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Family Justice Reform: A Review of Reports and Initiatives

Action Committee on Access to Justice in Civil and Family Matters

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Comité d'action sur l'accès à la justice en matière civile et familiale

Family Justice Reform
A Review of Reports and Initiatives

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for

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Action Committee on Access to Justice

In Civil and Family Matters

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1. Introduction

The paper was prepared for the Family Justice Working Group of the Action Committee on Access to Justice in Civil and Family Matters to help guide its discussions on initiatives and innovations likely to have the greatest impact on access to justice. The paper reviews a host of papers and studies written over the last fifteen years on the state of the family justice system.

Numerous full-scale reviews of the family justice system have been written over the last ten years in Canada and other Commonwealth countries. Underlying all these reports is the changing nature of the family. While the many Canadian families continue to be made up of married heterosexual couples with children, common law relationships and same sex marriage are growing rapidly. Families are smaller and the roles within them have changed. With women achieving higher levels of education and entering the workforce in greater numbers, men are no longer predominantly the main income generators. Families and individuals have become increasingly mobile and reproductive technologies have reshaped our notions of parenthood. Divorce and separation are commonplace, and the number of blended and single parent families has grown significantly.[1]

To add to the complexity, in an increasingly multicultural and pluralistic society, these changes do not impact all communities in the same way:

> *Persons with certain religious convictions, persons in smaller communities, Aboriginal persons, and persons who emigrated from more traditional societies may perceive "the family" in a different way, compared to the "mainstream" or predominant way. Traditional notions about gender roles, extended family ties, divorce or parenting may prevail. However, families from more traditional societies may adapt different attitudes under the influence of a multi-cultural environment, in particular in urban centres. While recognizing the diversity of family life, the legal system has an obligation to observe mainstream expectations – both norms and human rights and constitutional requirements – about matters such as sex equality.*[2]

Numerous reports and studies have reached remarkably consistent findings about the causes of and cures for the ailing family justice system. And, while they have generated

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[1] See, for example, Law Commission of Ontario, *Towards a More Efficient and Responsive Family Justice System: Interim Report* (February, 2012), p. 8-10, online: http://www.lco-cdo.org/en/family-law-reform-interim-report [Referred to as the "LCO Interim Report"]

[2] LCO Interim Report, p. 9

many innovative programs, services and processes and a certain amount of culture change, the fundamental systemic shifts that have been called for have not been achieved. The most recent report issued in February 2012 by the Law Commission of Ontario made the point:

> *We have concluded from our research, including consultations with users and workers in the system, that Ontario's family law system requires a drastic change if it is to be truly effective and responsive. Whatever the merits of particular reforms (and in themselves they may well be meritorious), they have been layered onto an existing system.*[3]

The perception that the various family justice reform efforts made to date have fallen short of the mark is reasonably common, as is the concomitant suggestion that something more "drastic" or fundamental is required to bring the necessary changes to family justice.

This paper synthesizes a number of family law studies and reports, and describes some programs and services in place across the country that reflect a shift in the way in which family justice is delivered. The paper does not attempt to exhaustively catalogue all of the many family law initiatives implemented in recent years across Canada. Rather, it attempts to identify all categories or types of current family law initiatives, while providing some representative examples of each.

The paper has six parts:

- Part 1 describes why the traditional civil justice system has not worked for family cases;
- Part 2 sets out some common principles that have emerged from the various reports and studies;
- Part 3 reviews the components of a renewed family justice system;
- Part 4 discusses ideas for dealing with high conflict cases; and
- Part 5 touches on how substantive law reform can support the new vision of family justice.
- Part 6 considers the need for changes to family law education and data collection and research practices.

The National Federation of Law Societies of Canada and the Alberta Department of Justice provided funding for this paper.

[3] LCO Interim Report, p. 81.

2. Part 1: The Problem

Civil legal needs studies conducted in a number of Canadian jurisdictions have illustrated the frequency of family law problems, their disruptive impact, and their tendency to cluster with other issues[4]. For example, the Ontario Civil Legal Needs study found that:

> *Family relationship breakdown is the primary reason why most Ontarians enter the civil justice system. The breakdown of a family relationship is also often at the heart of people encountering multiple civil legal problems, and it is at the centre of clustering civil legal problems. Family relationship problems are also among the most difficult, complicated, and time consuming to resolve. This reality translates into making them most disruptive to people's daily lives and most draining on their resources.*

Not only are family law problems common and complex, people with them appear to be among the most likely of those with civil legal problems to seek assistance from the traditional legal system[5]. (This is in contrast to more common and low impact problem types, such consumer or employment.) While hundreds of thousands of families[6] are turning to the justice system to help them resolve these complex and important problems, there is an almost universal recognition that the system is failing them. Many recent reports take that as a starting point without exploring why that is in any detail, but those that do raise consistent and familiar concerns.

First and foremost, is a concern about the **impact of parental conflict on children and the tendency of the adversarial system, and the adversarial culture, to promote**

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[4] Carol McEown, *Civil Legal Needs Research Report 2nd Edition* (March 2009), Law Foundation of BC, online: http://www.lawfoundationbc.org/wp-content/uploads/Civil-Legal-Needs-Research-FINAL.pdf

Legal Problems Faced in Everyday Lives of British Columbians (December 2, 2008), Legal Services Society

http://www.lss.bc.ca/assets/aboutUs/reports/legalAid/IPSOS_Reid_Poll_Dec08.pdf

Mary Stratton, Alberta Legal Services Mapping Project: An Overview of Findings from the Eleven Judicial Districts (July, 2011), Canadian Forum on Civil Justice, online: http://cfcj-fcjc.org/docs/2011/mapping-final-en.pdf

[5] Report of the Ontario Civil Legal Needs Project, *Listening to Ontarians* (May 2010) Ontario Civil Legal Needs Project Steering Committee, online: http://www.lsuc.on.ca/with.aspx?id=568 , p. 57. [Referred to as the"Ontario Civil Legal Needs Report"]

[6] Statistics Canada reports that in 2009-10 180,000 new family law cases involving custody, access and support were initiated in Canada and there were almost 330,000 ongoing cases. See Statistics Canada, Family Court Cases Involving Child Custody, Access and Support Arrangements, 2009/2010, Juristat (2011) online: http://www.statcan.gc.ca/pub/85-002-x/2011001/article/11423-eng.htm#a2

conflict. A 2003 Australian report[7] summarizes the research on the impact of parental conflict as follows:

> *Research indicates that parental conflict:*
>
> - *can violate children's core developmental needs, posing a serious threat to their psychological growth;*
> - *has a profound influence on adolescent development and future adult behaviour and can be the strongest predictor of violent delinquency;*
> - *is a more potent predictor of poor child adjustment than is divorce; and*
> - *is detrimental to the fathering role, partly due to the mother's withdrawal from facilitating situations that enhance the father-child relationship.*

The strengths of the adversarial system as an effective truth finding system, as a locus for the public resolution of intractable private disputes, and as a forum to establish or clarify legal principles of wide applicability are recognized and respected. The courts are a valued last resort for those who simply cannot resolve their disputes on their own. However, this does not mean the family justice system needs to be court-focused and it is important to understand how the traditional adversarial culture can not only fail to alleviate conflict, but often exacerbates it. The New Brunswick Access to Family Justice Task Force Report put it bluntly: "It [the adversarial system] is effective in criminal and civil cases, but it is the worst model to resolve family law cases".[8] The negative impact of excessive adversarialism on family justice problems is compounded by the broader trend in modern society to legalize human relationships and emphasize rights-based thinking.

BC's Family Justice Reform Working Group cited research on the impact of conflict on families and went on to say:

> *Knowing this, we must not offer as a first resort for separating families an adversarial system that by its very nature often heightens conflict and threatens emotional well-being. Experience and academic research tell us, for*

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[7] *Government Response to the Family Law Pathways Advisory Group Report*, Commonwealth of Australia (May 2003), online: http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(CFD7369FCAE9B8F32F341DBE097801FF)~grflpr2003.pdf/$file/grflpr2003.pdf, p. 5. [Referred to as the "Australia Pathways Report"]

[8] *Report of the Access to Family Justice Task Force*, Government of New Brunswick (January 23, 2009), p. 9, online: http://www.legal-info-legale.nb.ca/en/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=34&cntnt01returnid=252

[Referred to as the "New Brunswick Report"]

> *example, that the language of affidavits—a primary tool of custody litigation—can encourage parents to depersonalize each other and cast each other in the role of the enemy. Instead of supporting a shared understanding of a parenting problem and a cooperative attempt at resolution, legal procedures can be used to lay blame and cause lasting hurt.*
>
> *We apparently acknowledge the shortcomings of the current system and the merits of consensual processes for families in conflict, but still people are steered to the courthouse. Mediation is certainly more widely available than it was a few years ago but still is characterized as an "alternative" process.*
>
> *We frame family disputes as contests and we manage cases as if they will all go to trial, even though most never will. This means that the tools available to families who need to work towards settlement are those that were designed as preparation for court.* [9]

Additionally, **the system is complex, costly, lengthy and unpredictable**. Delay has become endemic: families not only must wait long periods for hearing dates, but many court appearances do not have meaningful outcomes.[10] The system is "complicated, intimidating and costs a great deal of money just when family's income is being stretched beyond its limits."[11]

Adding to the system's complexity is the existence of two separate but parallel courts with both unique and overlapping jurisdiction. Both provincial and superior courts have jurisdiction over parenting arrangements, support and protection orders. Provincial courts cannot make orders with respect to property or divorce. The system makes sense only to those with a thorough knowledge of constitutional law and history and, while the establishment of Unified Family Courts has addressed the problem in some jurisdictions, elsewhere the confusion continues.

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[9] *A New Justice System for Families and Children: Report of the BC Family Law Reform Working Group* (2005), Justice Review Task Force, online: http://www.bcjusticereview.org/working_groups/family_justice/final_05_05.pdf [Referred to as the "BC FJRWG Report"]

[10] See, for example, Alfred A. Mamo, Peter G. Jaffe & Debbie G. Chiodo, *Recapturing and Renewing the Vision of the Family Court* (2007), online: http://books2.scholarsportal.info/viewdoc.html?id=357212, pp. 92-93. [Referred to as the "Mamo Report"]

[11] BC FJRWG Report, p 10.

Families going through separation and divorce often cannot get the information and services they need. This not only includes legal information, advice and representation, but also services to assist with dispute resolution, financial matters, housing and other concerns that may arise during separation and divorce. The **unmet need for legal services** has been thoroughly analyzed in various reports, many of which are summarized by Melina Buckley in her paper for the Action Committee's Working Group on Access to Legal Services.[12] The Buckley paper synthesizes the research on unmet legal need and analyzes current and planned initiatives to address that need.

Among the important findings cited by Ms. Buckley is the connection between unmet legal need and the poor and vulnerable:

- *There is an important connection between unresolved legal problems and broader issues of health, social welfare and economic well-being;*
- *Age, country of birth, disability status, personal income and education level are statistically independent predictors of reporting legal events;*
- *In some studies, gender, ethnic/racialized background and Aboriginal status were also shown to influence the experience of civil legal problems;*
- *Legal problems tend to "cluster", meaning that problems tend to co-occur and can be grouped together (clusters vary across jurisdictions);*
- *People who experience one legal problem are much more likely to experience more than one and this is especially true for low income people and members of disadvantaged groups; and*
- *While every group experiences civil needs, the poorest and most vulnerable experience more frequent and more complex, interrelated civil legal problems.*[13]

She also points out that the surveys may not fully address the needs of certain vulnerable groups such as the homeless, linguistic minorities or Aboriginal people.

The **failure of the family justice system to provide an integrated and multidisciplinary response** to families going through family restructuring has been cited in many reports as a central problem. This fragmentation of services occurs both within the family justice system and between family justice services and relevant services in other

[12] Melina Buckley, *Access to Legal Services in Canada: A Discussion Paper* (unpublished, April 2011), [Referred to as the "Buckley paper"]

[13] Buckley paper, p. 5

sectors, such as mental health and financial management. The lack of integrated services means families often cannot access the services they need, even if they are available, and can result in people finding themselves in failed or endless referral loops between unrelated and uncoordinated agencies.

Another critical challenge, flowing from the problems already noted, is **the rise of self-represented litigants (SRLs)**. While data on the number of self-represented litigants is not easily gathered, some jurisdictions have attempted to determine the scope of the problem. Reports from Ontario have found that between 31 to 58% of family litigants were unrepresented.[14] A recent study reported:

> *It is not possible to obtain a totally accurate picture of the extent to which family litigants in Ontario do not have lawyers, since the only data collected is based on reports at the time of filing an application in the courts. However, this data source makes clear that a substantial portion of family litigants do not have lawyers. Based on this data source, between 1998 and 2003, an average of 46 percent of litigants in the Ontario Family Courts were not represented by a lawyer, rising to 62% in 2006-2007 before falling somewhat to 54% in 2009-2010, the last year for which there was data.*[15]

The same authors surveyed lawyers and litigants and listed the following as reasons for self-representation (in order of frequency as rated by litigants):

- cannot afford a lawyer and not eligible for legal aid;
- waiting to see if matter is contested;
- can deal with the other party myself;
- lawyers increase time and expense;
- didn't know I needed one;
- know enough about family law myself;
- lawyers increase conflict.

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[14] This data is cited in University of Toronto Faculty of Law, *Middle Income Access to Civil Justice Initiatives: Background Paper* (2011), online: http://www.law.utoronto.ca/visitors_content.asp?itemPath=5/1/18/0/0&contentId=21 pp. 15-16. [Referred to as the "U of T Middle Income paper"].

[15] Rachel Birnbaum & Nicholas Bala, Views of Ontario Lawyers on Family Litigants without Representation (unpublished, 2012), p. 2

Interestingly, while 90% of lawyers surveyed said that the most important or significant reason why people did not have a lawyer was because they couldn't afford it, only 46% of the litigants surveyed identified not being able to afford it as the primary reason for not having a lawyer.[16]

Studies of SRLs have been done in BC, Alberta, Saskatchewan, Quebec and Nova Scotia.[17] A review of these reports[18], as well as various American studies, drew a number of conclusions from them:

- SRLs appear to be on the rise across Canada and the U.S., but empirical data on the issue is scarce.
- SRLs are particularly common in family cases.
- Parties are usually self-represented because they cannot afford a lawyer or they have been turned away from legal aid, but a significant minority chose not to seek the assistance of a lawyer.
- Most research has found SLRs tend to have low-to-middle incomes.
- There is some evidence that cases involving SRLs take more time.
- Representation seems to improve outcomes in many cases. [19]

Many of the challenges faced by, and arguably caused by, self represented litigants stem from the fact that the justice system is built around and for trained professionals with well understood roles. Self-represented litigants do not fit comfortably into that system. The demand on judges, lawyer and court staff to respond to the needs and expectations of self-represented litigants pushes them into unfamiliar roles. For example, a judge in a case

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[16] Rachel Birnbaum & Nicholas Bala, *Experiences of Ontario Family Litigants with Self-Representation,* For presentation at the Family Law Seminar, National Judicial Institute (February 8, 2012) (unpublished), p. 8.

[17] Reports and studies include: Canadian Forum on Civil Justice, Alberta Self-Represented Litigants Mapping Project: Final Report by Mary Stratton (2007); Nova Scotia Department of Justice, Self- Represented Litigants in Nova Scotia: Needs Assessment Study (2004); Community Services Consulting Ltd., A Report on the Evaluation of the Alberta Law Line (2006); John Malcolmson & Gayla Reid, BC Supreme Court Self-Help Information Centre Final Evaluation Report (2006); Gayla Reid, Donna Senniw & John Malcolmson, Developing Models for Coordinated Services for Self-representing Litigants: Mapping Services, Gaps, Issues and Needs (2004); BC Legal Services Society, Civil Hub Research Project: Needs Mapping by Gayla Reid and John Malcolmson (2007); Saskatchewan Ministry of Justice and Attorney General, Unrepresented Litigants Access to Justice Committee Final Report (November 2007).

[18] U of T Middle Income paper, pp. 14-21

[19] University of Toronto Faculty of Law, *Middle Income Access to Civil Justice Initiatives: Background Paper* (2011), online: http://www.law.utoronto.ca/visitors_content.asp?itemPath=5/1/18/0/0&contentId=2113, pp. 14-21. [Referred to as the "U of T Middle Income paper"]

where one party is self represented may have to intervene to ensure the self represented person provides enough evidence for the judge to make a proper decision and the lawyer on the other side may find their patience tested by the self represented litigant's lack of knowledge. At the same time, represented parties may feel that the attention self represented person gets from the judge and court staff puts the represented party at a disadvantage.[20]

While there is little research to support the notion, it is widely accepted that self-represented litigants add to delay and costs.[21] The perception that the high numbers of SLRs cause delay and frustration within the system and compromise fairness in outcomes are part factors driving reform. The response focuses both in strategies to reduce the number of self-represented litigants and to make the family justice system easier for them to navigate.

[20] See for example, Alberta Rules Of Court Project, *Self-Represented Litigants: Consultation Memorandum No. 12*, (March 2005), online: http://www.law.ualberta.ca/alri/index.php?option=com_mtree&task=listcats&cat_id=76&Itemid=69 [Referred to as "Alberta SRL Memo"].

[21] See for example, Alberta SRL Memo, p. 15-19

3. Part 2: Principles

As early as 1992 the BC report, Breaking Up is Hard To Do, called for a coherent, non-adversarial, out-of court system to deal with family issues.[22] Since that time concerns about the use of the adversarial model in family matters have been expressed forcefully and often, but the adversarial model continues to dominate our approach to family conflict. As stated in the BC FJRWG Report:

> *There is no question that a good deal has been accomplished already, but now is the time to take bold steps forward along the course that has been set, towards the goal of a justice system that is fundamentally different from what we have known in the past—one that is actually designed for families. The groundwork has been laid. Now we need to do what the experts have been recommending and move family law away from the adversarial framework.*[23]

This call for a "paradigm shift"[24] and "significant structural change"[25] has been made in many other reports across jurisdictions. A key aspect of this shift is moving from "a court focused system to one where the court plays an important role but is just one option among several and almost never the first."[26]

In figuring out what a new paradigm might look like, a number of common guiding principles emerge.[27] Application of these principles has implications for all aspects of the system: substantive law, procedural law and the delivery of services. Six unifying principles are discussed below.

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[22] *A Summary of Selected Reports on Family Justice Topics from BC, Alberta,& Federal/Provincial Sources since 1992* (2003), BC Ministry of Attorney General online: http://www.bcjusticereview.org/working_groups/family_justice/family_justice.asp

[23] BC FJRWG Report, p. 5

[24] Mamo Report, p. 93

[25] Dr. Barbara Landau, Tom Dart, Heather Swartz, Joyce Young, Submission to Attorney General Chris Bentley: Creating a Family Law Process that Works: Final Report and Recommendations from the Home Court Advantage Summit (2009), online: http://www.docstoc.com/docs/39516572/Submission-to-Attorney-General-Chris-Bentley-CREATING-A-FAMILY , p.7

[26] BC CJRWG Report, p. 22

[27] Examples of principles from major reports from Canada, Australia and Wales are provided at Appendix A.

1. The best interests of the children come first

   This notion that the best interests of children come first is enshrined in the Divorce Act and the family law legislation of all provinces and territories, some of which provide that the best interests of the child is the *only* consideration for courts in making decisions related to parenting. While this has long been part of the substantive law, it is also relevant to the *process* for resolving cases. One of the stated objectives of the recently revised BC Supreme Court Family Rules is to help parties resolve legal issues in a way that will take into account the impact the conduct of the case may have on a child.[28]

2. The value of family relationships should be recognized, nurtured and supported

   Family relationships form the bedrock of society and even when families are restructured as a result of separation and divorce, the system that people turn to help them resolve the issues that arise should foster the ongoing capacity of parents to nurture their children. The family justice system must accommodate the diversity of Canadian families.

3. Conflict should be minimized

   The principle that the family justice system should strive to minimize conflict and promote cooperation between the parties flows directly from the consensus respecting the effects of parental conflict on children and the value of supporting family relationships.

4. Families should, as far as possible, be supported (or empowered) to resolve their own disputes

   Family autonomy is a key principle in a number of reports. The idea that families should be supported and empowered to solve their own disputes is based on the belief that solutions built by families will lead to better outcomes than those imposed by courts.

   > *When a family is together, we let its members take care of each other and we assume that the family can solve its own problems. Unless*

[28] BC Supreme Court Family Rules, Rule 1-3, online: http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/169_2009_00

> *someone behaves criminally or puts children at risk, we treat the family as an autonomous unit. But when spouses separate, new assumptions take over. Our family justice system is based on assumptions that might strike us as odd if we were not so accustomed to them: that a family's issues are best resolved by strangers; that family members should consider themselves adversaries; and that interpersonal problems should be understood in terms of competing rights.*[29]

Family autonomy is supported by providing services and processes to help families resolve their own disputes.

5. The response to families experiencing family restructuring should be integrated and multidisciplinary

An important part of the original vision of the Family Court of Ontario (established in 1977) was that family justice problems would be addressed in an integrated manner, both in terms of the courts' jurisdiction and the services delivered within the family justice system.[30] All major family justice reports have called for this type of integration. More recent reports go further, recommending a multidisciplinary approach to service delivery. These two notions are distinct. The call for integration often (although not always) refers to collaboration between those who deliver family justice services. These could include the judiciary, court registries, lawyers, mediators, legal aid organizations and family justice services providers.[31] The more recent call for a multidisciplinary response reflects the recognition that family law issues often trigger and are clustered with other non-family civil problems and the family justice system needs to collaborate with service providers from other sectors to provide "linked solutions"[32] to families' multifaceted problems.

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[29] BC FJRWG Report, p. 10

[30] Mamo Report, p 12.

[31] Including for example, mental health counseling, financial and housing advice

[32] *Out Of The Maze: Pathways to the Future For Families Experiencing Separation*, Report of the Family Law Pathways Advisory Group (Commonwealth of Australia, July, 2001), p. 15 online: http://www.ag.gov.au/Publications/Pages/FamilylawsystemOutoftheMazeAugust2001.aspx [Referred to as Australia Pathways Report]. See also *Government Response to the Family Law Pathways Advisory Group Report* (Commonwealth of Australia, May 2003), online: http://www.ag.gov.au/Publications/Budgets/Budget2003/Pages/GovernmentresponsetotheFamilyLawPathwaysAdvisoryGroupReportMay2003.aspx [Referred to as Australia Government Response to Pathways].

6. The safety of family members from violence must be assured

Many reports highlight the prevalence of violence, especially during family restructuring. Despite principles of family autonomy and support for the value of family relationships, there is a broad recognition that family justice systems must address issues of inequality, power and violence.

4. Part 3: Service Delivery Models – Common Themes

There has been a remarkable international convergence of ideas about what an ideal family justice system service delivery model should look like. The language used to describe the model and the way the pieces fit together is not always the same, and debates and experimentation on the details of the model are ongoing. Nonetheless, some common themes can be identified. The basic model contemplates these components:

- entry points to the family justice system,
- information,
- triage,
- dispute resolution,
- improved court processes, and
- post-resolution support.

In this part I will explore each of these in greater detail, referencing the major reports and reviewing some existing services that fall into each category.

A. Entry Points to the Family Justice System

Many reports have looked at the challenges people face in figuring out how to find help with their family justice problem. The reports on unmet legal needs cited above invariably show that people often do not know where to go or what resources are available:

> *Information failure is a significant issue: people do not understand legal events, what to do or where to seek assistance. People do not seek traditional legal advice, but rely on non-professional sources of advice and generally available information;*[33]

The question of how best to facilitate early access to relevant information and services within the family justice system is critical. Existing entry points include family and friends, non-legal professionals like doctors and counsellors, legal information and advice providers like help lines and dispute resolution providers like lawyers and mediators.

[33] Buckley paper, p.9

A number of reports have recommended a single, highly visible entry point[34], while others call for multiple entry points, referring to "no wrong number, no wrong door"[35], and rely on various "gatekeepers"[36] and "trusted intermediaries"[37] to help guide people to the right place. Utilizing multiple entry points is said to acknowledge the diversity of people using the family justice system, differences in rural and urban needs, the digital divide and the diverse factors that influence when and where someone might enter the system.[38]

One Stop Shop: Primary Visible Entry Points

Several jurisdictions have located a range of family justice services together in single location service centres intended to serve as visible entry points to the system for most cases. Family Law Information Centres (FLICs) in Ontario, Alberta and Nova Scotia, Justice Access Centres (JACs) in BC and Family Relationships Centres (FRCs) in Australia all serve this function to some extent, but differ in a number of important ways, including the services they provide, their clients and their connection to the court.

FLIC services are available in Family Courts across Ontario and offer information, advice and referrals. The Mamo Report, which reported on the evaluation of the FLICs, summarized their success and strengths as follows:

- *The Family Law Information Centres are frequently accessed by the public. FLIC fulfils an obvious need in the justice system for a clear entry point and access to information. The personal nature of the centre allows for greater access by those individuals who face barriers related to culture, language, literacy, and poverty.*
- *For the consumer, FLICs provide one-stop shopping for service. Consumers can access information, mediation, advice counsel, and community resources conveniently all in one location.*

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[34] For example, BC FJRWG ; Home Court Advantage Report; and *A New Approach To The Family Law System Implementation Of Reforms: Discussion Paper* (November 2004), Australian Government, online: http://epubs.scu.edu.au/educ_pubs/270/.

[35] Access to Justice Task Force, Attorney-General's Department, *A Strategic Framework for Access to Justice* , Government of Australia (2009), online**:** http://www.ag.gov.au/a2j [Referred to as Australia Access to Civil Justice Report]

[36] Australia Pathways Report

[37] Linguistic and Rural Access to Justice Project, *Connecting Across Language and Distance: Linguistic and Rural Access to Legal Information and Services,* by Karen Cohl and George Thomson (Toronto: Law Foundation of Ontario, 2008), online: http://www.lawfoundation.on.ca/linguistic_rural_access.php. [Referred to as the "LCO Linguistic and Rural Access Report"]

[38] These two approaches are discussed in the Buckley paper at pp. 15 and 16.

- *FLICs also provide a visual reflection of the principles and holistic nature of the court, and a continuity of service. For example, in some sites, the counter staff work closely with the IRC [information resource coordinator], and this assists greatly with the backlog at the counter. In other sites, FLICs provide a continuity of service between the advice lawyer, duty counsel, and the area director of Legal Aid.*
- *The FLICs that are perceived as successful are open the same hours as the courthouse, are accessible, and have a warm and welcoming atmosphere for the public.* [39]

The Mamo Report included in the FLICs' challenges: that legal advice services were only available to people below a certain income level; the lack of computer terminals available for public use; limited hours; and lack of visibility at some sites. The Report recommended that the FLI C should be the entry point into the family court system in Ontario and FLIC services are now available in all Family Court locations. Mandatory information sessions and information and referral coordinators are available, along with duty counsel for eligible clients.

In Australia, 65 Family Relationship Centres (FRCs) were established in the wake of a series of five family law reports issued between 2001 and 2004. The FRCs are designed to be the gateway to specialized help and services for families needing support to deal with conflict or reach agreement, with an emphasis on early intervention. They provide information and referral, parenting advice services, family dispute resolution and screening for violence. A primary aim of the FRCs is to support parents in reaching parenting plans. Originally legal services were not offered at FRCs, but they were introduced in 2009 and their integration into FRCs has been subject to a largely positive evaluation.[40] FRC services are available to anyone.

The establishment of FRC's was part of a larger reform package that also included changes to substantive and procedural law. New legislation introduced mandatory family dispute resolution (FDR), emphasized equal and shared parenting responsibility and created less adversarial terminology. A 2009 evaluation concluded that the reforms:

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[39] Mamo Report, pp. 51-75

40 *Evaluation of the Family Relationship Centre Legal Assistance Partnerships Program: Final Report,* Australian Government & Australian Institute of Family Studies (March 2011), online: http://trove.nla.gov.au/work/152907801?selectedversion=NBD47251028, p. 26. A particular challenge identified in the report is developing a better understanding about when FDR should not be used and what other options are available for families when FDR is not appropriate.

have had a positive impact in some areas and have had a less positive impact in others. Overall, there is more use of relationship services, a decline in filings in the courts in children's cases, and some evidence of a shift away from an automatic recourse to legal solutions in response to post separation relationship difficulties.

A significant proportion of separated parents are able to sort out their post-separation arrangements with minimal engagement with the formal system. There is also evidence that FDR is assisting parents to work out their parenting arrangements.

A central point, however, is that many separated families are affected by issues such as family violence, safety concerns, mental health problems and substance misuse issues, and these families are the predominant users of the service and legal sectors. In relation to these families, resolution of post-separation disputes presents some complex issues for the family law system as whole, and the evaluation has identified ongoing challenges in this area. [41]

The evaluation also found that the entry point function of the FRC had not become fully established (referred to as the "gateway function"), with only about half of the other service providers and one third of lawyers seeing the FRCs as an integral part of the family law system and with many lawyers being reluctant to refer clients to an FRC.

Family Law Information Centres in Alberta, Nova Scotia's and the Yukon are based on a self-help model. While the range of services and level of assistance varies, generally they provide information about court processes and family law, provide computers for public use, and guide people to appropriate forms. Some provide assistance with filling out forms and group information sessions. These services are available to anyone, but no legal advice services are available.[42]

BC has taken a broader approach through its Justice Access Centres (JACs), operated by the Ministry of Attorney General. The vision for the JACs flows from the reports of the BC

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[41] Evaluation Of the 2006 Family Law Reforms: Summary Report (December, 2009) Australian Government & Australian Institute of Family Studies, p. 26, online: http://www.aifs.gov.au/institute/pubs/fle/

[42] For more information see: http://www.albertacourts.ab.ca/go/CourtServices/FamilyJusticeServices/FamilyLawInformationCentres/tabid/121/Default.aspx; http://www.gov.ns.ca/just/FLIC/supremeFamily.asp#027; http://www.yukonflic.ca/

FJRWG and the BC Civil Justice Reform Working Group.[43] JACs provide a 'single door' to the justice system where people can access integrated services that will help them solve family and/or civil legal problems. The JACs offers self-help and information services, needs assessment and referral, dispute resolution and mediation services, and legal advice services for people with both family and civil justice problems. On the civil side, users may find information and resources related to income security, housing, employment, debt, immigration and refugee, human rights, consumer issues and wills and estates. In addition, the JACs have collaborated with a number of organizations to make a fuller range of legal and non-legal services available onsite and by referral. Onsite services include pro bono legal advice, credit counselling and maintenance enforcement. Services available by referral include those provided by organizations serving immigrants and refugees, people with disabilities, elders, women experiencing family violence, tenants, people with consumer and human rights issues. Some services are available to anyone while others, such as legal advice, are means tested.

The Law Commission of Ontario, in an interim report from it's project on Best Practices at Family Justice System Entry Points[44], recommends the establishment of something similar to JACs, although not located at the courthouse:

> *We believe that a comprehensive entry point should be the foundation of the family justice system and connect users to wider family services. "Multi-disciplinary multi-function centres" for all families with legal questions, challenges or problems regarding family matters should be close to the community, and provide a low-threshold front door.*

Given the currency of the report and it exclusive focus on entry points, it is worth citing from it at some length.

> *Our long term recommendations are based on the goals of achieving a family law system that provides access to justice, measured by how well the entry points achieve the following:*
>
> - *provide initial information that is accessible to people in their everyday lives;*
> - *help an individual determine the nature of their family problem(s);*

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[43] BC Civil Justice Reform Task Force, Effective and Affordable Civil Justice, Justice Review Task Force (2006), on line: http://www.bcjusticereview.org/working_groups/civil_justice/cjrwg_report_11_06.pdf

[44] LCO Interim Report, p. 95

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

Ideally, a family justice system operates in a wider system of family services. This system has various entry points for persons facing relationship problems or facing a situation of family breakdown. At a central entry point (where persons with family challenges or problems "routinely go") the full scope of a person's family challenges and problems can be assessed. The person can reach this central entry point directly or can be directed to it through various entry points which can be informal, "trusted intermediaries" in a community, family service providers, persons working in the area of family justice or public information. The central entry point itself can be accessed through various channels, including – ideally – experts giving face to face advice, or via telephone and online when this is meaningful for users. Once a person has entered the wider family service system, there are two basic steps. For convenience, we have listed these as if they always occur in a particular order; in practice, an individual may need to move back and forth between the steps, although if the system is effective this should only occur when it is useful and not because of a lack of adequate information or lack of coordination within the system.[45]

[45] LCO Interim Report, p. 83-84

Multiple Entry Points

The Australia Access to Civil Justice Report and research papers done for the LCO's research project on Best Practices at Family Justice System Entry Points[46] have taken a different approach. The Australian Report recommends a "no wrong number, no wrong door" policy under which all justice system providers are equipped to carry out an assessment in each case and to guide clients to the appropriate pathway.[47]

Two of the two research papers from the LCO Entry Points Project – the Linguistic and Rural Access Report referred to above and one on multidisciplinary pathways to family justice[48] – also emphasize the need for multiple entry points. Based on the literature on different pathways to justice, an examination of the various factors that influence why people use one entry point or another, and extensive consultations with stakeholders about their needs, these reports emphasize the need for multiple entry points to the family justice system, calling for a "system", as opposed to an "entity" (with centres being the entities).

This need for multiple access points is seen as particularly acute in rural and remote areas and for linguistic and cultural minorities. Not only may a lack of resources limit the ability of governments to establish full service entry points, like BC's JACs, in all locations, but people from cultural and linguistic minorities have particular challenges accessing centralized services. The LCO Linguistic and Rural Access report concluded that:

> *A clear theme that emerged through our project was the need to foster more formal relationships between legal and non-legal service providers to help community organizations ("trusted intermediaries") to provide better legal information and referral for vulnerable clients. It is common for both linguistic minorities and people in rural or remote areas to turn to the organizations they know and trust when they have a problem. In the course of helping clients, community workers are often the first to recognize that a problem has a legal component and to provide basic information or a referral.*
>
> *Trusted intermediaries include organizations that focus on social services, services to people with disabilities, immigrant settlement, health care,*

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[46] http://www.lco-cdo.org/en/content/family-law-reform

[47] The key features of the "no wrong number, no wrong door" policy are described in the Buckley paper at pages 16 and 17.

[48] Lesley Jacobs and Brenda Jacobs, Multidisciplinary Paths to Family Justice: Professional Challenges and Promising Practices, (Paper commissioned by the Law Commission of Ontario, June 2010) online: http://www.lco-cdo.org/en/family-law-process-call-for-papers-jacobs [referred to as LCO Multidisciplinary Paths Paper]

> *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.*
>
> *Most legal problems are inextricably linked with other issues. For that reason, linguistic and rural access to justice cuts across both the various elements of the justice system and the many community organizations that serve other needs. Improving linguistic and rural access to justice therefore requires a systemic response, and we have concluded that no one organization, existing or new, can or should "own" that response.*
>
> *We believe that the preferred solution is to provide multiple points of access to an integrated system, which, from the client's perspective, is seamless.*
>
> *An effective systemic response should encompass the array of community organizations to which our target groups turn for help. We see them as essential partners in an integrated system.* [49]

The LCO Multidisciplinary Pathways paper cites recent scholarship supporting the notion that there should be multiple paths to justice in a society with a well developed justice system:

> *The vision of multidisciplinary paths to family justice applies this idea to the conjunction of multidisciplinary family services involving a diverse profile of professionals with the provision of low-level family legal services oriented towards legal information, legal consultation, and informal community mediation and other forms of dispute resolution.*[50]

The paper goes on to describe how existing community health centres, family counselling centres, and the proposed Best Start Child and Family Centres in Ontario could integrate low-level legal services.

The LCO Voices Consultation Report reflects the approach in these background papers and calls for a holistic service delivery system rather than one which is built around single entry points.

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[49] LCO Linguistic and Rural Access Report, pp. 44, 45 and 54.

[50] LCO Multidisciplinary Pathways Paper, p. 45

B. Information

Early and appropriate information is essential to an effective family justice system. Only with the right information in hand can families make informed decisions about how to resolve their family justice issues fairly and quickly. In addition to information for families entering the system, some reports have recommended broader public awareness campaigns. For example, the Australia Pathways Report recommended a long term public education program and a national education package for school. This was based on the view that a better community wide understanding of the basic principles of the family law system was needed to change peoples' behaviour after separation.

Types of Information

Most other recommendations are focused on getting the right information to people going through separation and divorce early in the process. The type of information system users need includes:

- information for parents about the impacts of divorce and separation on children;
- parenting information;
- information for children about separation and divorce
- information about dispute resolution options;
- information about how the court system works, including information about how to fill out court forms and other self help resources;
- information about services, and
- legal advice and information[51]

Information should use plain language, be tailored to different users' needs and be reliable.

Providing Legal Information vs. Supporting Self-Help

With the growth of SRLs, there has been an increasing emphasis on supporting litigants as they navigate some or all of the stages of a family law case without a lawyer. This involves more than just providing legal information. The LCO Linguistic and Rural Access Report noted: "The distinction between a self-help service and providing legal information may be a question of what the provider expects the individual to do with the information."[52] In the United States there is a wide range of innovative self help services available and, as noted

[51] See for example, BC FJRWG Report, p. 27

[52] LCO Linguistic and Rural Access Report, p. 49

above, a number of provinces have established self-help centres. The growth of these services, however, is controversial. The LCO Linguistic and Rural Access Report find that programs and services designed to help people act on their own are suited to people with a high level of literacy and confidence, but people with language, literacy or cultural barriers lack the skills needed to effectively use them. Self-help services are said to be more effective if delivered in conjunction with in-person services. However, as the U of T Middle Income Report acknowledges,

> *In some situations the options are either self-help services or no services. Moreover, the studies discussed earlier in the section on unrepresented litigants suggest that self-help service do benefit users. The studies show mixed results with respect to the impact of self-help services on the outcomes of cases, but consistently show that clients of self-help services experience a high level of satisfaction and a reduction in confusion and anxiety, and that court staff and clerks report experiencing reduced demands on themselves. The same studies also show that in-court assistance supporting self-help services significantly improves case outcomes. These studies suggest both that facilitated self-help may be particularly effective and that the effectiveness of self-help services may be improved by integration with other court services.* [53]

How information is delivered

Canada has a thriving public legal education and information community which generates a considerable amount of high quality material and has been collaborating to explore innovative ways to create and deliver legal information[54]. Despite this, some reports have found that information is not always easily accessible. The LCO recent interim report found:

> *We conclude that while there is no shortage of information, it is not clear if it is as effective as it might be. In particular, online information is hard to access.*

And:

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[53] U of T Middle Income Report, pp. 31-34.

[54] See Just a Click Away, online: http://www.justaclickaway.ca/, an initiative of PLEI organizations across Canada to enhance how technology can be used to deliver legal education and information to the public.

> *If anything, the problem is too much information, including information that is difficult to navigate or understand.*[55]

While centres like FLICs and JACs serve as repositories, information needs to be widely available at locations in the community where people going through separation and divorce are likely to go. This might include libraries, community centres and doctors' offices. Information is offered in a number of jurisdictions by phone and through courthouse kiosks. A pilot project of the BC Courthouse Library Society aims to provide local access to basic legal information materials by providing public libraries with financial help with buying legal resources, bibliographies of recommended resources, research guides on legal topics, training for staff, reference and referral support and consultation and advice for local libraries.[56]

A number of reports recommend the creation of a central online coordination point or clearinghouse for legal information.[57] The PLEI community in BC has done that, creating a portal called Clicklaw,[58]which houses legal information and education designed for the public by 24 organizations. Organized under the headings: 'solve a problem', 'learn and teach', 'reform' and 'research the law', the portal provides a single point of public access to reliable and user friendly information about civil, criminal and family law issues. An evaluation of the site is underway. Other sites focus on providing comprehensive information and self help materials for family cases. These include New Brunswick's Family Law NB[59] and the BC Legal Services Societies' Family Law Website.[60]

Technology

There is much discussion in the literature about the use of technology to deliver legal information. The Ontario Civil Legal Needs Study found that 84% of low and middle income Ontarians are connected to the internet[61] and 93% of people living in BC have

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[55] LCO Interim Report, pp. vii and 66.

[56] http://www.courthouselibrary.ca/research/ForThePublic/LawMatters.aspx

[57] For example in the earliest reports reviewed and in the most recent: Australian Pathways Report in 2001 and *Family Justice Review: Final Report, Report of the Family Justice Review Panel*, Ministry of Justice, Department for Education and the Welsh Government (November 2011), online: http://www.justice.gov.uk/about/moj/independent-reviews/family-justice-review [referred to as Welsh Access Report]

[58] http://www.clicklaw.bc.ca/

[59] http://www.familylawnb.ca/english/index.php

[60] http://www.familylaw.lss.bc.ca/

[61] Ontario Civil Legal Needs Report, p. 59

access to high speed internet.[62] However, the LCO Linguistic and Rural Access Report found that there is still a significant "digital divide" in Ontario.[63] It cites a CRTC study finding that 47% of Canadian communities, mostly rural and small town, did not have broadband access. The LCO report also says that even where broadband service is commercially available, many people do not have home computers or may be unable to afford the service. This report, and others, caution against over-reliance on technology for the delivery of legal information arguing that this mode of delivery may not be effective for marginalized and vulnerable groups. With internet use among young people being much greater than in the general population and access to high speed internet spreading, increased reliance on technological solutions seems inevitable.

Mandatory Programs

Some jurisdictions see early intervention as so critical to improving outcomes that they have imposed mandatory information programs. In Ontario, parties must attend a mandatory information session before a contested hearing (some exceptions apply), where they are given information about separation, divorce and the legal process (including the effects on children), alternatives to litigation and local resources.[64] Quebec imposes a similar obligation on divorcing couples with children.

In some jurisdictions, information sessions overlap with the triage services discussed in the next section. For example, in four Provincial Court registries in BC parties are required to meet with a family justice counsellor (FJC) before their first court appearance. This meeting is characterized as a triage session where the FJC will not only provide information, but will help each party to clarify their issues and understand the options available for resolving their disputes. FJCs also provide mediation services to eligible clients or may refer parties to a private mediator.

BC, Saskatchewan, Alberta, Manitoba, Nova Scotia and Quebec have all introduced mandatory parenting courses for people seeking orders related to children. While not mandated in all courts or all locations, in each of these jurisdictions mandatory courses are widely implemented. Mandatory parenting sessions are also in place in many US states. Parenting courses generally receive very high user satisfaction ratings and most participants say they would recommend the program to other parents. However, so far empirical evidence has not been able to demonstrate with any certainty that the programs

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[62] http://www.network.gov.bc.ca/faq.htm

[63] LCO Linguistic and Rural Access Report, p. 34.

[64] Ontario Ministry of Attorney General, Family Justice Services, online: http://www.attorneygeneral.jus.gov.on.ca/english/family/family_justice_services.asp#mip

lead to fewer court appearances. And a recent review of studies concluded that there have not been sufficiently rigorous evaluations to say whether or not the programs had been effective in achieving goals like reducing parental conflict, improving co-parenting and improving outcomes for children.[65]

Voluntary parenting programs are available in a number of other provinces including Newfoundland, Prince Edward Island and New Brunswick. The Mamo Report evaluated the voluntary parenting program available in five Ontario Family Court locations and found that there was a lack of awareness about the program which contributed to low attendance However, those that did attend them reported a high level of satisfaction. [66] Ontario has not introduced mandatory parenting courses, but the mandatory information sessions include parenting information.

Access to Legal Advice & Representation

Lawyers play important roles at many points in the family justice system. As noted above, they are the entry point to the system for many people. Early legal advice can be an important dispute resolution tool: having a realistic view of the possible outcomes can help people reach fair and enduring agreements. Some people will be able to resolve their family law issues with only summary legal advice. When cases are more complex, because of their substance, the degree of conflict or the capacity of the parties, more legal assistance may be needed.

Readers are referred to the Buckley paper for a thorough discussion about access to legal advice and representation. This paper will add to that work only by noting a couple of initiatives that seem especially promising in the family area where the need for increased legal aid funding is acute and the need to develop strategies to expand services in an environment of shrinking resources has become urgent.

Expanded family duty counsel models have been introduced with some success in Ontario, Alberta and BC. These differ from traditional duty counsel services, which traditionally are designed to help clients move to the next stage in the legal process. In the expanded duty counsel model, the emphasis is on helping clients move toward resolution. This is seen as a middle ground between traditional duty counsel and full representation. Counsel can create and carry files, provide ongoing representation, prepare court documents and assist

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[65] Brenda Bacon, *Evaluation of the Saskatchewan Justice Parenting After Separation/Divorce Program: Final Report* (March 2003), online: http://www.justice.gov.sk.ca/ParentEdEval.pdf; Amanda Sigal, Irwin Sandler, Sharlene Wolchik and Sanford Braver, *Do Parent Education Programs Promote Healthy Postdivorce Parenting? Critical Distinctions and a Review of the Evidence*, Family Court Review, Vol 49, No 1, January 2011.

[66] Mamo Report, pp. 71, 72

at settlement conferences. The model has been very positively evaluated in both BC and Ontario.[67]

Another feature of expanded services is the delivery of legal services in locations where a wider range of family justice services (for example, self-help services and mediation) are offered. Initially the Family Relationship Centres in Australia did not include legal services. In an effort to provide better service, "legal services partnerships" were added to some FRCs on a pilot basis in 2009. The evaluation of this program had shown positive outcomes.[68] Legal services are co-located with other family justice services in BC, Ontario, New Brunswick and Alberta.

C. Triage: Assessment, Screening & Referral

Even with basic information in hand, most people need help figuring out what steps they should take to resolve their family law issue. Given that family relationship problems often cluster with other types of legal problems, family needs may be complex and require a range of supports and services. Appropriate early and ongoing assessment, screening and referral systems – sometimes collectively referred to as "triage" - allow resources to be targeted to the needs of individuals and families, saving them and the system time and money.

Full **assessment** involves gathering information from the client, diagnosing their problem, educating them about their options and guiding them to the appropriate services and next steps or pathways. It is also a key tool for shifting public expectations about how family justice problems are solved while acting as a gateway to a range of dispute resolution options, of which litigation is just one. In BC JACs the assessment is carried out by Family Justice Counsellors.

The service integration principle that underlies many reports can be implemented through co-location or strong operational links to related service providers. The goal is often to make a '**warm referral'**, i.e. a referral that involves more than just handing someone a phone number but might involve contacting another service on the client's behalf, sharing

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[67] Focus Consultants, Evaluation of the Expanded Family Duty Counsel Project (Robson Street Court House) *Final Report*, Legal Services Society of BC, online: http://www.lss.bc.ca/assets/aboutUs/reports/familyServices/evaluationFDCProject.pdf;

PRA Inc., *Evaluation Of The Family Law Expanded Duty Counsel Pilot Projects: Final Report*, Legal Aid Ontario, online: http://www.legalaid.on.ca/fr/publications/downloads/report_EDCevaluation_02oct.pdf

[68] *Evaluation of the Family Relationship Centre Legal Assistance Partnerships Program: Final Report* (March 2011) Australian Government & Australian Institute of Family Studies, online: http://www.ag.gov.au/Documents/Final%20Legal%20Partnerships%20Evaluation%20Report.PDF

case information with the other service so the client does not have to repeat their story. It may even involve attending the service with the client. It can include co-location of services in the referral network and close collaboration between service providers.

A third element of the triage process is **screening** for safety. Family violence is a frequent issue when families restructure. While the assessment process provides an opportunity for issues of power imbalance and violence to be considered and for people to be directed to appropriate services, many reports have found that we have some way to go in being able to properly assess and respond to family violence.[69] Better and more comprehensive training, enhanced screening, and differentiated responses in cases involving family violence are widely recommended.

Innovative approaches are being widely explored and implemented. One promising practice highlighted in the Mamo Report is a central service operating in Durham where women dealing with intimate relationship violence can access a range of needed services, including those related to police, shelter and outreach, and children's' aid, in one location.[70]

When, Where and Who?

Ideally triage should take place at the point where a person first seeks help for their family justice problem. Justice Access Centres are built around the use of a carefully designed assessment tool that helps staff direct parties to the services and processes most likely to help them resolve their civil and family justice issues. This type of triaging function is the central recommendation of the LCO's Interim Report on entry points.

In the FLICs, Information and Referral Coordinators provide information on dispute resolution options, information related to separation and divorce and referrals to community resources.

Assessment and information provision are blended and delivered somewhat later in the process in programs that require parties to attend sessions before appearing in court. Ontario's Mandatory Information Program falls into this category, along with BC's Family Justice Registry Rule under which parties must meet with a Family Justice Counsellor before their first appearance in court. Alberta's caseflow conference blends triage and

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[69] For example, Evaluation Of the 2006 Family Law Reforms: Summary Report (December, 2009) Australian Government & Australian Institute of Family Studies, online: http://www.aifs.gov.au/institute/pubs/fle/evaluationreport.pdf, p. 13,14 [Referred to as the Australia 2006 Evaluation]

[70] Mamo Report, p. 128, 129; Durham D.R.I.V.E.N., online: http://www.durhamdriven.com/

court based case management approaches. A caseflow coordinator[71] meets with self represented parties to help them prepare for their hearing and can refer them to other dispute resolution options..

These examples show that a continuum of approaches have been adopted across the country. At one end of the continuum are the JACs. With their early needs assessment for civil and family clients, co-location of various services, warm referrals and strong relationship with service providers outside the justice system, the JACs provide a more broadly integrated approach than is found elsewhere in Canada. The JAC model is widely regarded as successful, and expansion - subject to the issue of cost and resources - is a priority for the B.C. Ministry of Attorney General. B.C. is currently exploring innovative ways of expanding the services of the JAC to more locations. For example, the possibility of a "virtual JAC" offering services over the phone and the internet is presently under consideration.

Other jurisdictions stream people with family justice problems to information and referral, but are less integrated with non-legal services and employ fewer structured assessment processes than the JACs. All approaches require a high level of collaboration between service providers. Of course, the broader the range of services, the more complex and challenging this becomes.

Assessment at Multiple Entry Points

A further challenge is raised when considering the recommendation that multiple entry points to the justice system be recognized and that assessment, screening and referral take place at all of them. For example, the 2001 Australia Pathways Report recommended a template be developed for an assessment to be applied at the first point of contact and be tested in a variety of environments.[72] The 2010 LCO, Voices Report says:

> *Consultations helped clarify that the most basic screening that should take place at all entry points is whether the entry point is able to respond to the users' needs. This step already requires that people or organizations realize that they are an entry point to the family justice system and that they identify the users' needs. The next step is to respond to users' needs by treating different*

[71] Caseflow Coordinators are government staff hired at the same level as mediators and family court counsellors. They have social work, human services or, psychology backgrounds with a BSW/MSW or equivalent. They are trained in conflict resolution and have a good working knowledge of the *Family Law Act* and *Divorce Act*.

[72] Australia Pathways Report, p. 39.

needs differently or, when impossible to offer the required services, to refer users to other appropriate services.[73]

Both reports identified the need for the person conducting the assessment to be properly trained. Developing and implementing a consistent assessment tool to be delivered at multiple entry points by qualified individuals poses considerable challenges and has not been implemented in any Canadian jurisdiction.

D. Dispute Resolution

A central theme of family justice reform is providing families with a range of dispute resolution options. Historically referred to as "alternative dispute resolution" ("ADR"), the early approach to ADR saw parties stepping off the primary litigation path to attempt to come to a mediated or negotiated agreement. Mediation and negotiation were seen as add-ons to an essentially adversarial system.

There is now a broader range of dispute resolution options available to people entering the family justice system. While each is a helpful tool, they are likely to remain adjuncts to the litigation model unless they are part of a family justice system that has the components identified in this paper: early information, assessment/screening/referral, and streamlined court processes. Early information and triage are essential to ensuring people find the pathway that is most suited to their needs.

Types of Dispute Resolution

Mediation has now been joined by a range of options that people entering the family justice system can turn to for assistance in resolving their problems.

mediation

Mediation is an evolving type of dispute resolution that takes many different forms. At its core though it involves a neutral third party with no decision making powers helping people resolve their own disputes. Mediation has gained great ground in both civil and family cases over the last twenty years and its effectiveness is widely accepted. At the same

[73] Law Commission of *Ontario, Voices from a Broken Family Justice System: Sharing Consultations Results* (September 2010), online: http://www.lco-cdo.org/en/family-law-process-consultation-results, p 58. [Referred to as LCO Voices Consultation Paper]

time, a very active public policy debates about its format and regulation continues.[74] Some key issues related to mediation will be explored below.

family dispute resolution (fdr)

Australian legislation defines FDR broadly as any non-judicial process where an independent FDR practitioner helps people affected, or likely to be affected, by separation or divorce, to resolve some or all of their disputes with each other. Dispute resolution processes include mediation, conciliation and arbitration. In practice, mediation is the key process used for Australian family disputes.[75]

collaborative law

In a collaborative family law process the parties and their lawyers commit not to resort to the court process. If either party does, the collaborative process ends and the lawyers must withdraw. Other professionals are brought into the process as needed to resolve the issues in dispute. These might include financial advisors, divorce coaches, parenting experts or others. The process relies heavily on enhanced communication, cooperation and negotiation.

parenting coordination

Parenting coordinators are useful for parents who have final agreements but find themselves in constant conflict about the details of their parenting arrangements. The parents agree on the scope of the parenting coordinator's services and authority and then rely on the coordinator to use mediation and arbitration to resolve issues that arise. If a collaborative resolution is not possible, the parenting coordinator can impose a decision within the framework of the agreement. The role of parenting coordinators is enshrined in BC's new *Family Law Act*, under which the appointment of a parenting coordinator can be by court order or agreement and their determinations can be enforced or set aside by the court.

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[74] For example, the Mamo Report referred to a "clear disconnect between the nature of mediation as perceived by mediators hired by the services providers, and that of judges and lawyers at each site", p. 38

[75] Family Law Act 1975 (Cth) s 10F

arbitration

Use of family arbitration is growing. It allows parties who cannot reach a collaborative outcome to involve a third party decision maker in a confidential and, usually, more timely way.

recalculation services

Recalculation services offer an administrative alternative to applying to court to vary support awards or agreements when the payor's income changes. They are now in place in a number of provinces, including BC, Alberta, Manitoba, Nova Scotia and Prince Edward Island.

Mandatory vs. Voluntary Mediation

Information and triage are often used as primary tools to move people onto a cooperative form of dispute resolution, but there continues to be a lively debate about whether collaborative dispute resolution should be mandatory in family cases. Even where mediation is widely available, the take up rate continues to be disappointingly low. For example, the evaluation of Ontario's mediation service found that very few cases before the court were being mediated and judges and lawyers were referring only a small number of cases to it. This led the evaluators to conclude that the service was not meeting its initial objective of keeping cases out of the court. On the other hand, mediation was also being used off-site by clients not involved in any court action. What was not known was whether these cases would have entered the courts if mediation had not taken place at this early stage.[76]

These findings relate to a widely available and subsidized mediation service. While no data is available, purely voluntary mediation delivered by private practice mediators unconnected in any formal way to the family justice system also appears to have failed to make a significant dent in court activity in recent years. In light of this, some argue that the only way collaborative dispute resolution will realize its full potential and supplant litigation's primacy in the family justice system is to make it mandatory. BC's Family Justice Reform Working Group made this argument saying,

> *There once was an expectation that if mediation and other "alternative dispute resolution" (ADR) options were simply made available, people would recognize*

[76] Mamo Report, pp. 28, 29

> *their advantages and seek them out, rather than choose to go to court. This has not happened to the extent some expected. Although more and more families are aware of "ADR," public awareness of these options still competes with a lifetime of exposure to the court system.*[77]

Australia's 2006 reforms included mandatory mediation (also referred to as family dispute resolution) in cases involving parenting issues. The governing legislation requires parties to make a "genuine effort" to resolve their dispute before applying for a parenting order.[78]

Mandatory mediation has been adopted for family cases in a number of US states and is in place for civil disputes in many places. In Ontario mediation is mandatory in many civil cases in Toronto, Ottawa and Windsor. The BC FJRWG concluded that there is little difference between settlement rates in voluntary and mandatory mediation regimes, saying that "The fact is most people learn about mediation when they actually participate in it, and most are pleased with the process and results"[79] and Mamo reported many participants suggested that mandatory mediation be considered in certain types of cases, but there continues to be a concern about the use of mediation in cases involving family violence.[80] On the other hand, the LCO Voices Report found that there was a lot of scepticism about using mandatory mediation for family cases. In addition to citing concerns about the use of mediation in cases involving family violence, stakeholders also expressed concerns about how effective mediation is for a reluctant participant, the costs it might impose on parties, and imposing consequences that effect legal rights on those who do not attend.[81]

After carefully considering the arguments for and against a mandatory process, the BC FJRWG recommended that people be required – with the possibility of exemption in some

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[77] BC FJRWG, p. 39

[78] Family Law Amendment (Shared Parental Responsibility Act 2006 Cth), s 601(1) The 2009 evaluation of the reforms looked at outcomes from FDR and concluded: "*FDR appears to work well for many parents and their children. Among parents who had separated after the reforms, 31% of fathers and 26% of mothers reported that they had "attempted family dispute resolution or mediation". About two-fifths of this group reached an agreement and most of these agreements were still in place at the time the LSSF W1 2008 was conducted (about a year after separation). Most parents who had not reached agreement at FDR had sorted out their dispute at the time the survey was conducted. Whether or not FDR resulted directly in an agreement, the majority of parents who had attended FDR and who had sorted out their disputes felt that they had done so mainly through discussions between themselves. This is consistent with a key aim of FDR, which is to empower disputants to take charge of their dispute."* Australia 2006 Evaluation, p.8.

[79] BC FJRWG, p. 39

[80] Mamo Report, p. 40

[81] LCO Voices, p. 14.

circumstances - to attend a Consensual Dispute Resolution (CDR) session before they are allowed to take a first contested step in a court process. CDR is a term used to include mediation and collaborative law. This recommendation has not yet been adopted in BC, although some movement towards what has been described as "quasi-mandatory mediation" has occurred with the introduction of the Notice to Mediate (Family) Regulation. The Notice to Mediate allows one party in a case to compel the other party to attend a single mediation session. The regulation making power in BC's new *Family Law Act* is broad enough to make family dispute resolution processes mandatory.

In the U.S.A., where mandatory mediation has been widespread for the last twenty years, a debate has emerged about whether it continues to be the best public policy. The argument is that mandatory mediation should be discontinued in favour of a more nuanced triage approach, in which parties are directed to the appropriate pathway, which might not always be mediation. Proponents of this view argue that when mediation was introduced the litigation-mediation dichotomy was much stronger than it is today and that there was not the range of services and processes for families going through separation and divorce that exist today. They also argue that mandatory mediation has become increasingly bureaucratized, has a high cost and has not fully lived up to its promise. Triage is seen as more responsive to user's needs as well as recognizing the ever-shrinking resources available to the family justice system. [82]

Mediation and Family Violence

The use of mediation in cases involving family violence is another issue on which there are strongly held opposing views. There is no doubt that mediating in cases where there is family violence presents complex challenges. Safety is a significant issue as is the power imbalance that can affect the fairness of the process and the outcome. Some believe the mediation is never appropriate in such cases and some mediation services exempt cases involving family violence.

In some jurisdictions, the decision about whether or not mediation is appropriate is left to mediators who are trained to recognize and deal with issues of safety and power imbalance. BC's Notice to Mediate Regulation blends both approaches, providing an

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[82] See Peter Salem, The Emergence Of Triage In Family Court Services: The Beginning Of The End For Mandatory Mediation?. Family Court Review Evaluation Of the 2006 Family Law Reforms:, Vol. 47 No. 3, July 2009, 371–388,. See also: Hugh McIsaac, A Response To Peter Salem's Article "The Emergence Of Triage In Family Court Services: Beginning Of The End For Mandatory Mediation", Family Court Review, Vol. 48 No. 1, January 2010, 190–194. Also see discussion of moving away from the "tiered approach" (where all cases follow the same court through the system) in favour of triage in Nicholas Bala, *Reforming Family Dispute Resolution in Ontario*, in Middle Income Access to Justice, Michael Trebilcock, Anthony Duggan, and Lorne Sossin, eds, (University of Toronto Press, 2012) (forthcoming), p. 283.

exemption from mediation where a restraining order exists, and providing that a mediator can assess whether mediation is appropriate or end the mediation if violence, abuse or power imbalance are present.

A recent two volume Australian report containing 181 recommendations for responding to family violence endorsed the careful use of FDR in cases involving family violence:

> *However, the capacity of FDR to provide flexible and accessible resolution processes to accommodate the particular needs, interests and concerns of diverse parties—especially where parties are victims or are at risk of family violence—contributes significantly to the possibility of achieving sustainable and effective outcomes. .. The Commissions consider that the potential for FDR to expeditiously and effectively resolve parenting disputes in cases involving family violence—through practical and sustainable agreements, and with appropriate screening, risk assessment and risk management – may help may help to circumvent the development or escalation of related child protection and family violence concerns.*[83]

A recent article reviewing these concerns about mediation (referred to as the feminist critique) argues that they have been largely addressed by the use of screening, ground rules and specialized strategies for cases involving violence. The author argues that these concerns are more applicable to what he refers to as the "settlement mission" of the family justice system. He is referring to the "informal and unregulated encouragement or pressure to settle which judges and other family justice system workers apply to litigants."[84], in circumstances where the safeguards common in mediation programs are not present.

The value of mandatory mediation is a matter of ongoing debate.

Access to affordable, high quality mediation services

In a model in which mediation is a primary tool for the resolution of family disputes, issues of affordability and quality are becoming critical. A number of jurisdictions address

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[83] Family Violence: A National Response, Australian Government, Australian Law Reform Commission, New South Wales Government, New South Wales Law Reform Commission (October 2010), online: http://www.alrc.gov.au/publications/family-violence-national-legal-response-alrc-report-114, p. 985.

[84] Noel Semple, *Mandatory Family Mediation and the Settlement Mission: A Feminist Critique*, Canadian Journal of Women and the Law, Vol. 24, No. 2, 2012, p. 30, online: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1929974

affordability by offering government supported mediation services. There are a variety of service models including:

- government employees provide public mediation services for free (e.g.; family justice counsellors (BC), family court counsellors (Alberta), Family Conciliation Service (Manitoba), or on a sliding scale (e.g. Saskatchewan);
- community based mediation service providers on contract to government provide free or subsidized mediation (Ontario, Quebec)
- mediation practicum students provide free services (BC); and
- private mediators (on a sliding scale) and government employees (for free) provide technology assisted mediation (BC).

Services are not uncommonly limited by geography, the clients' means or the issue in dispute.

While providing free or subsidized mediation services to clients of moderate means is relatively uncontroversial, some question the need to subsidize the provision of mediation services to middle and high income clients on the basis that mediation is a much more affordable option than litigation and will save money in many cases where legal fees are being paid. On the other hand, some commentators observe that litigation is heavily subsidized and argue that it sends a mixed message not to subsidize mediation if public policy supports - or prefers - its use. Generally, mediators are unregulated[85] which means anyone can hold themselves out as a mediator on the open market. However, where governments encourage and subsidize mediation, failure to ensure consistently high quality services by well trained mediators undermines its potential for success. Regulation of mediation includes consideration of many issues, including:

- certification and/or licensing (qualification/admission requirements);
- codes of conduct;
- performance standards and expectations; and
- performance assessment, complaints processes, discipline and decertification.

Mediation programs also need to identify specific performance indicators that will help policy makers determine whether the programs objectives have been met. The Mamo Report found that a lack of common measureable objectives led to conflict between justice

[85] The exception to this is lawyer-mediators, who are regulated by some provincial law societies.

partners who, in the absence of those common measures, relied on their own, often inconsistent, criteria for determining success.[86]

As the use of other types of dispute resolution processes grows, similar issues will arise in relation to them. Parenting coordinators and collaborative lawyers in some jurisdictions have set up organizations to regulate their practice, however membership is not mandatory. BC's new Family Law Act, allows government to make regulations "prescribing classes of persons who may be family dispute resolution professionals" and respecting the training, qualifications and practice standards for family dispute resolution professionals.[87]

E. Improving Court Processes

A separate working group is considering issues related to court process, so this paper will only briefly touch on some major themes that arise in the family justice context.

Single Court for Family Matters

Constitutional issues have rendered the family court system in Canada needlessly complicated. Seven provinces have moved, in varying degrees, to a unified family court. In most jurisdictions UFCs are not available province wide and inadequate funding has undermined the ability of some UFCs deliver on the potential of the single court model.[88] The issue is complex and longstanding and the ideal resolution – a constitutional amendment – is unlikely.

There is a competing perspective on the ultimate effectiveness of UFCs. This analysis holds that making provincial courts unavailable for family law issues eliminates the option of the relatively simpler and more affordable procedures that are frequently available in provincially appointed courts. As a section 96 court, the UFC rules, procedures and formats are generally more complex and elaborate and therefore less accessible to parties.

Simplified Rules and Forms

With the rise of self represented litigants, the need for help with both procedures and court forms has become particularly acute.[89] A critical procedural step for litigants is the completion of court forms. Many jurisdictions have moved away from using the traditional pleadings format for initiating family cases. Instead, documents used to start a claim make use of check boxes, charts

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[86] Mamo Report, p. 38.

[87] Family Law Act, S.B.C. 2011, c. 25, s. 245(1)

[88] BC CJRWG, p. 89

[89] The U of T Middle Income Report cites an "overwhelming need for procedural advice", p.9

and short answers. In BC printed family forms in Provincial Court have a flyleaf attached to them, providing detailed instructions. Technology provides new opportunities for making the preparation of court documents even easier for litigants. In Ontario, parties can complete forms by responding to a series of online questions. The completed form sets out all the relevant information in the correct format for filing.[90] In addition to being very user-friendly, this approach creates forms that are much easier for judges, duty counsel and other service providers to read.

Tailoring & Proportionality

Ontario's Family Law Rules define the primary objective of the Rules as dealing with the case justly, and that is defined to include: "dealing with the case in ways that are appropriate to its importance and complexity" and "giving appropriate court resources to the case while taking account of the need to give resources to other cases."[91] This notion of proportionality is explicitly referred to in BC's new Supreme Court Family Rules, which provide;[92]

> (2) *Securing the just, speedy and inexpensive determination of a family law case on its merits includes, so far as is practicable, conducting the family law case in ways that are proportionate to*
>
> *(a) the interests of any child affected,*
>
> *(b) the importance of the issues in dispute, and*
>
> *(c) the complexity of the family law case.*

Proportionality is achieved by tailoring the processes to meet the needs of individual cases. For example, high conflict cases require more intensive court oversight and cases involving self represented litigants may justify the use of different processes.

Specialized judges

As the family justice system becomes increasingly differentiated from the general civil justice system, there is a need for judges to understand the unique challenges and

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[90] Ontario Family Forms Assistant, online: https://formsassistant.ontariocourtforms.on.ca/

[91] Family Law Rules, http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_990114_e.htm, Rule 2(5)

[92] BC Supreme Court Family Rules, http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/169_2009_00, Rule 1-3

opportunities of the evolving family justice systems and their "complex, multi-dimensional"[93] role in it. The BC CJRWG reported that:

> *It is generally agreed that specialist judges are a key element in a family court's success. They bring substantive and procedural expertise, more efficient and predictable hearings, and enhanced sensitivity to the social and emotional issues involved. Dedicated specialist judges are also needed to provide continuity and leadership to a court that is moving forward and providing judicial services in new ways.*[94]

Barriers to specialization include a concern about judicial isolation and burnout, as well as the resource and logistical problems of having specialized judges in smaller communities. The Mamo Report concluded:

> *We acknowledge that there is an active and principled debate about the desirability of specialization for Family Court appointments. In our opinion, this debate has needlessly polarized the bench and bar. Throughout our review, we found consensus amongst members of the bar and the family court judiciary that any judge sitting in the family court should have knowledge of Family Law and the Family Law Rules, desire and skill to deal with the family law issues in a resolution centred approach, and be aware of the ancillary services available to the court.*
>
> *To ensure the Family Court works effectively, it is important that when judges not specifically appointed to the family court are assigned to sit in that court, that they are provided with a significant uninterrupted period to be part of the FC.*[95]

One family one judge or one family one team

Having one judge sit on all applications in a family case provides a continuity and consistency that supports significantly greater efficiency and accountability. Although widely accepted as ideal, limits on judicial resources and Canada's demographics and geography pose barriers to making the practice a reality. Concern about its viability prompted the Mamo Report to recommend instead, enhanced consistency, completeness

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[93] Mamo Report, p. 108

[94] BC CJRWG Report, p. 103. See also Home Court Advantage, Appendix 2, p. 18 and LCO Voices Report on judicial training at p. 41.

[95] Mamo Report, p. 107

and accuracy of the recording of events on a file through the use of a standard form, so that subsequent judges get a more complete picture of the family.[96] Striking a somewhat uneasy balance between the ideal and the possible, BC's new Supreme Court Family Rules provide that "wherever practicable and appropriate, the same judge or master is to manage and hear all applications, case conferences and the trial in a family law case."[97]

Preserving judicial resources

Scarce and costly judicial resources should be reserved for the most challenging and important tasks. Other court officials could perform more quasi-judicial or administrative functions. Large "remand day" lists often see judges performing a triage function, some of which could be carried out by others. In Alberta caseflow coordinators take on some functions performed by judges in many family courts, including making referrals to services and helping parties prepare for hearings.[98]

Meaningful court appearances

The need to make optimum use of scarce judicial resources and the strain on the credibility of the justice system caused by court appearances that do nothing to bring the case closer to resolution has some jurisdictions searching for ways to make court appearances more meaningful. This concern is prevalent across civil, family and criminal processes. In the family context, the notion is closely linked to proportionality and to the availability of process and service options that ensure people do not end up in front of the court unless necessary. The Mamo Report defines a meaningful court appearance as one in which:

- *The event requires judicial skills, knowledge, and authority;*
- *The event has a defined purpose that is known to the litigants, their lawyers, the administration, and the judge;*
- *All relevant documentation to enable the court to deal justly with the issue has been filed in a timely fashion and on notice to the opposite side;*
- *The parties and their lawyers (including duty counsel if one is involved) are prepared and ready to deal with the issue;*
- *What is sought to be accomplished at the court appearance could not have been achieved in any other way;*

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[96] BC CJRWG Report p. 97

[97] BC Supreme Court Family Rules, Rule 22-1(8), online:

[98] See Bala, p. 297

- *The subject matter of the appearance is essential to the advancement of the case toward a cooperative or adjudicated resolution; and*
- *Something is accomplished that could not have occurred without the appearance.*[99]

Strategies for achieving meaningful appearances include:

- improving and enforcing disclosure rules;
- effective assessment and screening at the front end;
- using non-judicial case managers to help get cases judge-ready;
- mandatory case conferences before contested applications, where judges have broad powers;
- using costs as an incentive to comply with court rules;
- allowing uncontested adjournments by phone or email; and
- making sure parties know what to expect when appearing in court.

Hearing format

Achieving a paradigm shift in family justice involves considering whether adversarial hearings are the best model for resolving family cases. The rise of self representation undermines the adversarial model of hearings, which is predicated on parties having the knowledge and skill to present their cases forcefully. In fact, many family courts have already moved away from a pure adversarial approach, with the use of independent reports, the primacy of the best interests of the children, legal representation of children, less formality and more active judicial management of hearings.

Australia's 2006 family reforms included legislative amendments governing the conduct of proceedings. These provisions apply to cases involving children and to other cases if both parties consent. The Act set out five principles, summarized as follows:

1. In determining the conduct of the proceedings the court should "consider the needs of the child concerned and the impact that the conduct of the proceedings may have on the child".
2. The court should "actively direct, control and manage the conduct of the proceedings".

[99] Mamo Report, p. 92

3. The court should conduct the proceedings in a way that will safeguard the children concerned against family violence, child abuse and child neglect; and safeguard the parties against family violence.
4. The court should, as far as possible, conduct the proceedings "in a way that will promote cooperative and child-focused parenting by the parties".
5. The court should conduct the proceedings without undue delay and with as little formality, and legal technicality and form, as possible.[100]

Some of these concepts are found in BC's Supreme Court Family Rules. However, the Australian reforms go further, with the legislation setting out additional duties of the court in the following terms:

- to decide which of the issues in the proceedings require full investigation and hearing and which may be disposed of summarily;
- to decide the order in which the issues are to be decided;
- to give directions or make orders about the timing of steps that are to be taken in the proceedings;
- in deciding whether a particular step is to be taken, to consider whether the likely benefits of taking the step justify the costs of taking it;
- to make appropriate use of technology;
- if the court considers it appropriate, to encourage the parties to use family dispute resolution or family counselling;
- to deal with as many aspects of the matter as it can on a single occasion; and
- to deal with the matter, where appropriate, without requiring the parties' physical attendance at court.

The 'less adversarial trials'[101] in Australia's Family Court reflect the approach set out in the legislation (above). For hearings involving parenting arrangements the judge controls the case, not the lawyers or the parties. The judge swears in all of the parties at the beginning

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[100] Richard, Chisholm, '*Less Adversarial' Proceedings in Children's Cases*, Family Matters, No. 77 (2007), p. 28, online:

http://www.aifs.gov.au/institute/pubs/fm2007/fm77.html.

[101] Australia Family Law Courts, Less Adversarial Trial, online: http://www.familylawcourts.gov.au/wps/wcm/connect/FLC/Home/Publications/Family+Court+of+Australia+publications/FCOA_br_Less_Adversarial_Trials

of the hearing and everything said after that is under oath. The judge identifies the issues to be decided (based on a questionnaire filled out by the parties before the hearing), the evidence to be heard, how the evidence will heard, and what experts will be called. The court-affiliated 'family consultant' the parties are required to see before the hearing provides an assessment to the court and is available throughout the hearing as an expert witness.

F. Post Resolution Support

Restructured families often need ongoing support to manage the implementation of orders and agreements and to deal with continuing changes in their lives. Families should not automatically be placed on a pathway to litigation when these issues arise. Many of the types of information, triage and dispute resolution strategies discussed so far, can be employed at this stage to help families work through these disputes and deal with changing circumstances. Failure to comply with orders and agreements can be a major source of continuing conflict between separated or divorced parents and special processes for dealing with high conflict cases are discussed the next part.

Substantive legislative changes also have a role to play in creating more effective enforcement tools and that will be explored in more detail in Part 5.

5. Part 4: High Conflict Families

Many reports on reforming the family justice system mention the needs of high conflict families and there is a significant body of literature dealing with the issue.[102] High conflict cases have been defined to be those with the following indicators:

- either of the parties has a criminal conviction for (or has committed or has alleged to have committed) a sexual offence or an act of domestic violence;
- child welfare agencies have become involved in the dispute;
- several or frequent changes in lawyers have occurred;
- issues related to the court proceeding have gone to court several times or frequently;
- the case has been before the courts a long time without an adequate resolution;
- there is a large amount of collected affidavit material related to the divorce proceeding; and
- there is repeated conflict about when a parent should have access to the child.[103]

To make matters more complicated mental health issues are often present in these cases:

In most high-conflict families, one or both parents exhibit either narcissistic, obsessive-compulsive, histrionic, paranoid psychotic or borderline personalities. These parents

[102] Reports and papers referenced in this part include: American Bar Association Family Law Section and The Johnson Foundation Wingspread Conference Center, *High Conflict Custody Cases: Reforming the System for Children*, Conference Report and Action Plan (2000), online: http://www.americanbar.org/content/dam/aba/migrated/child/PublicDocuments/custody_proceeding_reform.authcheckdam.pdf; Linda D. Elrod, *Reforming the System to Protect Children in Custody Cases* , William Mitchell Law Review, Volume 28, 2001, p. 495, online: http://washburnlaw.edu/faculty/elrod-linda-fulltext/2001-28williammitchelllawrev495.pdf ; Glen, Gilmour, High-conflict Separation and Divorce: Options for Consideration, Department of Justice, Canada (2004), online: http://www.justice.gc.ca/eng/pi/fcy-fea/lib-bib/rep-rap/2004/2004_1/index.html; Canadian Research Institute for Law and the Family, *Conflict Intervention Programs In Alberta: A Review And Recommendations*, Alberta Justice Court Services Division Strategic Initiatives Branch (2007), [Alberta Conflict Intervention Report], BC CJRWG Report, Home Court Advantage Report, Mamo Report, New Brunswick Report, and Welsh Access Report.

[103] Gilmour, section 3.2

chronically externalize any blame, possess little insight into their role in the conflict, fail to understand the impact of the conflict on their children and routinely feel self-justified[104].

While relatively small in number, high conflict cases take up a disproportionate amount of the courts' time. In addition, these intractable disputes drain the finances of the people involved and have devastating effects on children.

There is an enormous body of research and writing related to high conflict divorce, both about its impacts and strategies to reduce those impacts. While many of the recommendations about how to deal with high conflict cases within the family justice system have been raised in other parts of this paper, there is a wide recognition that high conflict cases need to be treated differently than other cases:

Families present high conflict in numerous ways; the key is that courts need to treat all high conflict cases differently than they treat the majority of cases. High conflict families reveal a continuum of problems with contributing factors requiring a variety of interventions and approaches. The question is how to improve the legal system's response to these high conflict cases without unduly burdening the majority of parents who can amicably resolve parenting issues. [105]

While there are a range of ideas and initiatives being recommended and used, there is a need for the development of a systemic response to manage high conflict cases that integrates options across the information, assessment, dispute resolution and court components of the family justice system. A systematic approach to high conflict cases would involve all components of the family justice system and could include some of the following.

Triage

Assessment tools should identify high conflict cases early on so that they can be prioritized and referred quickly to appropriate services. These cases may need to bypass otherwise mandatory programs. One approach employs increasingly invasive interventions along a continuum. For example, the 'Sieve Model':

> *The Sieve Model distinguishes between those in need of intensive therapy, evaluation, and mediation and those who may be helped with less invasive strategies, such as educational classes and instructional workshops. There are*

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[104] Linda D. Elrod, Reforming the System to Protect Children in Custody Cases, William Mitchell Law Review, vol. 28 (2001), online: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=979578. [Referred to as "Elrod"]

[105] Elrod, p 516.

11 options or stages, often referred to as "elements" included in this model, each of which addresses a specific need. Finman et al. (2006) explain how the majority of divorcing/separating couples are able to meet their needs by using one of the first few elements of the model. However, those cases considered high conflict may continue through the sieve to other therapeutic and evaluative methods of dispute settlement. Some cases go through all 11 elements, though it is possible for the professionals to arrange for some elements to be omitted if it appears that they would serve no useful purpose. The aim of this model is for high conflict cases to receive the least intrusive and expensive response needed to help resolve the dispute.[106]

Services

A higher degree of intervention is usually required in high conflict cases. While sometimes the most effective response is a quick judicial determination, other services can also contribute to de-escalating or resolving conflict. These include:

- Specialized parent education – A number of jurisdictions, including Alberta, BC, and Saskatchewan offer specialized parenting courses for high conflict families. Those performing triage and/or judges could have the power to order those identified as high conflict disputants to these courses.
- Evaluations – Court appointed assessors have been shown to be extremely helpful in resolving high conflict cases involving children.
- Parenting coordinators – Parenting coordinators help families resolve ongoing disputes within the framework of their parenting order or agreement. They are widely used in the U.S. and are beginning to gain profile in Canada. BC's new *Family Law Act* establishes a statutory role for parenting coordinators. When the determination of a parenting coordinator is filed with the court, the court will enforce as if it were an order.
- Specialized mediation – "Impasse mediation", which involves a series of sessions combining therapy and counselling and includes the whole family, is used with high conflict families in some jurisdictions.
- Counselling - Counselling may be one-on-one, in joint sessions, or groups, for adults and for children. Some counselling models may overlap with mediation. Most provide information about legal options, help parents make their own decisions and

[106] Alberta Conflict Intervention Report, p. 20

give them an opportunity to resolve their disputes. Mandatory referral to counselling is available in some jurisdictions.

A pilot involving judicial referral to intensive counselling in high conflict cases has just begun in Medicine Hat, Alberta. The Province is piloting the "New Ways for Families" model created by US high conflict expert, Bill Eddy. Eddy himself trained sixty Alberta judges as well as lawyers and therapist to deliver his program, which focuses on helping parties build basic relationship and conflict resolution skills before major decisions are made through individual, parent-child and family counselling sessions. The Alberta government has provided a grant to help subsidize the cost of the counselling sessions.[107]

- Separate representation for children – Many reports recommend that a lawyer should be appointed to represent the children in high conflict cases. While the need to ensure the voice of the child is heard in these cases is uncontroversial, the need for and role of separate legal representation for has been the subject of considerable debate.[108] The central issue is whether a lawyer representing a child should be confined to their traditional role of advocating the outcome as instructed by the client or whether lawyers should decide, by themselves, what outcome to advocate for. Some argue lawyers are not qualified to reach conclusions about the best interests of the child and should not be given the task of convincing the court that their own views are correct. Instead of acting for the child, another option is for the lawyer to act for the court with the responsibility of ensuring the judge has all the information needed to make a decision, including the views of the child. In the Office of the Children's Lawyer in Ontario these lawyers and clinical investigators work together to help the court determine what parenting arrangement would be in the best interests of the children.

Professionals

In high conflict cases it is particularly important that the professionals in the system coordinate their efforts and understand each other's roles and professional obligations. The obligations of everyone involved to help families find solutions that are in the best interests of the children should be clear. This includes lawyers, whose traditional adversarial role can be in conflict with what should be an overarching obligation to support the best interests of the children.

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[107] http://www.highconflictinstitute.com/blog/new-ways-in-canada-for-separating-and-divorcing-families

[108] *Chapter 8: Children's Participation Discussion Paper*, Civil and Family Law Policy Office, Ministry of Attorney General, April 2007, online: http://www.ag.gov.bc.ca/legislation/pdf/Chapter8-ChildrensParticipation.pdf; Guggenheim, Martin, *The AAML's Revised Standards for Representing Children in Custody and Visitation Proceedings: The Reporter's Perspective* (2009). New York University Public aw and Legal Theory Working Papers. Paper 160. http://lsr.nellco.org/nyu_plltwp/160

BCs new Family Law Act requires parties to consider *only* the best interests of the children in make orders or seeking agreements This new obligation on parties will impact directly on lawyers who will have to provide advice and advocacy that is consistent with their clients' obligations under the *Act*. BC lawyers practicing family law are also encouraged to adhere to new *Best Practice Guidelines for Lawyers Practicing Family Law*[109] issued by the Law Society of BC in July 2011. These include the following:

> *7. Lawyers should keep their clients advised of, and encourage their clients to consider, at all stages of the dispute:*
>
> - *the risks and costs of any proposed actions or communications;*
> - *both short and long term consequences;*
> - *the consequences for any children involved; and*
> - *the importance of court orders or agreements.*
>
> *8. Lawyers should advise their clients that their clients are in a position of trust in relation to their children, and that*
>
> - *it is important for the client to put the children's interests before their own; and*
> - *failing to do so may have a significant impact on both the children's well- being and the client's case.*

Court Processes

- Differential case management – Courts should have their own tools for identifying high conflict cases and impose control and structure on these cases. Cases should be given priority as delay is particularly problematic in high conflict cases.
- Parenting plans – A number of jurisdictions require parties in high conflict cases to submit detailed parenting plans.
- Same judge – Using a single judge to hear all court matters in high conflict cases is recommended even where it is recognized that such a policy could not be implemented for all cases.
- Specialized judges – Judges dealing with high conflict cases should have specialized training and education on the dynamics of high conflict cases, effective ways to

[109] http://www.lawsociety.bc.ca/page.cfm?cid=110&t=Family-Law-Task-Force

manage disputes involving high conflict people, child development, and family violence.

- Judicial guidance - Judicial benchbooks or protocols with detailed information about how to deal with high conflict cases and training for judiciary and court staff could be developed.
- Holding parties accountable – Family law legislation and court rules should empower judges to hold parties accountable.

6. Part 5: Substantive Law Reform

Many provincial family law statutes were developed and implemented in the context of an adversarial civil and family justice process. Jurisdictions are beginning to look at how substantive law can be reformed to support the shift to a new paradigm, getting away from what the BC CJRWG referred to as "legislated litigation"[110]; that is, to pursue their support and property rights and to get a divorce, people have to start a legal action. This is an issue worthy of a separate paper and this section, drawing heavily on the recent reforms in BC, provides a brief overview of some of the ways in which substantive law can contribute to that shift.

The policy values underlying the new Family Law Act are consistent with those of a restructured family justice system. They are:

- supporting fair, early, efficient, flexible and proportionate resolution of disputes;
- reducing the emotional and financial costs of family break-up;
- using out-of-court dispute resolution processes, where appropriate;
- using public resources wisely and efficiently;
- encouraging families to resolve their disputes in co-operative ways; and
- maximizing the ability to discover and effectively apply children's best interests while
- encouraging parents to reduce conflict and the effect of conflict on children.[111]

Alberta's Family Law Act, introduced in 2005 has some of the same goals and was a model for the BC legislation in many respects.

Certainty & clarity

Uncertainty and lack of clarity in the law fuel litigation. Both substantive and procedural law can do much to create greater clarity. Ways in which the BC Family Law Act attempts to create greater certainty include:

- Creating express rules for relocation – The existing Family Relations Act (FRA) is silent about relocation and a lack of consistency and clarity in the case law led to

[110] BC CJRWG, p. 12

[111] BC Ministry of Attorney General, White Paper on Family Relations Act Reform (July 2010), online: http://www.ag.gov.bc.ca/legislation/family-relations-act/family-law-act.htm

considerable litigation. The new Act sets out a process and test for applications to relocate.

- Reapportionment and spousal support guidelines - Neither the case law nor the existing FRA provide a clear rationale or set of principles on how reapportionment of family property based on economic need relates to spousal support. The new Act fills this gap.
- Property division – The new Act abandons the unpredictable "use for a family purpose test" for determining a whether something is a family asset to be divided equally, in favour of the more predictable property division approach in most other Canadian jurisdictions.
- Default guardians - The new Act establishes the default that both parents are guardians (unless a parent has not lived with the child) and that, in the absence of an allocation of parenting responsibilities through an agreement or order both parents retain all parenting responsibilities.
- Limiting scope of judicial discretion –Providing more detailed guidelines for the exercise of judicial discretion increases certainty and supports settlement.

Terminology

Terminology in family law legislation, such as 'custody' and 'access', evokes notions of children as property, frames parenting as an ownership issue, focuses on the rights of the parents and is arguably more likely to evoke an adversarial response. Both Alberta and BC have replaced these terms with 'parenting responsibilities', 'parenting time' and 'contact with the child'. These changes are intended to emphasize parents' shared responsibility for their children. (The term 'guardianship' is retained.) They are consistent with the amendments to the Divorce Act introduced in 2004, following a lengthy national consultation, however these amendments died on the order paper.

Support for agreements

Traditionally the only dispute resolution process acknowledged in family law legislation is litigation. BC's new Act highlights out of court resolution and promotes the use of resolution by agreement. Part 2 of the Act (following the interpretation section) is entitled "Resolution of Family Law Disputes" and includes:

- Division 1 – Resolution Out of Court Preferred
- Division 2 – Family Justice Counsellors
- Division 3 – Parenting Coordination

Clear rules for enforcing or setting aside agreements are also included.

Endorsing processes that prevent conflict

Family law legislation can play a role in preventing conflict by, for example, creating a formal role for parenting coordinators and providing legislative support for administrative recalculation.

Support for information and triage

Family law legislation could be constructed to reflect and support the paradigm shift from an adversarial system to one built around information, triage and dispute resolution options, and court processes. This could include, for example:

- information – requiring justice system professionals to provide information about dispute resolution options to clients, and allowing judges to order parties to parenting courses; and
- dispute resolution - vesting judges with the power to order parties to participate in specified processes, requiring parties to attend mediation or other collaborative processes, and providing a regulation making power for designating and setting minimum practice standards for dispute resolution practitioners.

Providing judges with statutorily based case management tools

BC's new Family Law Act gives judges authority to use a greater range of tools to manage cases and expedite cases and enforce orders. This is particularly important for the Province's Provincial Court judges, whose power is derived from statute.

7. Part 6 Other Issues

A. Legal Education

While the family justice system has undergone steady scrutiny and critique over the last 20 years, family law education has not received the same attention. Are today's law students being prepared to make a constructive contribution to the evolution of family law and the lives or their clients? Have changes been made in legal education that correspond to the changing values in the practice of family law? Such questions have been the subject of considerable debate and discussion in the US through work of the Family Law Education Project (FLER), sponsored by the Association of Family and Conciliation Courts and Hofstra law School. The introduction to FLER's final report outlines the issue:

> *The last two decades have seen substantial—even dramatic—changes in family law, most particularly in the ways in which family law is practiced. As this sea of change has occurred, however, law school curricula and teaching have remained relatively static. The result, predictably, is that lawyers entering family law practice regularly find themselves unprepared for what they encounter. A substantial and growing gap between family law teaching and family law practice undermines the best efforts of new family lawyers to assist parents and children in separation, divorce, abuse and neglect, dependency, and delinquency actions.*
>
> *Today's family lawyers need a thorough understanding of many issues and practices that traditional family law courses rarely touch upon. These include the appropriate—and inappropriate—uses of dispute resolution processes, new case management techniques in the family courts, the key roles played by professionals from other disciplines in the court system, and current research on such issues as the effects of conflict and loss of parental contact on children. Yet the materials from which most family law professors teach contain nary a word on most of these topics or on the skills necessary for effective family law practice.*[112]

The project brought together law professors, law students, practitioners, mediators, child custody evaluators, court administrators and judges to consider what a family law

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[112] Mary E. O'Connell and J Herbie DiFonzo, *The Family Law Education Reform Project Final Report*, Family Court Review, Vol 44, Nov 4 (October, 2006), online http://onlinelibrary.wiley.com/doi/10.1111/j.1744-1617.2006.00107.x/abstract, p. 524 [FLER Report]

curriculum should cover if its goal is to "prepare students who are well versed in the law, sensitive to legal context, and competent to serve their clients needs in an ethical manner." 526 The recommendations are based around the "four C's": Content, Context, Conduct and Competence.

Content – The Report suggests that if law school teaching were a camera, it would be taking photographs, not shooting video since most case litigated cases provide a snapshot of a moment in crisis. This form of study, they say, does not reflect the interconnected events that make up a family law case. They recommend a re-designed curriculum move away from a dominant focused on case based analysis toward a family-based structure.

Context – Family law education ought to address family law's larger context and emphasize:

- family law is part of an ongoing process of social change
- family courts are in flux, and there are significant differences among the states and even within states
- the field is daily affected by many disciplines other than law
- there are multiple processes for resolving family disputes, and the lawyer has an important client counseling role in selecting and guiding the client through the web of dispute resolution processes
- the American legal system is only one of many possible approaches to family law issues; international and cross-cultural perspectives on the family and family law can be extremely valuable
- an historical and cultural frame of reference is crucial for all legal analysis

Conduct – This topic deals with issues of professionalism and civility and the need to put the welfare of the family ahead of an individual client.

Competence – Family lawyers play multiple roles and must have a wide range of skills, including communications skills not always taught in law school including (active listening, handling emotional content, setting boundaries with clients and communicating with children); educating clients about the family law system; and managing cases in which other types of professional support may be required.

A review of family law curricula in Canadian law schools is outside the scope of this paper. It may be that many law schools provide family law education that encompasses some or all of the "four C's". However, the question is worth further exploration if the lawyers of the

future are going being given the education and training that will allow them to make a constructive contribution to the evolution of family law and the lives or their clients.

B. Research & Data

Many reports on the family justice system (and on the civil justice system generally) have called for better and more data in order to better understand the existing system and the impact of any changes. This issue was canvassed in the Buckley paper:

There is mounting evidence concerning civil legal needs and disputing behavior. Progress will require more and better data as a matter of priority to inform decision-making. Strides have been made in collecting justice system statistics since earlier waves of court reform and access to justice initiatives took place in the early 1990s. The Canadian Forum on Civil Justice has made a substantial contribution in both enhancing information exchange through is clearinghouse function as well as carrying out original research. However, there is much work still to be done in this regard.

> *The Australian Report identifies the following measures as ones that should be captured by process of data collection and analysis:*
>
> 1) *Who uses the justice system and who does not;*
> 2) *What kinds of disputes they use it for;*
> 3) *What kind of assistance they seek and what they find;*
> 4) *The quality of outcomes: what kinds of results they get (how do they resolve disputes, how long does it take, how effective is it);*
> 5) *How much it costs: including better information on the actual costs (public and private), the costs of particular pathways and mechanisms for resolving disputes; and*
> 6) *How satisfied they are with the outcome.*
>
> *One specific recommendations made in the Australian Report is that, as a standard practice, the implementation of changes to the justice system should include consideration of data collection necessary to enable the evaluation of the impact of these changes.*
>
> *The comprehensive Ontario Civil Legal Needs Project, the BC Legal Needs Survey, the national surveys carried out by Dr. Albert Currie at Justice Canada and other surveys and studies have already made a significant contribution to our knowledge about the first three topics identified above. However, very little data is gathered that relates to the last three topics. Formalizing and coordinating the sharing of public data and information*

> *could be a cost effective method for increasing our understanding of functioning of the civil justice system.*
>
> *Judging from the Taskforce report, Australia appears to be much more advanced with respect to data collection and analysis, particularly as it concerns costs and expenditures within the justice system. The Canadian Forum on Civil Justice has proposed a multi year project to gather more refined information about the costs of the justice system. LSBC reports that it is also working with partners in BC to look into the potential to conduct a practical and feasible economic analysis of the justice system. Moving Forward on Legal Aid proposed a study on the economic costs of inadequate legal aid and the financial requirements of an effective properly funded legal aid system. The CBA Systems of Civil Justice Task Force deplored the inadequacy of justice system statistics in its 1996 report and it is clear that we are only marginally closer to having the financial data and other information required for rational decision-making about civil justice reform today.*[113]

The issues raised by Ms. Buckley are equally applicable in relation to the family justice system, which has some features that make data collection and analysis especially complicated. These include determining when a family case is finished and what a successful outcome looks like. An added complexity is the proliferation of processes, program and services not only across the provinces, but also within provinces. In this context, a systematic approach to sharing what is learned in each jurisdiction would contribute to building a national agenda for family justice reform.

[113] Buckley Paper, pp. 34-35

8. APPENDIX A

PRINCIPLES UNDERLYING FAMILY JUSTICE REFORM

Excerpts

Out of The Maze: Pathways to the Future For Families Experiencing Separation
Report of the Family Law Pathways Advisory Group
Australia 2001

Principles for an integrated family law system

The Advisory Group considers that a family law system should be one that:

- acknowledges the value of family relationships and seeks to provide families with a range of support services and information at various points in the family life cycle;
- values and supports the ongoing capacity in families, whether intact or separated, to provide nurturing parenting to their children;
- helps to minimise the damage of separation and conflict to partner relationships and to children, and maximises the capacity to re-partner effectively; and
- provides opportunities and incentives for families to reach agreement themselves.

This builds on four fundamental principles laid out in existing legislation, which also underpin the recommended system. These are, in brief:

- the best interests of the children always come first;
- non-adversarial dispute resolution is a priority;
- the safety of family members from violence must be assured; and
- parents are responsible for financially supporting their children.

A New Justice System for Families and Children:
Report of the BC Family Law Reform Working Group
British Columbia, 2005

At the core of our mandate was the instruction to recommend the design of a family justice system that will:

- be accessible

- serve the needs of children and families first and foremost, rather than the needs of professionals
- use available resources efficiently and effectively
- integrate service planning and delivery
- promote early resolution of disputes, and
- minimize conflict by encouraging early cooperative settlement, refining and enhancing non-adversarial settlement processes, and supporting trials as an appropriate recourse only when other means are not appropriate or effective.

Submission to Attorney General Chris Bentley: Creating a Family Law Process that Works: Final Report and Recommendations from the Home Court Advantage Summit Ontario, 2009

The family law system needs significant structural change to strengthen the process so that couples resolving family issues can do so with greater efficiency, at less cost and in a non-adversarial manner. Ontario families deserve a paradigm shift in family law and equitable access to services. The interconnected pillars of change are:

1. Providing early information for separating spouses and children
2. Assessing parties and directing them to appropriate and proportional services using a triage approach
3. Facilitating greater access to legal information, advice and alternative dispute resolution processes
4. Developing a streamlined and focused family court process.

Family Justice Review: Final Report, Report of the Family Justice Review Panel Wales 2011

The following guiding principles have been identified which are intended to provide a framework within which the Review's work should be undertaken:

- The interests of the child should be paramount in any decision affecting them (and, linked to this, delays in determining the outcome of court applications should be kept to a minimum).
- The court's role should be focused on protecting the vulnerable from abuse, victimisation and exploitation and should avoid intervening in family life except where there is clear benefit to children or vulnerable adults in doing so.
- Individuals should have the right information and support to enable them to take responsibility for the consequences of their relationship breakdown.

- The positive involvement of both parents following separation should be promoted.
- Mediation and similar support should be used as far as possible to support individuals themselves to reach agreement about arrangements, rather than having an arrangement imposed by the courts.
- The processes for resolving family disputes and agreeing future arrangements should be easy to understand, simple and efficient and be transparent both to those involved and wider society.
- Conflict between individuals should be minimised as far as possible.

9. APPENDIX B

KEY REPORTS AND PAPERS

ANNOTATED

- Law Commission of Ontario, *Towards a More Efficient and Responsive Family Justice System: Interim Report* (February, 2012), online: http://www.lco-cdo.org/en/family-law-reform-interim-report.

  Interim report from the Law Commission of Ontario's project: Best Practices at Family Justice System Entry Points: Needs of Users and Response of Workers within the Justice System.

- *Family Justice Review: Final Report, Report of the Family Justice Review Panel*, Ministry of Justice, Department for Education and the Welsh Government (November 2011), online: http://www.justice.gov.uk/about/moj/independent-reviews/family-justice-review.

  Established in recognition of increasing pressure on the family justice system alongside concerns about delay and effectiveness. The review was to assess how the current system operates against stated principles and make recommendations for reform in two core areas: the promotion of informed settlement and agreement; and management of the family justice system. Paper is predominantly focused on child welfare cases. Discussion of private law has three main sections: making parental responsibility work; the process of resolving disputes; and divorce and ancillary relief.

- Buckley, Melina, Access to Legal Services in Canada: A Discussion Paper (April 2011) unpublished

  Prepared for the Action Committee on Access to Justice, Working Group on Access to Legal Services, the paper synthesizes the finding on research on the unmet need for legal services, examines efforts to address the problem and sets out some ideas about what can be done at a national level to support them.

- Evaluation of the Family Relationship Centre Legal Assistance Partnerships Program: Final Report (March 2011) Australian Government & Australian Institute of Family Studies, online: http://trove.nla.gov.au/work/152907801?selectedversion=NBD47251028

Report presents findings from an evaluation of the Family Relationship Centre (FRCs) Legal Assistance Partnerships Program. The program, commenced in December 2009, is to enable FRCs to partner with legal service organisations so that legal information, advice and assistance may be provided to clients of FRCs.

University of Toronto Faculty of Law, Middle Income Access to Civil Justice Initiatives: Background Paper (2011), online: http://www.law.utoronto.ca/visitors_content.asp?itemPath=5/1/18/0/0&contentId=2113.

A general overview of issues of access to justice by middle income earners aiming to identify the most acute, unmet civil legal needs in the province for middle-income Ontarians; explores a range of existing and possible solutions to these problems.

- Law Commission of Ontario, Voices from a Broken Family Justice System: Sharing Consultations Results (September 2010), online: http://www.lco-cdo.org/en/family-law-process-consultation-results

  Part of the Law Commission of Ontario's project: Best Practices at Family Justice System Entry Points: Needs of Users and Response of Workers within the Justice System. A consultation Paper was published in September 2009 on the basis of which submissions were received, and 49 individual and group meetings were conducted. This paper summarizes the results of the consultations and explores who they will affect the last research phase of the project.

- Report of the Ontario Civil Legal Needs Project, *Listening to Ontarians* (May 2010) Ontario Civil Legal Needs Project Steering Committee, online: http://www.lsuc.on.ca/with.aspx?id=568

  Research study by LSUC, Pro Bono Law and LAO to identify and quantify civil legal needs of low and middle income Ontarians.

- Report by the Access to Justice Task Force, Attorney-General's Department, *A Strategic Framework for Access to Justice* (Government of Australia 2009), online**:** http://www.ag.gov.au/a2j

  Major Australian report on access to civil justice.

- Lesley Jacobs and Brenda Jacobs, Multidisciplinary Paths to Family Justice: Professional Challenges and Promising Practices, (Paper commissioned by the Law Commission of

Ontario, June 2010) online: http://www.lco-cdo.org/en/family-law-process-call-for-papers-jacobs

LCO research paper includes:

- *a brief overview of the development of multidisciplinary holistic family services in Ontario, illustrated by Community Health Centres*
- *how legal services have fit into these multi-disciplinary family services models in Ontario, including a description of five different kinds of centres in Ontario that provide this sort of service as well as a filling out of the vision of multidisciplinary paths to family justice*
- *challenges when professionals collaborate together to forge multidisciplinary paths to family justice. identifies some promising practices that can meet the professional challenges for multidisciplinary paths to family justice.*

❖ Evaluation Of the 2006 Family Law Reforms: Summary Report (December, 2009) Australian Government & Australian Institute of Family Studies, online: http://www.aifs.gov.au/institute/pubs/fle/

Summary of detailed evaluation of Australia's 206 family reforms including mandatory family dispute resolution and use of Family Relationships Centres.

❖ Dr. Barbara Landau, Tom Dart, Heather Swartz, Joyce Young, Submission to Attorney General Chris Bentley: Creating a Family Law Process that Works: Final Report and Recommendations from the Home Court Advantage Summit (2009), online: http://www.docstoc.com/docs/39516572/Submission-to-Attorney-General-Chris-Bentley-CREATING-A-FAMILY.

Final Report of a Summit held in Ontario in 2009 to discuss the Mamo, Jaffe, Chiodo recommendations and the recommendations made by the Ontario Bar Association, the Ontario Institute for Family Mediation and the Arbitration and Dispute Resolution Institute of Ontario to the Attorney General. The AG accepted the paradigm shift advocated in the recommendations and asked for recommendations under the four pillars.

❖ *Family Violence: A National Response*, Australian Government, Australian Law Reform Commission, New South Wales Government, New South Wales Law Reform Commission (October 2010), online: http://www.alrc.gov.au/publications/family-violence-national-legal-response-alrc-report-114

A two volume report from the New South Wales and Australian Law Reform Commission considering what improvements could be made to the legal framework related to family violence to protect the safety of women and their children.

- *Report of the Access to Family Justice Task Force*, Government of New Brunswick (January 23, 2009), online: http://www.legal-info-legale.nb.ca/en/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=34&cntnt01returnid=252

  A Task Force appointed to review the family court system, including the legislation, regulations and Rules of Court and make recommendations to the government that would lead to:

  - *more timely access to justice in resolving family law disputes*
  - *expanded use of alternatives to family courts to resolve family law issues*
  - *increased access to legal information and legal assistance in family law matters,*
  - *especially for the poor, single parents and First Nations people.*

- Linguistic and Rural Access to Justice Project, *Connecting Across Language and Distance: Linguistic and Rural Access to Legal Information and Services,* by Karen Cohl and George Thomson (Toronto: Law Foundation of Ontario, 2008), online: http://www.lawfoundation.on.ca/linguistic_rural_access.php

  Report of the Linguistic and Rural Access to Justice Project of the Law Foundation of Ontario, focused on access to legal information and services for low income people living in rural or remote areas and those who do not speak English or French.

- Alfred A. Mamo, Peter G. Jaffe & Debbie G. Chiodo, *Recapturing and Renewing the Vision of the Family Court* (2007), online: http://books2.scholarsportal.info/viewdoc.html?id=357212

  Reviews service delivery and court operations at five Ontario Superior Courts of Justice, Family Court Branch (FC): evaluation of ancillary services and review of operations of court – recommends systematic review of Ontario Family justice system.

- A New Justice System for Families and Children: Report of the BC Family Law Reform Working Group (2005), online: http://www.bcjusticereview.org/working_groups/family_justice/media_release_06_09_05.asp

  The Family Law Reform Working Group was established by the Justice Review Task Force (Ministry of Attorney General, Chief Judge of Provincial Court of BC, Chief Justice of BC Supreme Court, Law Society, Canadian Bar Association). The Working Group included

experts from across family justice system. Its mandate was to propose fundamental and cost-effective changes to BC's family justice system.

- *Out Of The Maze: Pathways to the Future For Families Experiencing Separation*, Report of the Family Law Pathways Advisory Group (Commonwealth of Australia, July, 2001) http://www.ag.gov.au/Publications/Pages/FamilylawsystemOutoftheMazeAugust2001.aspx

  An Advisory Group of service providers, experts in family law, academics and representatives from Government making recommendations on how to achieve better outcomes for family members, particularly children, following the end of a marriage or relationship. The Government asked the Advisory Group for advice about the best ways to:

  - *simplify and signpost pathways to early assistance so that people get the help they need when they face relationship breakdown;*
  - *help families to minimise conflict, manage change more successfully, and meet new obligations and commitments;*
  - *make information and support available for families during the transition to, and settling of, new arrangements; and*
  - *provide coordinated service delivery between the range of agencies that can assist families during and after separation.*

- *A Summary of Selected Reports on Family Justice Topics from BC, Alberta,& Federal/Provincial Sources since 1992* (BC Ministry of Attorney General, 2003), online: http://www.bcjusticereview.org/working_groups/family_justice/family_justice.asp

  Background paper to Family Justice Reform Working Group Report, it summarizes:
  - *3 reports on the family justice system in BC - 1993-2002*
  - *4 reports on UFC*
  - *4 evaluation reports of programs and services piloted in BC*
  - *An Alberta report on UFC and the Alberta Family Law Reform Stakeholder Consultation Report*