



LAW COMMISSION OF ONTARIO
COMMISSION DU DROIT DE L'ONTARIO

**Voices from a Broken Family Justice
System:
Sharing Consultations Results
*Highlights***

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

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Highlights

As part of its family law project (“Best Practices at Family Justice System Entry Points: Needs of Users and Responses of Workers within the Justice System”), the Law Commission of Ontario consulted with 49 individual and groups from across Ontario, including northern regions whose needs and experiences are often overlooked, during the fall and winter of 2009-2010. Of these, more than a quarter were conducted in the French language.

The family law project will make recommendations for improvement of entry points into the family justice system. The LCO consulted both users of the family justice system and workers who provide services in order to provide a clearer picture of what both users and workers need from the family justice system, whether those needs are being met, and what the barriers to meeting those needs seem to be.

The consultation process allowed the LCO to hear firsthand about the experiences of those working within, and those affected by the family justice system. Participants provided invaluable information regarding their experiences, and brought to light several issues that warrant further consideration by the LCO in the final stages of this project. This summary will highlight some most important issues that were brought up during the consultation process.

Emotional nature of family disputes

The emotional nature of family issues can hinder the resolution process and make it difficult for parties to make “rational” decisions. The legal system is also ill-equipped to deal with the emotional issues that arise in family disputes. This gap in the system is even more challenging for people who, in addition to dealing with emotions, express themselves in a second language, have a low literacy level or cope with a disability. They are sometimes perceived as less capable or credible.

Using the legal system for financial and family planning

The purpose of this early intervention is to prevent the emergence of complex and potentially unsolvable legal issues later on. There is a reluctance to use pre-emptive measures to protect legal rights before family problems arise, likely because most people do not want to consider the breakdown of a relationship that is just beginning.

Some people may be more or less forced to plan in ways others are not. For example, community workers indicated that the legal complexities of family planning for LGBTQI¹ people mean they are forced to plan family formation extremely carefully. Heterosexual people, on the other hand, are more easily recognized as parents, even following an unforeseen pregnancy.

Even so, there is value in encouraging family planning for everyone at the outset. Consultations revealed that a lack of planning for the emotional, physical and financial care of each family member, children in particular but also adults, was a major cause of family problems. Consultation participants suggested that access to programs, which would provide information and education on the legal aspects of marriage, would be an improvement. Some participants suggested that education and testing, similar to that for drivers' licences, should be required prior to marriage:

“It would be ludicrous to allow individuals free rein to drive without training and education and following an accident bring them to task for failing to meet the requirements of the laws of driving. If the government and the courts are to be involved in the inter-personal relationships and family units of its citizens then advance knowledge of the expectations if that relationship fails is imperative in order for both users and the system to operate properly and effectively” – Ontario Native Women’s Association

¹ Lesbian, Gay, Bisexual, Transgendered, Queer and Intersexed people.

Relationship between Users and their Lawyers

Most users had difficult relationships with their lawyers, when they had one, including

- Tensions around time and cost of legal services;
- Expectations about services;
- The adversarial nature of the relationship; and
- Their lawyers' failure to consult them about decisions.

Many participants stated that, although they may have had a tense relationship, their lawyer was the most helpful person in the process.

Lawyers commented about

- The difficulty of estimating the cost of legal services; (other than a general estimate)
- The unreasonable expectations about and reluctance to pay costs by some clients ;
and
- Overly emotional clients who wanted the lawyer to use aggressive tactics.

Despite concerns about lawyers, most unrepresented litigants do not choose to represent themselves, but do so out of necessity, usually because they lack the funds to hire a lawyer. The prevalence of unrepresented litigants causes undue delay and creates significant costs to the family justice system.

Responding to Children and Youth

The LCO conducted consultations with groups of youths, who gave their stories of their experiences within the family justice system, with professionals who work with youths and adults who shared their experiences of facing family problems in their youth.

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Members of a Francophone group of older adolescents raised several issues, including:

- The organization of family relationships, gender role expectations, and how these factors may be a source of conflict within families; and
- Domestic violence and bullying in schools.

They expressed doubts about the effectiveness of anti-bullying programs.

Anglophone children 8 to 13 years of age revealed their firsthand experiences with family problems:

- One boy talked about being woken up in the middle of the night by his parents' fighting;
- Two girls talked about having to call the police themselves for fear that their father would choke or badly hurt their moms;
- One youth mentioned that she had to stay in a shelter with her mom for a while after the separation;
- Another one mentioned that it was no surprise to her when her parents separated and that she was relieved when her father left;
- Many of the female participants expressed negative views of their fathers, many of whom had been violent towards them or their mothers, and used strong language to describe their feelings towards them; and
- Boys found it disturbing to hear girls use such strong language to describe their fathers.

All children had a negative perception of lawyers:

- They were particularly frustrated by the fact that lawyers either did not ask them for their opinions or, when they did, did not seem to hear them;
- One youth said "why should a one line e-mail cost one hundred dollars to my mother?"
- Another youth commented on the wait time in court. She thought that the court system did not work and should be completely redesigned;

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- They were frustrated over not having their opinions heard in court because they were not of the requisite age; and
- They were dissatisfied with the legal system in general.

The youth also shared their coping mechanism in dealing with the anger, frustration and sadness brought on by family conflict. Some suggestions included: writing in a diary, confiding in people you trust and physical activities such as bike riding.

Entry Points

Participants identified factors that influenced the choice of entry points, including:

- How they perceived the issue, for example, as emotional, economic, legal or spiritual;
- The availability of financial resources, affecting whether they would seek professional assistance;
- Severity of conflict;
- The stage of the relationship; and
- Whether the other partner had taken steps to resolve the dispute.

Interpretation services, legal clinics working with racialized or remote communities, Francophone groups working in the area of domestic violence and collaborative family law practitioners working with Family Law Information Centres (FLICs) provided case studies.

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This particularly poignant case study was provided by a culture and language specific legal clinic, and demonstrates the need for culturally sensitive services, and services in one's native language:

Ms. Liu² and her husband have been married for many years with grown up children. Neither of them works but they own a house where they live in separate rooms. They have tenants. Mr. Liu told them to pay rent to him directly, so Ms. Liu has no money. He also told Ms. Liu if they divorce he will only give her \$30,000. If she wants one more penny, he will kill her. But Ms. Liu does not want to call the police.

Ms. Liu was told by lawyers that even if they draft an agreement for them, her husband may still change his mind and the case will go to court. She cannot afford a lawyer and does not believe the law means anything to her husband. Ms. Liu went to see her MPP who referred her to a legal clinic serving the Chinese population, which provided her with family law information in her mother tongue.

She does not understand English and must rely on Chinese speaking lawyers. She is in her 50's, even though she has been in Canada for 9 years, she cannot speak English and it is very hard for her to learn a new language.

Here the entry points are:

- Members of the client's own cultural group (Chinese speaking lawyers); and
- Ms Liu's MPP, who helped her to find an appropriate legal clinic providing information in her mother tongue.

Other entry points include:

- Court-based Family Law Information Centres;
- Interpretation service managers; and
- Policing services.

² The LCO uses a fictitious name in this scenario.

Service Delivery Models

Many participants expressed interest in a holistic approach to service delivery. A holistic approach may include offering legal, health and immigration services, in one location or through one organization, for example. Participants suggested

- A one-stop-shop or storefront at an accessible location for the targeted user group with quick referrals to appropriate services that would be located close by; and
- A mobile clinic with a similar service delivery model for more remote areas where transportation is an issue.

The Brant Response to Violence Everywhere Committee (BRAVE) system, a Brant County initiative, is an example of a “one stop shop” approach that uses technology to respond to a need that was identified during consultations by workers in the area of domestic violence, which is to avoid having victims tell their stories more than once. The BRAVE system connects workers through the Internet so the victim can tell her story to more than one of them at the same time.

Participants also mentioned

- The need for networking and collaborative work between different types of professionals, requiring workers to develop trusting relationships, share knowledge, and refer clients to one another when problems that arise are outside of their area of expertise;
- Information circulation;
- Screening triage; and
- Referral systems.

Fee Systems

The cost of legal and other professional services came up frequently during consultations. Such costs prevent access to many entry points into the family justice system. Suggestions

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for fee systems to increase access to the family justice system for Ontarians of all income levels included:

- *Pro bono* services;
- Legal Aid Ontario services;
- Sliding scale fee systems (already offered by, for example, the Ontario government-funded Mediation Centre of Simcoe County);
- Flexible payment plans;
- Working for a smaller fee; and
- Market rate fee systems.

Legal Aid

Users and workers both had concerns about Legal Aid Ontario (LAO) offices for several reasons:

- LAO offices' lack of transparency as to what cases they accept;
- Unfriendliness to users; and
- Inadequacy of the lawyer referral lists kept by the LAO (users had to make several phone calls before finding a lawyer or giving up).

Participants concluded that if the certificate system did not work, perhaps offering family law services through legal clinics would work better. The general consensus seemed to be that LAO should put more resources into family law services.

The need for Legal Aid services was particularly evident in remote Northern regions such as Moosonee. In this area, most people are only able to access family legal advice with the help of Legal Aid certificates. In addition, lawyers in remote regions are mostly dependent on Legal Aid certificates for paid work. Without the potential to make a living, there is little incentive for lawyers to stay in such regions, making access to justice for residents even less likely. This clearly illustrates the need for some minimal support to family law services in many smaller regions across the province, for the least privileged.

Conclusion

The consultations provided valuable insight into the family justice system from a variety of perspectives. The issues and experiences discussed in consultations will be taken into consideration and will inform the recommendations put forth by the LCO in the final stage of this project. It is essential that the recommendations are feasible in the short and long term, and that they relate to what happens in practice.

The last stage of the project will involve conducting additional research and developing recommendations for family justice reform. In early 2011, the LCO will produce an interim final report including preliminary recommendations, on which Ontarians will have a chance to comment. The LCO will then produce its final recommendations and report, as approved by its Board of Governors.