the path that would most effectively resolve their problems or respond (for example) to a high conflict dispute, the centres might differ to some extent in offering specific services relevant to a particular ethnic or cultural community, for example.
431. South Ottawa Community Legal Services, *Connecting Region/Ottawa Report* (March 2011) [*Connecting Region Report*], online: <http://www.plelearningexchange.ca/wp-content/uploads/2012/04/Connecting-Ottawa.pdf>. As of September 2012, the Connecting Ottawa project had hired staff and was anticipating its own website: South Ottawa Community Legal Services, News, online: [http://www.socls.org/en/about\\_us.html#law-foundation-grant](http://www.socls.org/en/about_us.html#law-foundation-grant).
432. *Connecting Region Report*, note 431.
433. *Connecting Region Report*, note 431.
434. Casey Gwinn *et al*, “The Family Justice Center Collaborative Model” (2007) 27:1 St. Louis U. Pub. L. Rev. 79, 93 [“The Family Justice Center Collaborative Model”].
435. “The Family Justice Center Collaborative Model”, note 434, 85. A loose collaboration of organizations including the San Diego police, the City Attorney’s Domestic Violence Unit, and the San Diego Domestic Violence Council received City approval for the idea, as well as a \$500,000 Challenge Grant from the California Endowment (a private health foundation).
436. For an account of the development of the FJC movement, see Casey Gwinn and Gael Strack, *Hope for Hurting Families: Creating Family Justice Centers Across America* (California: Volcano Press, 2006).
437. San Diego Family Justice Center, online: <http://www.sandiego.gov/sandiegofamilyjusticecenter/>.
438. Family Violence Project of Waterloo Region, note 202.
439. DRIVEN, note 202.
440. Safe Centre of Peel: Collaborative Assistance for Victims of Abuse and Violence, online: <http://www.familyjusticecenter.org/7.%20Family%20Justice%20Centers%20-%20New/FJC%20Profiles/Canada%20FJC%20-%20Safe%20Centre%20of%20Peel.pdf>.
441. Gwinn and Strack, note 436.
442. Catholic Family Services Peel-Dufferin, *2011 Annual Report* [CFSPD 2011 Annual Report], online: <http://www.cfspd.com/Annual%20Report%202011.pdf>. The funding was raised to include CFSPD’s head office.
443. The service providers included Associated Youth Services, Catholic Cross Cultural Services, Crown Attorney’s Office of Peel, Dufferin Peel Catholic District School Board, Family Education Centre, India Rainbow Community Services, Legal Aid Ontario, Peel Committee Against Woman Abuse, Peel Children’s Aid Society, Peel Committee on Sexual Assault, Peel Regional Police, Salvation Army Family Life Resource Centre, Trillium Health Centre Sexual Assault Care and Domestic Violence Services, Victim Services of Peel and Victim Witness Assistance Program: Raveena Aulakh, “Peel eyes one-stop centre to tackle domestic violence”, *Toronto Star* (November 21, 2010), online: [http://www.thestar.com/news/gta/2010/11/21/peel\\_eyes\\_onestop\\_centre\\_to\\_tackle\\_domestic\\_violence.html](http://www.thestar.com/news/gta/2010/11/21/peel_eyes_onestop_centre_to_tackle_domestic_violence.html).
444. House of Representatives Standing Committee on Family and Community Affairs, *Every Picture Tells a Story* (Canberra: Parliament of the Commonwealth of Australia, 29 December 2003). See “About Family Relationships Centres”, online: <http://www.familyrelationships.gov.au/Services/FRC/Pages/default.aspx>.
445. Rae Kaspiew, *et al*, *Evaluation of the 2006 Family Law Reforms* (Australian Institute of Family Studies, December 2009).
446. Australian Government, *A New Family Law System – Government Response to Every Picture Tells a Story*, (Commonwealth of Australia, June 2005) [*New Family Law System*], online: <http://www.fahcsia.gov.au/our-responsibilities/families-and-children/publications-articles/a-new-family-law-system-government-response-to-every-picture-tells-a-story>.
447. *New Family Law System*, note 446. Ministerial responsibility for the FRCs is shared between the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) and the Attorney General’s Department (AGD). \$188.5m (AUD) was approximately \$197.5m (CAD) at the time of writing. All financial references in the discussion of FRCs are to Australian dollars. There was a subsequent, albeit relatively insignificant cut to this amount.
448. John Butcher and Benoit Pierre Freyens, “Competition and Collaboration in the Contracting of Family Relationship Centres” (2011) 70:1 15, 18, 23.
449. Family dispute resolution is offered by FRCs only where parenting issues exist. Matters that involve only property issues are referred to external dispute resolution services.
450. For a fuller discussion of the types of services that may be offered at FRCs, see Patrick Parkinson, “Parenting after Separation – The Process of Dispute Resolution in Australia”, Sydney Law School Legal Studies Research Paper No.10/115 (November 2010), 14-22, online: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1702639##](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1702639##).
451. Institute of Child Protection Studies, *Evaluation of the Supporting Children after Separation Program and Post Separation: Cooperative Parenting Programs* (Australian Catholic University, June 2011), 10, online: <http://www.ag.gov.au/FamiliesAndMarriage/Families/FamilyLawSystem/Documents/Archived%20family%20law%20publications/Evaluation%20of%20the%20Supporting%20Children%20After%20Separation%20Program%20and%20Post%20Separation%20Cooperative%20Parenting%20%20Accessible.pdf>.
452. Georgina Dimopoulos, “Gateways, Gatekeepers or Guiding Hands? The Relationship between Family Relationship Centres and Legal Practitioners in Case Management and the Court Process” (2010) 24 Australian Journal of Family Law 176, 179.
453. Lawrie Moloney, *et al*, Evaluation of the Family Relationship Centre legal assistance partnerships program Final report (March 2011), online: <http://www.ag.gov.au/FamiliesAndMarriage/Families/FamilyLawSystem/Documents/Archived%20family%20law%20publications/Evaluation%20of%20the%20Family%20Relationship%20Centre%20and%20Legal%20Assistance%20Services%20Partnerships%20-%20Accessible%20%28%29.pdf>.
454. Catherine Caruana, “Roundup of Developments in Family Law” (2011) *Family Matters* No. 86, online: <http://www.aifs.gov.au/institute/pubs/fm2011/fm86/fm86-fl.html>.
455. B.C. Justice Review Task Force, *A New Justice System for Families and Children: Report of the Family Justice Reform Working Group to the Justice Review Task Force* (May 2005) [*New Justice System*], online: [http://www.bcjusticereview.org/working\\_groups/family\\_justice/final\\_05\\_05.pdf](http://www.bcjusticereview.org/working_groups/family_justice/final_05_05.pdf).
456. *New Justice System*, note 455, 37-38.
457. *New Justice System*, note 455, 24.
458. *New Justice System*, note 455, 33.
459. *New Justice System*, note 455, 35-36.
460. Focus Consultants, *Nanaimo Family Justice Services Centre Implementation Phase Evaluation* (September 2008), 1 [*Nanaimo Evaluation 2008*], online: <http://www.ag.gov.bc.ca/justice-reform-initiatives/publications/pdf/FJSCFinalReport.pdf>.
461. *Nanaimo Evaluation 2008*, note 460, 2.
462. *Nanaimo Evaluation 2008*, note 460.
463. Gayla Reid and John Malcolmson, *Civil Hub Research Project: Needs Mapping* (Legal Services Society, June 2007), online: <http://www.ag.gov.bc.ca/justice-reform-initiatives/publications/pdf/CivilJusticeHub.pdf>.
464. British Columbia Ministry of Justice, “Justice Access Centre”, online: <http://www.ag.gov.bc.ca/justice-access-centre/>.
465. Butler, note 10.
466. Government of Ontario, *The Partnership Project: An Ontario Government Strategy to Create a Stronger Partnership with the Not-For-Profit Sector* (2011), 4 [*Partnership Project Report*], online: [http://www.citizenship.gov.on.ca/english/keyinitiatives/partnership/part\\_project.pdf](http://www.citizenship.gov.on.ca/english/keyinitiatives/partnership/part_project.pdf).
467. *Partnership Project Report*, note 466, 5.
468. *Partnership Project Report*, note 466, 8.
469. Ontario Ministry of Citizenship and Immigration, “Partnership

- Project”, online: <http://www.citizenship.gov.on.ca/english/pp/faqs.shtml>.
470. Ontario Trillium Foundation, “Strengthening Collaboration in Ontario’s Not-for-profit Sector” (2011), online: [http://www.otf.ca/en/knowledgeSharingCentre/resources/OTF\\_Collaboration\\_Report.pdf](http://www.otf.ca/en/knowledgeSharingCentre/resources/OTF_Collaboration_Report.pdf)
471. Ontario Trillium Foundation, “The Future Fund” (2011), online: [http://www.otf.ca/en/applyForaGrant/future\\_fund.asp](http://www.otf.ca/en/applyForaGrant/future_fund.asp).
472. Commission on the Reform of Ontario’s Public Services, *Public Services for Ontarians: A Path to Sustainability and Excellence* (2012) [Drummond Report], online: <http://www.fin.gov.on.ca/en/reformcommission/chapters/report.pdf>.
473. Michael J. Wolf, “Collaborative Technology Improves Access to Justice” (2012) 15:3 N.Y.U.J. Legis. & Pub. Pol’y 759, 760.
474. Jacobs and Jacobs, note 37.
475. Law Society of Upper Canada, *Rules of Professional Conduct*, note 122, Rule 6.10. The commentary to Rule 2.01 provides as follows: In a multi-discipline practice, a lawyer must be particularly alert to ensure that the client understands that he or she is receiving legal advice from a lawyer supplemented by the services of a non-licensure. If other advice or service is sought from non-licensure members of the firm, it must be sought and provided independently of and outside the scope of the retainer for the provision of legal services and will be subject to the constraints outlined in the relevant by-laws and regulations governing multi-discipline practices. In particular, the lawyer should ensure that such advice or service of non-licensurees is provided from a location separate from the premises of the multi-discipline practice.
476. Law Society of Upper Canada, By-Law 7, Part III, online: <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147485808>.
477. *Child and Family Services Act*, note 284, s.72. This section deals with a duty to report a child in need of protection and applies to anyone performing “professional or official duties with respect to children” (s.72(1)).
478. *Child and Family Services Act*, note 284, s.72(8).
479. Macfarlane, note 288, 238.
480. LCO telephone discussion with Shelina Jeshani on April 13, 2012
481. Family Service Ontario, online: <http://www.familyserviceontario.org/content/members-services>. Other services include an annual conference, regional executive director meetings, EAP administration for agency staff, government advocacy and accreditation.
482. Family Service Ontario, online: <http://www.familyserviceontario.org/content/accreditation-0>.
483. Legal Aid Ontario, “Legal aid transforms services with new family law centre” (January 19, 2010), online: [http://www.legalaid.on.ca/en/news/newsarchive/1001-19\\_northyork.asp](http://www.legalaid.on.ca/en/news/newsarchive/1001-19_northyork.asp). The Greater Toronto Region covers North York, Scarborough, Etobicoke and Toronto.
484. An example of this in a community context is Immigrant Women Services Ottawa, which provides crisis intervention to immigrant and visible minority women fleeing abuse, a transitional housing and support program, services for children who have witnessed violence against women in their home, a wide variety of settlement and integration services, including employment services, and translation and interpretation services. WSO also provides cultural training. These services are offered in the same building (based on a visit by the LCO). See note 194.
485. Other jurisdictions also have civil justice access centres, such as the “Counter” system in the Netherlands or the Citizens Advice Bureaux in Britain. In the Netherlands, Service Counters were introduced between 2003 and 2006. They operate 30 physical counters throughout the country, located so that every citizen can access a Counter within one hour of public transit: Legal Aid Board, *Legal Aid in the Netherlands: A Broad Outline*, 8, online: <http://www.rvr.org/binaries/rbv-downloads/brochures/def-opmaakvoorsel-brochure-legal-aid--rvr90265-ve.pdf>. Also see Peter J. M. van den Biggelaar, “The Legal Services Counter: Lessons Learned”, International Legal Aid Group Conference paper (2007), online: [http://www.ilagnet.org/jscripts/tiny\\_mce/plugins/filemanager/files/Antwerpen\\_2007/Conference\\_Papers/The\\_Legal\\_Services\\_Counter\\_Lessons\\_Learned.pdf](http://www.ilagnet.org/jscripts/tiny_mce/plugins/filemanager/files/Antwerpen_2007/Conference_Papers/The_Legal_Services_Counter_Lessons_Learned.pdf). That size of system would not be sufficient to meet the needs of a province the size of Ontario. The UK Citizens Advice Service offers services out of over 3,500 bureaux, operated by 382 different charities. The Citizens Advice Service train the bureaux, which in turn provide them with data the Service uses to track widespread problems deserving national action. They employ 7,000 staff and rely on 21,500 volunteers: Citizens Advice Bureau, *Citizens Advice: Introduction to the Service* (2010-2011), online: [www.citizensadvice.org.uk/citizens\\_advice\\_introduction\\_to\\_the\\_service\\_2010\\_11.pdf](http://www.citizensadvice.org.uk/citizens_advice_introduction_to_the_service_2010_11.pdf). Such a service would be fiscally difficult to establish.



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