



LAW COMMISSION OF ONTARIO  
COMMISSION DU DROIT DE L'ONTARIO

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

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

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

The following LCO staff and student researchers contributed to this paper:

Julie Lassonde, LCO Research Lawyer (Project Head)  
Margaret Hageman, LCO Community Outreach Coordinator  
Joshua Goldberg, Faculty of Law, University of Toronto  
Amanda Letourneau, Osgoode Hall Law School, York University

Law Commission of Ontario  
276 York Lanes, York University  
4700 Keele St., Toronto, ON M3J 1P3  
Tel: (416) 650-8406  
Fax: (416) 650-8418  
General E-mail: [LawCommission@lco-cdo.org](mailto:LawCommission@lco-cdo.org)  
[www.lco-cdo.org](http://www.lco-cdo.org)

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LCO is therefore grateful for the efforts that many individuals and groups have contributed to its family justice reform project.

The LCO is aware of the initiatives to reform the family law system by the Ontario Ministry of the Attorney General, and of research into this area of the law by others. The relationship of the LCO's project to these initiatives and research will be addressed in the Interim Final Report of the family justice project.

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## EXECUTIVE SUMMARY

Over fall 2009 and winter 2010, the LCO conducted public consultations as part of its family law project entitled “Best Practices at Family Justice System Entry Points: Needs of Users and Responses of Workers within the Justice System.” This research project focuses on the early stages of solving a family challenge or problem. It explores the first places, or “entry points”, where Ontarians go when they face such issues. Examples of entry points include – but are not restricted to – the following: personal networks of family and friends, schools, workplaces, community-based organizations, mental health, legal and policing services. The LCO was interested in better understanding the experiences of people who use or work at various entry points, whether actually in the family legal system or not. Consultation participants’ comments, found in this description of the consultation results, will help shape our last phase of research, which will lead to elaborating recommendations for family justice reform.

The questions covered during consultations were explained in detail in a Consultation Paper published in September 2009 and still available on the LCO website. The LCO conducted 49 individual or group consultations meetings, in person or by telephone, in English or French language. It also received written submissions by e-mail, mail and through an online survey. People participated from across the province, including Aurora, Hamilton, Lanark County, Moosonee, Manitoulin Island, Ottawa, Sault Ste. Marie, Sudbury, Thunder Bay, Toronto and Walkerton, for example. All told, the LCO has heard from about 100 individuals.

The consultations allowed the LCO to discuss key terms used in the research. For example, participants believed that it was important to understand the notion of a family as broad, diverse and inclusive. For some, this meant specifying family issues, particularly parental issues, facing lesbian, gay, bisexual, transgendered and queer people. For others, this meant recognizing the economic disparity between Ontario



families and identifying groups, such as Aboriginal or racialized newcomers' families, for whom different clusters of problems are associated with family challenges and problems.

Participants also discussed differences between family “challenges” and family “problems”. The LCO defined family *challenges* as less serious (although often complex) issues that tend to arise at happy times in family life. Using the expression “family challenges” helped people think about family formation – as opposed to breakdown - with challenges such as understanding the consequences of living with or marrying someone. As the Ontario family law framework still focuses mainly on family breakdown, Ontarians do not typically understand these challenges as having legal dimensions worth addressing to prevent future problems. Finally, participants discussed the meaning of “entry points”. They pointed out the difference between an entry point “where someone would first think of going when they face a family issue” and an entry point “that truly helps resolving the issue”.

Consultations also helped identify some of the most significant issues that matter to Ontarians when trying to solve a family challenge or problem. Acknowledging the emotional dimensions of such challenges and problems appeared to be key at any stage in family life. The LCO heard adults, some of whom are parents, and children, talk about the emotional scars left by family disputes and the difficulty of dealing with mental health, legal and financial problems at the same time. We also heard professionals discuss their strategies to help people cope with their emotions while providing them with the required services. These discussions made clear that there is a need for a holistic and multidisciplinary approach to entry point service delivery, to address the various dimensions of family challenges and problems.

Moreover, consultation participants helped the LCO identify factors to consider in developing recommendations for reform. Some of these factors are connected to broad underlying social issues. Others specifically relate to service delivery in the family justice area. The broad social factors mentioned by participants included the lack of

resources amongst Ontario families and of government funds to provide affordable family justice services. Participants also discussed their and others' resistance to use prevention and early intervention mechanisms, such as cohabitation agreements or counselling services. In addition, participants discussed sensitive issues, such as violence and bullying between family members, which are related to the power dynamics at play within families. Stories illustrated how family power dynamics are influenced by variables such as gender, sexual orientation, ability, age, culture, religion, immigration status and economic pressure, to name only a few. Talking to children and youth helped the LCO understand how private and public education about gender identity and sexuality plays a role in reinforcing these social problems.

Participants recommended reform of family service delivery, including

- the level of confidentiality and type of expertise necessary to solve family challenges and problems;
- whether services should be voluntary or mandatory;
- how legal culture influences the relationship between lawyers and users, between lawyers and other professionals, and between judges, users and other professionals;
- the need for assistance in navigating the family justice system; and
- a better response to children and youth in the family justice system.

One of the most striking aspects of consultations was to hear users and workers share their experiences at family justice entry points, especially when these stories came from different regions in the province. Most stories involve a linguistic, cultural, gender and economic component. They also often involve situations where there is a lack of services beyond entry point level, which means that problems may be identified but not solved.

This report includes examples of such stories. One involved a woman in her fifties who speaks only Chinese, living “separately” from her husband, but in the same home. Since the tenants pay her husband, she has no money. Her husband threatens her. She does not want to call the police, cannot find Chinese-speaking lawyers she can afford or who

would take her case on a *pro-bono* basis and while she finds a legal clinic with Chinese-speaking staff, they do not offer the services she needs. She has concluded that she should focus on survival rather than pay for lawyers unless they can truly resolve her problems.

Ontarians like this woman face serious barriers to family justice. Because of the complexity of addressing family issues, as well as the cost of legal services, many Ontarians live with unsolved family challenges and problems, which in turn have a cost for the province. In some cases, however, challenges and problems are not so complicated that they cannot be resolved. In these cases, it is more a question of developing appropriate information and referral systems at entry points, and introducing technology that can give Ontarians from remote regions better access to resources that benefit others who live in large urban centers.

When it comes to discussing the details of various possible service delivery models, most users are looking for affordable, effective and timely services. According to workers, however, users do not always appreciate the complexity of the challenges or problems they face. Their problems are often multi-dimensional, which leads workers to believe that more efforts should be deployed in developing multidisciplinary services, as well as networking, information sharing, screening, referral and fee systems.

Some regions in Ontario have taken the lead in implementing well-functioning sliding scale family services or using technology to reduce the cost and increase accessibility of services. Despite these efforts, the LCO noted that the profound inequalities between different regions of Ontario in terms of access to publicly-funded services makes the task of developing appropriate initiatives province-wide very difficult. For example, although LAO programs such as certificates for family law advice were reported to be far from perfect, the absence of LAO services in some regions would mean the end of access to any kind of legal services in these regions. As a large part of family justice services are delivered by the private sector, service delivery in that sector also needs to be more flexible. The main needs that were identified were that private legal

practitioners collaborate with practitioners in other fields and offer different fee arrangements to suit a broader range of clients with different financial means.

In short, the LCO public consultations indicate that prevention and early intervention, through the development and better management of entry point services, can help resolve family challenges and problems in a more effective way and prevent solvable problems from becoming unsolvable. Consultation participants repeatedly said that “they wished they had known this and that earlier” and “they wished they had been directed to the right service earlier”.

## **I. INTRODUCTION**

During fall 2009 and winter 2010, the LCO conducted consultations as part of its family justice project entitled “Best Practices at Family Justice System Entry Points: Needs of Users and Responses of Workers within the Justice System.” The LCO organized 49 individual or group consultation meetings, either in person or by telephone and consulted over one hundred people. The large majority of these meetings were conducted in the English language. However, more than a quarter were conducted in the French language. Telephone interviews allowed the LCO to reach out to individuals or groups across Ontario. The LCO also gathered information for its research through an online survey, which was made available following publication of its Consultation Paper in September 2009.<sup>1</sup> The LCO spoke with individuals or groups working closely with Aboriginal peoples in Moosonee, Manitoulin Island, Thunder Bay and Toronto. We also had conversations with or received written submissions from people from other regions of Ontario, including Aurora, Brantford, Burlington, Guelph, Hamilton, Ilderton, Kingston, Lanark County, London, Mississauga, Ottawa, Toronto, Sault Ste. Marie, Sudbury, Sutton West and Walkerton.

This paper summarizes the LCO family justice consultation methodology and results. It also explores how these results will impact the last research phase of this project. Following publication of this consultation report, the Project Head, in consultation with the Ad Hoc Project Advisory Group and others, will identify areas that require additional research and discuss possible recommendations for family justice reform. In 2011, these recommendations will be explored in an interim report, which will allow stakeholders to provide feedback. The LCO recommendations will then be finalized in the LCO final report on family justice. The Board of Governors is responsible for approving the final report and its recommendations.

## **II. CONSULTATION METHODOLOGY**

### **A. General Remarks**

LCO consultations are generally open to all, with an emphasis on people living or working in Ontario or having relevant experience or expertise related to the province. As always, consultations were both an opportunity for the LCO to gather information as part of its research process and to engage in a relationship-building process that enhances its capacity to respond to the province's population in all its diversity.

The LCO Consultation Paper was the main tool used to invite participation and explain the family project. This paper was circulated to a stakeholder list of around two hundred individuals and groups with whom the LCO had been in touch in a preliminary research phase that led to the selection of this research project. The Consultation Paper was also posted on the LCO website along with an online survey that allowed participants to answer the research questions it raised. Throughout the consultation period, the Project Head, in collaboration with the LCO Outreach Coordinator and others, conducted ongoing outreach activities to invite participation and obtain different perspectives on the project. Many individuals or groups demonstrated interest in family justice issues and volunteered to share their thoughts. The LCO was interested in hearing from both users and workers.

### **B. Reaching Out to Users**

The LCO considered it crucial to hear users' viewpoints. By users the LCO means people who faced family difficulties and attempted to find solutions through the family justice system. The LCO was able to conduct seven individual meetings with users (two in person and five by telephone), five group meetings with an average of six users (two in person; two by telephone) and three in person group meetings with a mix of users and workers. This represents close to a third of the consultation meetings. In addition, 30 users and workers responded to our online survey. The LCO was therefore able to include first-hand user experiences as part of its research.

One effective method to reach out to users was to ask workers to contact users they knew and, if users agreed, to recommend them for LCO interviews. Alternatively, workers could also set up user groups themselves, in which the Project Head would participate.

In addition to providing input from users, the process of reaching out to users through workers revealed an important consideration for the family justice project. This process revealed how important it is for workers to build trusting relationships with users. The LCO observed that some users were willing to participate and share stories with the LCO because they established a high degree of trust with the workers involved, whether these workers were community-based or in private practice. This trust in one worker or one organization was the focal point that allowed users to come together and share their experiences beyond their differences. It was instructive that groups who may have difficulty having conversations with one another can gather in a safe space to have important discussions, as a result of trusting relationships established by third parties. For example, one meeting led individuals of different genders, some of whom had faced domestic violence, and others who had rightly or wrongly been charged with domestic violence assaults (in situations that were of course unrelated to one another), to have respectful interactions with each other. In another example - a woman-only consultation meeting with victims of domestic violence - it was both the trust users had towards the workers who organized the consultation meeting and the fact of having had a similar experience and gender identification that made the consultation successful.

### **C. Reaching Out to Workers**

Many workers came forward to discuss the family project. The LCO consulted with workers in the legal field (community legal or legal support workers, lawyers, mediators, arbitrators and judges) and in other fields (transitional support workers, social workers, therapists, financial advisors, supervised access workers, interpreters and police officers). The network of legal clinics across the province was particularly helpful in reaching out to workers in a wider range of regions, outside of Toronto and Ottawa. Many associations or community groups organized consultation meetings where they

invited their membership. In short, the LCO conducted 17 individual meetings with workers, including 7 in person and 10 by telephone. The LCO also organized 17 group meetings, including 10 in person, 3 by telephone and 4 in person with others joining through conference call. In total, the LCO conducted 34 consultation meetings with workers.

In addition to the LCO consultation meetings, the OBA and the ADR Institute invited the Project Head to participate in their November 2009 Summit,<sup>2</sup> which provided another opportunity for the LCO to discuss the project with other stakeholders.

## **D. Clarifying Concepts and Terminology**

Part of the LCO's approach was to develop key research terms. These terms were described in the Consultation Paper and included family justice process, entry points, users and clusters of problems, as well as workers and silo problems. Consultations allowed the LCO to test whether its use of certain concepts was similar to that of various users and workers, to ensure that recommendations can be formulated in a language that is meaningful to them. Consultation participants' responses sometimes reinforced our conceptual choices and sometimes forced us to further define the vocabulary we chose to use. Discussing terminology also allowed the LCO to identify issues discussed in section III of this paper. The key concepts that were discussed were the following: family, family challenges and problems, as well as entry points.

### *1. Family*

The Consultation Paper acknowledged that people's perceptions of what a family is have changed in the past decades. We purposely left the definition of family for consultation participants to define. However, in any effort to acknowledge the plurality of family models, there is always tension between being too general or too specific. Being general can allow for inclusiveness but can also overlook certain realities. Being specific permits focus on a chosen reality, while potentially preventing the acknowledgement of the bigger picture, including other realities that have yet to be recognized or have been ignored. An example of this tension arose in a consultation



meeting with a lesbian, gay, bisexual, transgendered, queer and intersexed (LGBTQI) group.

Our consultation with the LGBTQI group revealed that speaking about the family in general terms was not enough to bring light to realities faced by this group. The lack of specific mention of same-sex families and of challenges faced by LGBTQI family members who wanted to have or already had children, for example, made this group feel invisible in the consultation process. In other words, some members of the LGBTQI community believe that, in order to be inclusive, the definition of family needed to be more specific. This is largely due to the strong historical tendency to interpret family as a heterosexual unit consisting of rigidly defined gender roles. As the LCO's focus in this research is not to provide a comprehensive definition of the term 'family', the LCO will use specific examples to illustrate how inclusive this term should be.

## *2. Challenges Versus Problems*

In addition to the concept of family, as well as the advantages of exploring specific family models, consultations reinforced the importance of distinguishing between the concepts of "challenge" and "problem". The consultation paper distinguished these two concepts, challenges being defined as less serious – although often complex – issues that tend to arise at happy times (when planning to live together, for example) and problems being more serious and usually arising when things go wrong (when trying to get divorced following a marriage that involved abusive relationships or when same-sex couples try to have children and face discrimination, for example). Distinguishing challenges from problems was a way for the LCO to broaden its approach to family justice and to put more emphasis on prevention and early intervention.

During consultations, using the term "challenge" was helpful to draw attention to issues that families do not always see as a potential source of problems. These challenges include making informed decisions about whether to share a bank account or to take on a certain number of hours of care giving work on a weekly basis, for example. When focusing on "problems," the legal framework and the risks involved in leaving these

challenges unsolved might not be as visible for everyone as they should be in order to prevent future problems. According to consultation participants, this lack of awareness or capacity to recognize family challenges is part of the larger issue of “legal literacy.” Failing to identify these risks and taking up the challenge of taking them into account can lead to extremely damaging future family disputes. For example, gendered consequences of certain models of family planning are notorious: if a woman removes herself from the workforce for a long time, she risks having trouble finding employment later; if a man disengages himself from caregiving activities, he may have trouble developing a relationship with his children later.<sup>3</sup> As a mental health worker and mediator mentioned during consultations, if expectations are unclear throughout a long term relationship, the price of solving this dispute is likely to be high. From a law reform viewpoint, part of the issue is to develop a legal framework that does not only deal with family “problems” but also with all “challenges” faced by families, at various stages of their development. This legal framework would also be more effective if it took into account the “law” within the family and not simply state law. Consultations revealed that, in general, people have yet to see family law as a preventative tool. Much remains to be done to integrate family “challenges” within our legal framework. For these reasons, the LCO will continue distinguishing family “challenges” from “problems”.

### *3. Entry Points*

Consultations also helped clarify the notion of “entry points”. Participants saw an obvious distinction between an entry point “where someone would first think of going when they face a family issue” (“category one”) and an entry point “that truly helps resolving the issue” (“category two”). Consultations demonstrated that there are unfortunately more of the first than of the second category of entry points. Part of the LCO project is to explore how to turn category one into category two entry points. When this is not possible, we may explore ways to better direct people to category two entry points, to avoid finding themselves at places that will not help them. These objectives can be achieved by better understanding various users’ needs, choosing appropriate service delivery models, providing better education and information about family

services and developing quality control mechanisms for such services, which is of course not a simple task.

### **III. ISSUES RAISED DURING CONSULTATIONS**

Consultations raised various issues that are important to consider to better understand family justice entry points, as well as to develop recommendations for improvement of entry point service delivery and family justice more generally. First, they made clear that it was important to recognize and understand the emotional dimensions of family challenges and problems before thinking about legal or other issues. Second, they allowed the LCO to identify issues that need to be taken into account in thinking about family justice reform. Third, they provided additional examples of entry points into the family justice system and a better understanding of entry points already identified in the Consultation Paper. Fourth, they shed light on users' and workers' experiences. Fifth, they provided a better understanding of various aspects of service delivery. Finally, consultations helped identify broad underlying issues that will have an impact on the LCO's final recommendations. Each of these areas will be explored in the following sections of the report.

#### **A. Emotional Dimensions of Family Challenges and Problems**

Not unexpectedly, we heard that emotions play a large role in family challenges and problems. Consultations confirmed that the level of emotion involved in a user's situation is an important factor to take into account in order to find an appropriate way to solve their challenge or problem. In order to help better understand the emotional landscape of family difficulties, the LCO identified typical dimensions of family challenges and problems that emerged out of the consultations:

##### *1. Issues Faced by Parents*

- One parent wants to collaborate and the other one does not;
- One parent wants to save the marriage or the relationship and the other one does not;

- Parents cannot distinguish between their intimate relationship and their parenting obligations;
- Parents cannot see custody and support as two distinct issues; that is, that the amount that the payer pays in support payments is not a function of the amount of time the payer spends with the child; and
- Losing a relationship with a child is a catastrophe for a parent.

## 2. *Issues Faced by Children*

- Children want to be heard but they feel they have no voice and no power in relation to adults, including their parents, lawyers, counsellors and judges;
- They know when things go wrong and expect their parents to deal with their problems;
- They are frustrated that their parent who most needs therapy refuses to do it;
- They are angry at their parents;
- They are afraid of an aggressive parent;
- They are upset when one side of the family talks behind the back of the other;
- They are hurt when they feel that their parents don't care about them;
- They feel their parents' emotions and believe that they have to be supportive, which means that they become "their parents' parent"; and
- They are outraged by the cost of legal services that their parents have to pay.

## 3. *Other Issues*

- People can have very different and unspoken expectations about an intimate relationship, which can create challenges and problems;
- People have to adjust their expectations about the difficulty and cost of solving legal issues;
- There is stigma around using the law to plan finances and care giving activities in families and not just as a tool to solve problems after they emerge;
- Isolated individuals face the most challenges and need support networks to heal from family disputes; and

- People lack trust in professionals as they doubt that they are committed to quality services at the lowest possible cost.

These are only a few examples of emotional dimensions of family challenges and problems, and their connection to service delivery. However, consultations revealed that understanding such dynamics is an important element in preventing and solving such challenges and problems. Users need their emotions to be validated during the dispute resolution process and if the legal system cannot fulfill this function, other services should be put in place to respond to this need.

From the viewpoint of a counsellor and mediator who participated in consultations, emotional transformations are necessary when a person goes through family issues. For example, married persons need to transform themselves into separated persons. Another example would be that mothers who have been the main caregivers need to acclimatize to no longer being primary caregivers and sharing caregiving responsibilities with the other parent. There can be many scenarios but the bottom line from a mental health perspective is that if someone gets what they want in court without having done emotional grieving, their issue will not be resolved. Consultations revealed how difficult it is for the legal process and emotional grieving to happen side by side. Most professionals to whom the LCO talked believed that, where possible, efforts to encourage a collaborative process, or on the contrary, where necessary, efforts to use the legal system to create a distance between parties involved in a family dispute and providing mental health support on each side separately, were essential elements to improve the family justice system. Consultations revealed that all workers involved in solving family challenges and problems, including lawyers, constantly have to make these judgment calls.

## **B. Factors to Consider for Reform**

In addition to providing insight into emotional dimensions of family challenges and problems, consultations revealed factors to consider in reforming entry point service delivery and family dispute resolution in Ontario. Some of these factors relate to broad

underlying issues affecting access to justice, such as lack of resources. Others relate to challenges faced by workers, such as obstacles to collaboration. Finally, some factors are linked to significant social problems, such as domestic violence. These factors will guide LCO reflections during its last research phase and recommendation development.

### *1. Lack of Resources*

At a macro level, many good suggestions have been made to improve family justice, such as building one-stop-shops or ensuring that the same court services are offered across the province, but implementing them requires resources. At a micro level, the financial consequences of family problems are huge for users and families do not always plan for such expenses. Families go from sharing expenses to individuals paying for them on their own. Low income people face an increase in expenses as well as a lack of services, which can lead to homelessness and perpetuates the cycle of poverty. Users in general also face the high cost of family dispute resolution. The LCO commissioned a research paper to provide a cost benefit analysis of family justice services, which provides examples of such challenges.<sup>4</sup>

### *2. Confidentiality*

No one likes their personal or family problems to be exposed to the outside world. Confidentiality is an important element in building the trust required between people who are trying to solve family challenges and problems.

Mental health professionals have confirmed this need for confidentiality during consultations. However, they recognized that this need often clashes with the legal system. If therapy is about having a safe place to open up and explore difficulties with a view to personal growth, it is difficult to imagine that anyone would be able to successfully do this if they were afraid that what they said in a therapy session may be repeated out loud in a court, a process that is open to anyone. In fact, one counselling service mentioned that they managed to function for thirty years with only once having to face a lawyer who tried to subpoena them. In a way, due to its reputation and strong conviction, this service managed to impose its own rules and coexist with the court system.

Mediators have also commented on the issue of confidentiality. Open mediation refers to a process where what is said during the mediation can be used later in court. In a closed mediation, bringing up issues discussed or statements made during the mediation in another process is not permitted. Some mediators, especially those who are mental health professionals, seem to prefer closed mediation as they see confidentiality is a crucial element of the process. In the absence of confidentiality, some mediators believe that parties cannot trust the process if they are not clear on what part of the process is confidential and what is not. Users tend to agree about the advantages of confidential alternative dispute (ADR) mechanisms. For example, a user who lives in a small town explained that going to court was extremely difficult because her family issues became known to everyone, which she found humiliating. She would have preferred having access to confidential ADR mechanisms.

This said, the rules of professional conduct of different professionals are often in conflict when it comes to what needs to remain confidential or not, preventing professionals from collaborating with each other. The LCO commissioned a research paper that explores this issue.<sup>5</sup> It is also important to recognize that there are good reasons to make court decisions public if society as a whole can learn from others' experiences; transparent decision-making also contributes to maintaining the integrity of the judicial system. There is therefore a fine balance between the need for confidentiality and information sharing, which the LCO will explore in its last research phase, from a more specific entry point perspective.

### *3. Expertise*

Because legal issues are only one part of the puzzle in solving family problems, legal professionals need to recognize the limits of their expertise. This is true for all users and workers involved in solving disputes. As an example, many users and workers mentioned that courts lacked the expertise to deal with children appropriately. Lawyers and judges are, of course, not experts regarding child development. However, they are still asked to make arguments about and evaluate the “best interest of the child”. Social

workers and mental health professionals who participated in consultations explained that legal professionals were often very simplistic in their understanding of this notion. They thought that applying the legal principle of maximizing contact with both parents often leads legal professionals to think that “it’s good for children to see both parents” without having any expertise in terms of what social and psychological conditions were necessary to make this happen. From their viewpoint, creating the conditions for a child to have a positive interaction with a parent can be a long process and in the meantime “it’s not good for children to see both parents”. The issue of expertise, especially in relation to children, is extremely challenging. It raises cultural issues as well as the risk of intergenerational damage, which has been observed in particular in Aboriginal communities. These discussions raise the issue of whether it is appropriate for child custody, support and protection matters to be dealt with in court.

From an entry point perspective, not surprisingly, the earliest interventions appeared to be made by people’s closest support networks: friends and family. If friends or family members have the capacity to see the challenge or problem and if they are committed to provide ongoing support, consultation participants generally believed that their interventions can be helpful. One user mentioned, for example, that her sister accompanied her and reviewed every document she signed for three years. In this case, this support from a non-expert was sensible and enabled the user to have a sounding board before making important decisions in the family justice process.

Although these interventions were often appreciated emotionally, most people found that such help only went so far if they could not, in addition, get professional help. Sooner or later, expertise appeared to matter. According to participants, most friends and family members were misinformed about family law and did not know where to refer friends and relatives to receive legal advice. The most helpful friends and family members for consultation participants were those who were or knew a lawyer or another professional, and who managed to get them a free primary consultation with that professional, due to the personal connection. This way into the family justice system established trust and provided the user with a more positive perception of this system.



One user mentioned, for example, that she had a friend who was a psychotherapist. She was embarrassed to contact her at first. However, when she faced a mental health crisis and when the hospital and other professionals would not respond to her immediately, she phoned her up and her friend met with her. She turned out to be the only person to be able to respond in a timely manner. Service providers and professionals certainly do not always have the capacity to respond to emergencies. In addition, emergency and other services have a cost that not all users can afford. Although these services can sometimes be effective entry points, if each service does not have the capacity to respond to the demand or is not accessible to all, users need multiple options.

When family and friends intervene, consultation participants seemed to believe that they are most helpful if they are able to do the following:

- Acknowledge the emotional dimensions of family challenges and problems;
- Have quality knowledge in the area of family justice that allow them to see the issues and respond appropriately; and
- Have connections with professionals who can help in this area.

This is, of course, not the case in most situations. This is why other qualified workers need to provide the support that many do not have.

Mediation is another area where consultation participants raised the issue of expertise. Although many lawyers practice mediation, mediation is also practiced by other professionals, mental health professionals, for example. As mentioned before, consultation participants identified issues around qualification in order to become a mediator, as well as the regulation of mediation generally. The LCO consulted with mediators, some of whom were family law specialists, and others who did not necessarily appear to have any experience in the family area but still believed that they may want to develop a practice in this area. Lawyers and judges also sometimes move from one specialty to another, or practice as generalists. However, lawyers and judges, as well as members of other regulated professions, have stricter codes of conduct that

ensure quality of services. Mediators who come from unregulated areas of activity do not have the same professional obligations, which can cause problems. This said, consultation participants mentioned that there are many competent family mediators in Ontario and if it was better regulated, advertised and made financially accessible, there would be no reason why mediation should not be used more often in solving family disputes.

#### *4. Mandatory or Voluntary Services?*

When discussing access to family justice information or services, questions frequently arose about what should be imposed by the law or be optional. Mental health professionals confirmed that it would be foolish to think that we can force someone through a therapeutic process.<sup>6</sup> According to them, counselling should be voluntary, but better advertised and connected to other family justice services. There was also a lot of scepticism about mandatory mediation, mediation being a process that can only work if both sides are committed to solving their issues on their own with the guidance of the mediator, and trust the process. Mandatory information sessions raise other questions, such as how much information a reluctant participant will retain. It may also be a problem if a person cannot attend for health reasons, lack of child care or because they cannot afford to miss work or to travel to where the session is taking place. In such circumstances, if the consequences of not attending are that the individual loses legal rights, making such sessions mandatory may not be a good idea unless we provide for making exceptions, as consultation participants have said. It is therefore not easy to decide what is appropriate to make mandatory and voluntary.

#### *5. Public/Private Divide*

The issue of the public/private divide is closely connected to the choice of making certain things mandatory or voluntary. Given that most people do not plan their family relationships, family law has a set of rules that simply apply by default when people cohabit or get married. However, when things go wrong, in most cases, except in cases involving criminal or child protection law, it is entirely optional to solve these issues or not. In other words, it is relatively inexpensive for the government not to intervene at family formation, except by way of default state legislation, and shift most of the

financial burden of family breakdowns to the private sphere. In some cases, even cases where people are forced to go through the court system, they are not provided with appropriate resources to do so. For example, when provincial law forces low income people, mostly women, to go through court processes to seek spousal and child support as a condition for them to claim social assistance, this is again an attempt to shift the financial burden of family challenges and problems to the private sphere.

Families have historically been perceived as part of the private sphere. However, family relationships or other private relationships are still ruled by state law, for example through the institution of marriage and through several other mechanisms described above. Therefore, the public/private divide is not as clear as it might appear. This lack of clarity also relates to issues around confidentiality that were discussed above. Looking at family relationships as “private issues” has historically hidden serious social problems such as unpaid caregiving work, domestic violence, profound economic gender inequalities, oppression on the basis of sexual orientation and the racialization of poverty. There must continue to be places to publicly debate these issues and eventually solve them so that they do not remain hidden. However, in debating these issues, it is important not to forget that people suffering from these issues need mechanisms to receive help in a way that does not reinforce these issues, which at times may require some level of confidentiality. Looking at family justice from the public/private angle must therefore be done with caution as the LCO moves through reflecting on possible recommendations for family justice reform.

#### *6. Encouraging What Works*

Although there is significant dysfunction within the family justice system and, as noted in the Consultation Paper, people have mentioned that “the system is broken”, some workers and users function relatively well at entry point service delivery. There are good examples of healthy workers’ networks across the province and other regional initiatives that work well, which we will explore in the service delivery section of this paper. Such networks and initiatives are often unknown. Information sharing and outreach is therefore important so that justice reform initiatives do not destroy what is working well

while solving other issues. The LCO will attempt to reinforce what is already working in developing its recommendations.

### *7. Hearing One Side of the Story*

When the LCO consulted with users, for example, it usually heard only one side of a family story. Workers also often face this problem. In collecting various stories, the LCO intends to provide a wide range of perspectives, which can give everyone involved enough distance to develop best practices. Tools such as information, collaboration and approaching family problems in a holistic way help provide perspective on problems and create better conditions to solve them. In order to improve service delivery at entry points, this reality needs to be taken into account and workers need to have enough perspective on family issues to be able to respond appropriately when they hear one side of the story.

### *8. Resistance to Early Intervention*

One of the main assumptions underlying the LCO family justice project is that early intervention can prevent family problems from becoming so complex that they become almost unsolvable. However, as we have seen in the section about emotional dimensions of family challenges and problems, users sometimes resist addressing these challenges and problems early for emotional reasons. In addition, as the family justice system focuses on remedying family breakdown rather than planning family formation, workers are not encouraged to intervene early either.

When thinking about early intervention, family formation appears to be a particularly effective moment at which to intervene because it corresponds to the early stage of family life. If challenges and problems already arise at that stage, intervention becomes important to prevent them from resurfacing at a later stage.

Interesting comments about family formation were made by LGBTQI community workers. They shared their thoughts on how LGBTQI people who want to parent face the complexity and lack of clarity of the law. They also face a disproportionately high level of scrutiny when wanting to have their parentage relationships legally recognized.

For example, two women can register as parents on their child's birth certificate if they use an anonymous sperm donor and assisted reproduction.<sup>7</sup> However, many women use known donors and the legal status of such donors remains unclear. Moreover, women who use known donors who are not their sexual partners, and want a clinic-based insemination, can only use their frozen, as opposed to fresh, semen.<sup>8</sup> In the case of gay, bisexual or queer male donors, in order to overcome an exclusion found in a *Health Canada Directive*, they must go through special procedures.<sup>9</sup> In these circumstances, LGBTQI people are therefore forced to plan their parenting project.

Heterosexual couples, on the other hand, are more easily recognized as parents, even following an unforeseen pregnancy. They are not forced to plan to the same degree as same-sex couples. If anything, some of them face the opposite issue of not wanting to be considered a family in order not to bear the weight of parental obligations.

Being forced to plan for the wrong reasons, because of discrimination on the basis of sexual orientation as the example above demonstrates, is a serious issue. But is being forced to plan for other reasons, for example when adopting a child, also a problem? Overall, 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. Moreover, this could lead to power imbalances in the family. If all families, whether working within a heterosexual or a LGBTQI framework, were not forced but rather strongly encouraged and given tools to plan their family life, without discrimination, families may be better prepared to face various types of challenges and problems.

Consultation participants also shared their experiences about how early interventions are made in the family justice area. Looking back, after having gone through significant family problems, most participants did not find that they received services early enough. However, when the LCO discussed "very early" interventions and prevention mechanisms, participants disagreed about how early they wanted family justice to intervene in their family lives. Most participants agreed that being better informed about

the consequences of entering into a relationship, cohabiting and getting married was helpful. Some participants thought having mandatory information sessions before getting a marriage licence made sense:

*Legal literacy is important, it should be common knowledge what framework you get into when you get married, not just emotions, cooking and passion but some awareness of mutual obligations from a legal point of view, in particular women should know what happens during a family breakdown and be prepared for it going into it. Women who face a break-up at sixty sometimes have no idea about their rights. Women should know earlier. (A legal clinic lawyer<sup>10</sup>)*

According to some consultation participants, legal literacy is even more important in a context where families are mobile and family law varies from province to province and from country to country. Nevertheless, many people find it “suspicious” that someone would want to get legal information at an early stage of a relationship and would prefer not seeking it for fear of being perceived as not trusting their intimate partner.

Pre-nuptial or cohabitation agreements are certainly the least popular of early intervention mechanisms among those consulted. Although many who had already experienced a frustrating and costly separation or divorce mentioned that they would clearly negotiate a pre-nuptial agreement next time they entered a relationship, some people who were still struggling with a costly family dispute were not convinced that this was appropriate. The embarrassment attached to having discussions about how finances, child care or house care should be organized, as well as what would happen if the relationship broke down, when a relationship is going well, is immense. Most people are afraid that these conversations will destroy their relationship. That said, more than one consultation participant suggested that people should be more pragmatic about these issues and some of them compare marriage with driving licences:

*We are all required to be licenced to drive a vehicle – these requirements include education and testing. 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)*

The comparison between the requirements to acquire a marriage and a driving licence was made by others consulted as well. According to social and mental health workers with whom the LCO consulted, the fear and lack of open discussion and planning between family members often leads to the development of conflicting expectations about family relationships. Later on, these diverging expectations can create difficult emotional and financial problems.

For groups who have a history of poverty and marginalization in Ontario, such as Aboriginal communities, solving family challenges and problems is much more complex. These groups face intergenerational damage that requires more than early intervention. In other words, there are systemic issues in Ontario that require more than short term solutions. The LCO will therefore seek to develop recommendations that take this complexity into account.

In short, given the lack of incentive that people generally have to get better informed about family justice early on in their family life, the law will continue to have to respond to emergencies while trying to create opportunities for early intervention. Also, given systematic issues such as gendered patterns in relation to caregiving and financial power in intimate relationships, the racialization of poverty or intergenerational damage created by child protection policies in Aboriginal communities, the family justice system is already quite late in its response.

#### *9. Relationship Between Users and Their Lawyers*

Most users the LCO consulted with had difficult relationships with their lawyers, when they had one. Tensions tended to revolve around time and cost of legal services, as well as around expectations about services.<sup>11</sup> The LCO also notes that the role of lawyers inevitably involves telling their clients what they do not want to hear, such as

that a judge is not there to acknowledge their feelings but to solve legal issues. In that context, users cannot necessarily expect their lawyer to make them feel better. Users themselves have, at times, said that despite the tense relationship they had with their lawyer, their lawyer had in the end been the most helpful person in solving their dispute, which was difficult to see when they were in the middle of it.

Regarding legal fees, users have anxieties about how costly their legal services will be from the moment they phone or step into a lawyer's office. They want clarification about the cost of legal services. For example, they want to know whether their lawyer will bill them when she or he has conversations with the other side. Lawyers, on the other hand, cannot entirely predict how long and complicated disputes will be and it is therefore difficult for them to estimate the costs of their services. Nevertheless, one lawyer mentioned that she is able to give an idea of the cost to her clients, based on her experience, and she is comfortable doing this. She also finds that her assistant is helpful in providing this kind of information as it creates a distance and relieves clients of the fear that they would be billed for every minute they talk to their lawyer. When law firms have other staff, such as articling students or paralegals, for example, they will be able to perform appropriate tasks for a lower fee than lawyers, including taking the time to communicate with clients in an emotionally responsive way. Despite these efforts, however, some clients may remain unhappy about the cost of legal services. During consultations, lawyers mentioned that even if their mandate was clear, in writing and signed by their clients, some clients still did not want to pay for certain things that were foreseeable and were still frustrated when they received an invoice that matched estimated costs. They believe that clients' unreasonable expectations are a result of misinformation.

Some users complained about the unprofessional or non collaborative behaviour of lawyers. One user, for example, chose to represent herself after her lawyer failed to inform her of changes in court dates. Others mentioned that they did not like it when lawyers appeared to be making decisions on their own, without informing them. They liked being treated as "part of the team". Lawyers, on the other hand, complained that their clients often did not provide complete information and did not inform them of steps



they were taking on their own, which ended up prolonging the process and increasing costs. One lawyer mentioned, however, that some lawyers take too many files and end up making mistakes. As mentioned above, there is a relationship between anxieties related to legal fees and the lack of communication between lawyers and clients. If clients are afraid of the cost of speaking to their lawyer, they will talk to them as little as possible. Lawyers therefore need to explore cheaper ways for their clients to communicate with them. Unhappy clients who do not understand why their lawyer acted in a particular way are more likely to make complaints to the Law Society of Upper Canada. Overall, the lack of trust between clients and lawyers has a cost for both sides.

As mentioned earlier, emotions play an important role in solving family challenges and problems. In that regard, users as well as non legal professionals appear to believe that lawyers create adversity and are too aggressive. However, it can also happen that, when users are caught in a very adversarial family dispute, they sometimes complain about their lawyer not being aggressive enough. Lawyers also report clients being very aggressive and adversarial and saying things such as “I want his balls on a platter”!

Most lawyers that the LCO spoke with agreed that too much adversity does not help solve family problems. One lawyer believed that the level of emotion that someone brings to the table is often directly proportionate to the time and money that is necessary to resolve the issue. In response, some lawyers developed practices to help their clients reduce their aggressiveness. They may for example say:

- “Let’s take 10 minutes to talk about how you feel;”
- “If you participate in creating warfare, you’re perpetuating it;” or,
- “If I was representing the other side, I would have recommended the same thing.”

They may also do the following:

- Talk about the limits of the law and what the law cannot do,
  - for example, that a judge will not necessarily tell them that they are right if this is what they want to hear;
- Ask clients to visualize five years in advance; or

- Use a hypothetical to help clients understand their behaviour without blaming them
  - this method is also used by therapists working with children and adults.

Lawyers explained that these techniques help manage clients' expectations. That said, some lawyers did not believe that it was their job to deal with their clients' anger and did not appear to take steps to manage their expectations. Non legal professionals, some of whom work in the mental health sector, still find that given the level of adversity created by the legal system, and regardless of efforts made by lawyers themselves, it is still very difficult to collaborate with anyone in the legal field.

Despite concerns about lawyers, the great majority of people who self-represent do not choose to do so, according to a legal clinic lawyer. They do so because they cannot afford legal services. Some may also do so because of a previous bad experience with an incompetent lawyer. However, most people would like to retain one if they could afford it. Lawyers who represent clients in disputes where the other side is unrepresented do not find it easy. The lack of representation on one side creates an imbalance that can drive up time and cost of litigation. Judges also find the high numbers of unrepresented litigants problematic. At the same time, from an access to justice perspective, they want to be fair towards them, which puts them in the difficult position of ensuring fairness while maintaining their impartiality. Issues related to unrepresented litigants are linked to broader questions around the cost of the family justice system, to which we will come back in the last section of this paper.

As much as emotions have to be acknowledged and dealt with, most likely by users' personal support networks as well as mental health workers, lawyers must maintain boundaries and not absorb their clients' emotions. Family law is a very demanding practice area and consultation participants believe that family law lawyers should receive more training to manage their clients' and their own emotions. Lawyers mentioned that it was difficult to deal with a lawyer on the other side who took the case personally. They also acknowledged that there was a fine line between blaming clients

for their behaviour and helping them understand how a client's behaviour may positively or negatively influence this client's capacity to resolve his or her problem. Users confirmed that they did not like feeling judged by their lawyer. Lawyers mentioned that having a triage approach to cases, which means that they detect cases where emotions were high as well as cases that need urgent action, and deal with these cases differently than regular cases. They found that triage helped dealing with clients' emotions because they could foresee what cases would be more demanding than others. This triaging can happen at any time during the professional relationship as some issues may be uncovered during the process of representation. In short, some suggested that professional development for family law lawyers about maintaining a professional distance and managing clients' emotions may be an important component of building trust between lawyers, between lawyers and other professionals, as well as between lawyers and their clients.

#### *10. Relationship Between Professionals*

This section will focus on the relationship between professionals and in particular between lawyers and other professionals, as well as between lawyers themselves.

##### *a. Trust*

The lack of trust between lawyers and other non legal professionals, social workers for example, is well captured by this quote:

*Most lawyers don't refer to social workers to help people deal with their emotional reactions to divorce. Family violence is often ignored or legal advice may downplay the importance of the fact that abused women are not on an equal playing field with their abusive partner. (Burlington Counselling & Family Services)*

There are many ways to build trust between professionals. One way may be to interact more frequently. Another way, as the above quote suggests, may be to recognize and value each professional's area of expertise.

*b. Civility*

One lawyer mentioned that civility between lawyers, who will sometimes represent each side of a dispute, varied from region to region. She mentioned having a good relationship with most family law lawyers in her region but that it was difficult to deal with some lawyers in other regions. In other words, lawyer culture and attitudes vary and not all lawyers apply the same level of civility in their relationship with their colleagues. The degree to which lawyers are friendly towards each other impacts the level of adversity in dispute resolution and the quality of service delivery, for example, as it may or may not encourage the development of mentoring relationships.

*c. Power Imbalances*

Lawyers, lawyer-mediators and mental health professionals also mentioned that power imbalances between lawyers and other professionals make collaborations difficult. Despite these tensions, many non legal professionals recognize the importance for their clients to receive quality legal advice and try to convince their clients to consult a lawyer.

*d. Reluctance to Collaborate*

There are also tensions within the legal profession, between lawyers who have diverging philosophies about how to approach family problems. Some prefer an adversarial approach and others, a collaborative one. These disagreements lead some lawyers to be critical of their own profession:

*The worst mistake is to commence a proceeding too quickly. If there is hope for a principled resolution, that should be explored first, without firing off an issued application. "We", meaning lawyers, already know how to avoid this mistake. Many of us don't make the effort required to work on a reasonable resolution. It is easier to start an application. The lawyer also makes more money this way, and responsibility for the outcome is shifted to the court. (A lawyer)*

According to some workers and users, lawyers who do discuss all options with their clients, do not always explain collaborative options very well:

*Legal professionals do not perceive information dissemination and referrals as part of their job. (Association for Better Care of Children)*

One lawyer explained that she gives all options to her client at the first meeting. Options include mediation, collaborative law, unregulated mediation, arbitration and litigation, among others. It takes her about one to one and a half hour to explain this to her client. A user reported being forced to make a decision about going the collaborative route after only a half hour of explanation from her lawyer. She decided to try mediation but it failed. In addition, she reported that her ex-husband refused to use the services of the court appointed mediator who was working on a sliding scale, which meant that she was forced to pay double the price. This user mentioned that she would have liked to receive a legal opinion about what would be appropriate in her case, before starting any process. She also thought that mediators should be regulated through a professional body. The Ontario Association for Family Mediation currently provides accreditation for mediators.<sup>12</sup> However, membership in this association is not mandatory to provide family mediation services in Ontario.<sup>13</sup>

*e. Collaborative Law's Multidisciplinary Approach*

According to one lawyer, the basic principle behind collaborative law is that you are not allowed to talk about positions at the beginning. The process starts with an exchange of information, then there is a brainstorming session and finally decisions are made. Lawyers who practice collaborative law, however, stated the following reasons NOT to choose the collaborative route:

- It is usually not ideal when there is physical violence, severe emotional difficulties, mental deterioration and power imbalances;
- It does not work if there are drug, alcohol or severe mental health issues;
- Financial imbalance in itself can be a factor but it depends on whether one party is ready to recognize that the other party who does not have financial resources has the right to spousal support; if the richer party acts in good faith, collaborative law can happen even if parties are not financially equal; and

- If the other side is a “control freak” and has always been, if there is an urgent need for money or if children are gone, if one party does not work and does not have any money, court is the preferable route.

One prerequisite to the use of collaborative law is that each party has the financial resources to be represented by a lawyer, which makes it only accessible to a few. However, if more public resources are put into legal services, consultations did not reveal any compelling reasons why resources could not be split between lawyers who practice traditional litigation and those who adopt a collaborative approach, if an adequate process is in place to direct people to appropriate services. Consultation participants also explained that collaborative law can also involve a multi-disciplinary team approach. Some lawyers and mental health professionals who participated in consultations argued that resources should be put into a multidisciplinary team approach to the collaborative process (perhaps by various sources of government funding). They believed that working as a team helped detect problems earlier and ended up saving money.

*f. Coordinating Therapy and Legal Services*

Because voluntariness and confidentiality are so important to them, counsellors often find it incredibly difficult to collaborate with adversarial lawyers who would not hesitate to use any kind of information, such as information related to someone’s therapy, to attack the credibility of the other side. According to consultation participants, this contradiction goes as far as to prevent users from obtaining mental health services for fear that this may be used against them in the court system. This could be used as a way to argue that they do not have the capacity to care for their children, for example.

Consultation participants mentioned that lawyers are also often used to trying to get things done quickly and can push to accelerate other professionals’ processes. However, counsellors know that quick counselling does not work. This said, counsellors were not against legal services. Most of them recognize the need for legal services in order to solve – and to solve quickly – the legal side of disputes. However, despite

lawyers' ability to deal with certain issues quickly, according to counsellors, the legal system as a whole did not respond very quickly. Lawyers mentioned, however, that legal issues can also become more complex than they appear on the surface, resulting in a longer dispute resolution process. Some social workers and lawyers agreed that unsolved legal issues and a long and increasingly adversarial legal process can negate any therapeutic process. These factors do not help efforts to foster effective collaborative dispute resolution.

Despite difficulties in coordinating therapy or social work with the legal process, consultation participants mentioned that such services were crucial in solving family challenges and problems. The same applied to users who successfully solved issues without recourse to professional services: they coordinated the emotional side of things with everything else involved. According to some consultation participants, these considerations are even more important when children are involved. They mentioned that parenting is a long term responsibility and sharing this responsibility after a separation is a challenge especially for parents who did not share care-giving activities during the relationship. Parents do not have a choice but to have at least minimal interaction with their children and with each other after they separate. Counsellors and social workers have skills to help people understand their parenting role and transition from parenting together to parenting separately. In high conflict cases, social workers can also act as parenting coordinators, which means that they can help parents develop parenting plans as well as mediate and arbitrate disputes that arise in the application of this parenting plan. In scenarios that involve violence, a clear separation between the people involved needs to be put in place to protect them. In short, consultation participants believed that coordinating social and legal services was an important consideration for family justice reform.

### *11. Need for Accompaniment*

The LCO spoke with legal support workers and transitional support workers who are not lawyers but have some legal knowledge, either by training or by experience, and play an important role in the family justice system. These workers typically work at legal

clinics or shelters for women who have been abused. These workers provide comprehensive accompaniment services for users. They help people follow up on their case. They help with the legal aid or court paperwork. They provide accompaniment to various meetings and court appearances as much as they can. They help users keep everything they need for their case together. They provide some emotional support. They help users deal with social service agencies and, for example, help convince such agencies of users' credibility. These workers are invaluable in order to provide support to those who do not have a helpful network of support in their personal lives, such as friends or family, and who have limited financial resources, which means that they cannot have access to other professional services. Legal support workers are not lawyers, however. As there are usually not enough lawyers working for this segment of the population, legal support workers face an unfair burden of work when users do not have access to lawyers. Their services would be more helpful if they worked in collaboration with legal aid or pro bono lawyers as well as other professionals.

### *12. Responding to Children and Youth*

During consultations, discussions about users' experiences often reflected only adults' viewpoints. Children's voices were difficult to hear. Despite this difficulty, the LCO consulted with the following individuals or groups:

- An Ontario-wide Francophone youth group;
- A Toronto-based Anglophone youth group;
- Adults who shared their experiences of facing family problems in their youth; and
- Professionals working with children and youth.

Both adults and children said that children do not have a voice in court, but can have a voice in parenting coordination, mediation, social work and psychology. Many believed that any worker dealing with family issues should consider children's psycho-social development and not encourage battles between parents. A lawyer explained that parenting plans that are amicable enough to provide for children's needs were better for children and more cost effective than others. However, according to some of the stories the LCO heard, many children find themselves in extremely hurtful situations that can



create damage beyond one generation. This is why the LCO believes that it is important to hear their stories and for their well-being to be taken seriously.

*a. Francophone Group of Seventeen Year Olds*

As part of its consultation with the province-wide Francophone youth group, the LCO asked youth where they would go if they faced a family issue. These youth had not gone through family challenges and problems themselves but had friends who had. They talked about their perception of entry points in general.

Three 17 year old youth as well as one 21 year old adult working with youth mentioned that they would not necessarily know where to go if they faced a family issue. One said that he may phone up a lawyer. Another said that she would hope that the dispute be solved by other means than law, such as therapy or mediation. She mentioned that parents would probably try to solve things without telling their children so that children can be protected from their conflict. She believed adults had the capacity to come to an agreement before consulting a lawyer. Others mentioned that schools and especially career counsellors were good resources and that they would feel comfortable approaching them if they faced a family issue. Some of them who lived in rural areas mentioned that in rural regions, career counsellors may have less training than in other regions, and may not be as helpful. However, they thought that in small schools you could approach virtually anybody for help. In schools where mediation was used, youth knew about it and thought about this as a way to solve family issues. With appropriate training regarding family justice issues, school staff can therefore have a positive role in preventing family problems as well as difficulties in their resolution.

Youth also shared their thoughts about the organization of family relationships. A seventeen year old explained that domestic tasks are complicated and a source of conflict at her home. She said:

*It is a question of communication. Each person who lives with others is educated in a specific way. It's a question of values. There can be value conflicts. It's important to*

*understand that there are differences and it's important to be able to see that not everyone sees things in the same way.*

A twenty-one year old man explained that his mother taught him to clean so his mother was responsible for him breaking gender stereotypes. According to him, people need to understand that what goes on in a house is an agreement between the people who live there, the parents mainly, and that each couple is different. He had trouble seeing how we can teach negotiation in couples as each couple is different. He seemed to think that this is something that you learn as you go. What he learned in his household was a function of the values and rules established within this household, which we referred to as the “law” within the family earlier in this paper.

Youth also expressed their views on domestic violence and bullying in schools, issues that we will explore in the context of family problem dispute resolution in another section of this paper. They mentioned that there were campaigns against these problems in schools. They thought that it was good to have these campaigns. However, one youth said that no one would have conducted such campaigns about violence in his Catholic school because it would have been perceived as a source of shame. Other youth said that although there had been campaigns against bullying, for example, these campaigns did not necessarily produce concrete results. In short, based on these young people’s experiences and understanding, it seems that youth continue to grow up in family and school environments that are not safe in Ontario. Recently, the provincial government decided not to implement a new sexual education curriculum that would have improved children and youth understanding of sexuality as well as LGBTQI issues. Following some controversy about the content of the reformed curriculum, the government has chosen to continue using the sexual education curriculum which has been in use since 1998.<sup>14</sup> This curriculum, for students around 12-14 years of age, focuses on “age appropriate” questions about sexuality, and in particular “the physical, emotional, interpersonal, and spiritual aspects of healthy sexuality” as well as abstinence.<sup>15</sup> The new version of the sexual education curriculum, proposed in 2010 and subsequently revoked, recognized that “students at this age are developing their sense of personal

identity, which includes sexual identity.”<sup>16</sup> Further, it would have taught young adolescents about “delaying sexual activity; preventing pregnancy and disease; understanding how gender identity and sexual orientation affect overall identity and self concept, and making decisions about sexual health and intimacy.”<sup>17</sup> The reversion to the old curriculum is an example of a missed opportunity to use school as a helpful entry point and to provide Ontarians with adequate tools to prevent family challenges and problems.

*b. Anglophone Group of Children from Eight to Thirteen Years of Age*

This group of six children from the ages of eight to thirteen discussed their experiences in relation to their parents’ separation or divorce. This group was therefore younger than the previous one and each youth had experienced family problems first hand. They were all very articulate and clear about what they thought and felt. They were brought together by a counselling service with which they had been involved. The children and their parents signed written consents to participate in this consultation. The head of this counselling service, who has significant experience providing services to youth and their parents, co-facilitated the meeting.

These children’s parents’ separation and divorce had a very negative impact on them. When asked what they remembered from their parents’ separation or divorce, it took only a few minutes before children talked about their parents fighting or having arguments. One boy talked about being woken up in the middle of the night by his parents’ fighting. Two girls talked about having to call the police themselves for fear that their father would choke or badly hurt their moms. One youth mentioned that she had to stay in a shelter with her mom for a while after the separation. Another one mentioned that it was no surprise to her when her parents separated and that she was relieved when her father left. For all of these children, their parents’ separation or divorce was an extremely difficult time.

Young people in this group had quite a few comments on therapy. One youth observed that she and her mother were doing therapy but that it was really her father who needed

it. She was hoping that he would one day decide to do therapy but she was convinced that he didn't care at all about her, her mother or the family conflict. She also wondered where the therapy was going but didn't feel that she could say this to her therapist.

Many girls had a very negative image of their father who had been violent against their mother or themselves. They used strong language such as "he's a loser" and "I hate him" when talking about their father. They appeared to be disgusted by their father's behaviour. One girl said she was afraid of her father. For another girl, though, it was important to say that she still loved her father. Boys found it disturbing to hear girls use such strong language to describe their fathers. At the same time, one boy seemed to wonder why fathers often behaved in inappropriate ways. Another youth felt that his mother's side of the family had a more negative perception of his father's side of the family than the reverse. He said that in the end it was upsetting when one side talked behind the back of the other. Although girls were particularly harsh in their description of their fathers, they also expressed frustrations in relation to their mothers.

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

One eleven year old thought that it was unfair that she could not be heard in court because she was not twelve years old. She also felt that an audio recording of her police testimony did not sound like her anymore and did not reflect what she thought. She believed that she should have the right to testify in addition to this recording. The LCO asked children at what age they thought children should be allowed to voice their opinions on their own. They said that it depended on the person and that it was difficult to pick a specific age. Some suggested to give children a quiz or that a teacher could evaluate their capacity to express themselves. However, one youth thought that all children had the right to their opinion, no matter what their capacity level was. They seemed to appreciate the opportunity that the consultation gave them to say what they thought.

The LCO asked children what helped them cope with their family problems and what coping mechanisms they would recommend other youth. Children provided the following advice:

- Draw, listen to music, sing;
- Play video games, watch TV or a movie;
- Go see a therapist to get things out of your system;
- Never stay depressed, stay happy;
- Write a diary;
- Get a mini punching bag or scream in and beat your pillow;
- Say what you think but be careful about who you talk to (one youth reported being devastated when she learned that one of her friends told what she had gone through to the whole class);
- Talk to people you trust;
- Talk to a friend or a family member, like a cousin, who has been through this before;
- If someone's not listening, try another coping mechanism;
- Ride your bicycle;
- Write a letter and don't send it;
- Get your hair braided;

- Date someone; or
- Imagine stuff, the future, something amazing.

One youth added that if someone you know is going through this, it was important to tell them that you know how they feel.

All these children experienced feeling angry and being tempted to have or having aggressive behaviour. They each had their own strategies to deal with anger. One girl mentioned that when she felt like going up to her room and hitting the wall, she managed to talk to her mother instead. Another one mentioned that after having a fight with her mother, she would go to her room, lie down and look up at the ceiling, thinking. She would then go back to her mom and sometimes get a hug. She liked getting a hug. One boy mentioned that since his parents' separation or divorce, he was thinking too much all the time and he was questioning everything, something he didn't use to do before. Another one mentioned that he once beat up another kid at school and felt horrible afterwards. Children agreed that violent behaviour towards other children did not solve anything but they believed that they needed a way to get the anger out of their system, hence their recommendation of punching a mini punching bag or a pillow.

In addition to providing these children with a voice, this consultation meeting revealed that youth experience gendered and racialized oppression at an early age. Because of their age, they also have different degrees of decision-making power, for example, regarding signing documents, consenting to sexual activity or testifying in court. They also have to live with adults' decisions around parenting, which have a significant impact on them. These different degrees of dependency make them vulnerable and also suspicious of adults' decisions about them. Serving children well requires counsellors and lawyers who work with children or have them as their clients to keep these power dynamics in mind.

### *13. Domestic Violence and Legal Bullying*

Many users and workers believe that the family justice system still deals inadequately with the problem of domestic violence and legal bullying. In this section, we use the term domestic violence mainly to refer to intimate partner violence but also more generally to refer to violence within the home, between family members. We use the term legal bullying to refer to situations where someone uses the legal system to intimidate someone through threats, inappropriate number of motions or taking a highly adversarial approach, for example. Other consultation participants mentioned that there is a lot of misinformation circulating about domestic violence and few opportunities for regular quality training about them.<sup>18</sup> As one family law lawyer put it, criminal law is too harsh on minor assaults and not harsh enough on serious assaults. In addition, although criminal and family law are necessary to solve some of these cases, the most positive results in terms of the reduction of domestic violence and legal bullying appear to be achieved through education and self-esteem building processes outside of the law. At best, the family court system fails at addressing these issues and at worse reinforces them by providing litigants with tools to perpetuate their behaviour.

#### *a. Domestic Violence*

Perceptions of how the family justice system deals with domestic violence vary. Some workers who probably participated in many discussions about this topic over the years appear to feel that they know enough about it. They are not necessarily interested in focusing on this aspect of family justice. Others appear to be irritated by the feminist discourse around family violence without demonstrating an understanding of such discourse. Some believe that men's voices are not often heard when discussing domestic violence, but do not seem to see in a positive light the efforts that have been made to hear women's voice on this issue. As various consultation participants mentioned, more work therefore needs to be done to go back to the bottom line: domestic, family or other types of violence create long term and often intergenerational harm; not all violence looks the same and is extreme in nature; all violence must be taken seriously; and a lot of patience is required to detect violence and evaluate allegations of violence in the family justice system. Consultations with children made

clear that they are deeply affected by violence between their parents and the anger they experience starts building gender stereotypes in their minds and sometimes, when their strategies to deal with their anger fails, pushes them to bully other children. There is therefore no doubt that domestic violence remains a serious issue.

Moreover, consultations revealed that domestic violence and legal bullying are still frequent. Most users with whom the LCO consulted, including those who were not brought together by workers who offer services primarily in the area of domestic violence, had experienced one form of domestic violence or another. Domestic violence remains common, even if the discourse around domestic violence may have changed over the years:

*Partner violence is one of the most frequent reasons for referral to the Society. (A children's aid society worker)*

*About 14% of supervised access cases involve domestic violence. (A supervised access worker)*

More than one user came forward during consultations to tell stories of domestic violence and disability. A user talked about pressure from extended family whose members belong to a racialized community, to stay with an abusive partner. Problems related to domestic violence can therefore take various shapes and forms. Many users discussed the fact that people around them, including workers such as police officers or judges, did not recognize that they were facing abuse, even when presented with what users believed to be convincing evidence.

Still, many workers discussed how they identified domestic violence cases. For some lawyers, it appeared to be easy. Clients sometimes self-identify and some even asked lawyers whether they have experience dealing with domestic violence cases. However, one lawyer mentioned that sometimes people do not identify as a victim directly. They tell their stories and sometimes even downplay the aggressor's behaviour. Some reported that emotional abuse was more difficult to identify than physical abuse and



believed that minor physical assaults may be the sign of something more serious. Many users explained that they did not see their situations as domestic violence until very late in their relationships. Some reported that they only realized it when a counsellor told them that this was abuse. In short, physical, emotional, psychological, sexual, spiritual or financial abuse is not always easy to identify for a user or a worker. Developing sophisticated screening processes at intake as well as throughout service delivery is not an easy task. Many believed that workers working in the family justice area should receive regular training about domestic violence. The LCO notes that the reluctance, impatience or frustration expressed by some users and workers in discussing this issue may play a role in preventing identification of domestic violence.

Some male users who participated in consultations disclosed having been found guilty of assault and others discussed more generally emotional and financial issues they faced in relation to relationship breakdown. They mentioned that, although at first they were reluctant to attend men's support groups, once they did, they wished they had done so sooner. Counsellors, who work with men who are required to attend therapy by the court, mention that mandatory therapy does not go very far. Voluntary men's support groups around issues of domestic violence are less known and there are fewer services for them than for women.<sup>19</sup> Some workers mentioned that it was too early to fully see what positive impact these groups can have. Others who offer group therapy to domestic violence victims as well as family members who face serious difficulties, including men, have seen positive transformations in their clients' lives. The LCO noted that in general some men who participated in consultations would like to see an increase in services offered to men in relation to custody as well as domestic violence issues.

Most women involved in domestic violence situations had suffered various forms of abuse perpetuated by a male partner; some had suffered abuse by their children; and some adults also mentioned having witnessed their mother suffer acts of domestic violence as a child and suffered themselves from it. As we have seen in a previous section about children and youth, children suffer deeply from being exposed to domestic

violence. Most of the women who used shelter and transitional support services felt that these services were very helpful. One girl mentioned that she found shelter personnel kind when she temporarily lived there with her mother. Some workers mentioned that the current shelter and violence against women system tended to serve relatively young and able women well. They thought that there could be improvements in responding to the needs of older women, women with disabilities, women who are not custodial parents after a separation, women who are members of the LGBTQI community and racialized women who do not speak English or French.

*Many seniors who face abuse do not report or even talk about their situation for fear of being placed into a care facility. (The Ontario Network for the Prevention of Elder Abuse)*

In its recommendations, the LCO will take into account the need for broadening the scope of services related to domestic violence. The LCO older adult project has also identified elder abuse as an issue and provides another forum to discuss it.<sup>20</sup>

#### *b. Legal Bullying*

Regarding legal bullying, which may or may not be linked to a situation of domestic violence, consultation and survey participants were asked how they would define the notion of legal bullying. They provided different perspectives, including the following:

*In our view, “legal bullying” is a reflection of the systemic failure in the justice system. The legal community and extended divorce services are the perpetrators of “legal bullying”; clients wishing to abuse the other party are merely the catalyst. (Canadian Equal Parenting Council)*

*I would describe “legal bullying” as the use of threats to use the legal system against someone (e.g., threatening to go to a lawyer or to the police to control the other person’s behaviour, even if the threat is unwarranted). (Women’s shelter worker)*

*All lawyers in my region are legal bullies. (A user)*

Abuse of the justice system by one party against another is related to systemic imbalances of power in Ontario. This phenomenon is not only restricted to the family area. There are many stories of economically powerful litigants who force people to court. This does not mean, however, that there should not be mechanisms to identify and stop legal bullies. The justice system has developed some mechanisms to deal with such abuses as well as with imbalances of power. However, according to both users' and workers' experiences, many people still fall between the cracks.

In a family justice context, legal bullying is also linked to power imbalances within families. Users may want to prolong court procedures and bully others for different reasons. These reasons may include not accepting emotionally that a relationship is over or wanting to continue exercising control over their former partner as they did during the course of the relationship. Consultation participants also mentioned that lawyers sometimes used delaying tactics to make money, which made them bullies. Others mentioned that schools sometimes bullied non custodial parents who wanted information about their children. Legal bullying in the context of family law can therefore take many forms.

Regarding the court system, many users mentioned during consultations that judges could do a better job at stopping legal bullies. It may be interesting for these users to hear what Superior Court of Justice judges have told the LCO on this matter:

*If there are portions of an affidavit that are inappropriate they should be struck. Costs should then be imposed. (Superior Court of Justice (SCJ) judges - Central South of Ontario)*

*A manipulative and abusive party may re-victimize the other party – but the answer is not to exclude him or her from the process by cost orders or orders that the pleadings be struck or that the matter proceed on an undefended basis: the risk is that the matter may be adjudicated on something other than the merits and not in the children's or the parties' best interests. The answer is to prevent further filings or hearings without leave*

*and, importantly, to compel compliance with orders already made, through contempt proceedings and/or a temporary stay. (SCJ judges - North East of Ontario)*

*The civil side has its own share of vexatious litigants with all the same hallmarks as what we see in family cases. We should not hesitate to use the overarching requirement that we deal with cases justly, with a proportionate use of court resources, to make orders that limit further motions/conferences, shut down vexatious litigants, enforce time limits, and fix trial dates that cannot be adjourned. We must get over our view that all cases can/should be settled. Many can't, and should not be. There is nothing wrong with trying cases and imposing decisions on those who can't/won't make them for themselves. (SCJ judge - Toronto)*

#### *14. Perception of Judges*

While lawyers were often criticized by consultation participants, including by other lawyers, judges were another group about which consultations participants were critical. Judges are, of course, former lawyers, and given that the legal profession holds a significant amount of power in solving family disputes, both workers and users have high expectations of them. Perception of judges is also affected by the power dynamics between legal and non-legal professions. In addition, it is important to consider that once users are at the point where they cannot solve their dispute and need a third party to make decisions for them, they are bound to be unhappy about the decision, although relieved that a decision has been made. As one Ontario Court of Justice judge said, “consumer satisfaction” cannot be used as a criterion in evaluating the effectiveness of the family justice system. However, users’ voices and opinions must still be taken into account. Their voices must be understood in the context of the emotional landscape of family disputes.

Some participants perceived that family court judges have their own internal power dynamics, including some level of competition between Ontario Court of Justice and the Superior Court of Justice judges. They believed that these power dynamics did not help users and workers because, overall, they create adversity in the family justice system. Consultation participants also pointed out that some judges did not seem to have much

contact with court staff; this does not create a collaborative environment. In short, hierarchies in the court system contribute to creating adversity. Despite this criticism, some judges are very conscious of the value of staff's work:

*It would also be helpful if our court officers (CSOs) had their job descriptions revised to recognize that the job of a Family Court CSO is much different than in other areas of the Superior Court... A good CSO is invaluable in helping to organize and vet the list, while the judge is dealing with other matters in court. (SCJ judges – Central East)*

Many consultation participants pointed out the need for more training for judges. Some mentioned that not all judges were familiar enough with the *Family Law Rules*.<sup>21</sup> However, most were concerned with judges' understandings of social issues, namely domestic violence and high conflict cases, and LGBTQI, race and disability issues. Some Superior Court of Justice judges expressed the need for more training themselves:

*It is hard to justify the tremendous cost of bringing all of us to these conferences where, often, very little is relevant to our work in Family Court.... We should hear from experts in domestic violence but not just "victims" – both perspectives should be presented, with input about strategies that would/would not be helpful in dealing with both sides.... Courses like the recent "managing the domestic violence case" course through NJI (National Judicial Institute) should be scheduled each year, far enough in advance that we can request a nonsit with our yearly schedule request, so that we can attend if we wish. (SCJ judges – Central East)*

Many consultation participants appeared to feel that there is still gender bias in the court system in Ontario. A few consultation participants expressed concern with a bias against men and others against women. Some men felt that women could more easily

get custody than men. They also thought that men could more easily be falsely accused of domestic violence than women. Some women felt that their credibility was more often questioned than men's, which means that they often felt that they were not taken seriously. Members of the LGBTQI community mentioned that, because they have been historically and up until very recently unfairly treated by courts, they have a hard time trusting the court process, especially in the area of family law.<sup>22</sup> In their experiences, workers and users felt that these biases were perpetuated by female and male judges alike.

Although both workers and users criticized judges, most admitted the need for an authority figure, such as a judge, to solve certain types of high conflict family cases. Similarly, although judges complained about the high numbers of unrepresented litigants and the lack of legal aid funds to provide people with legal representation, they also mentioned that they believe in the right of people to go to court if they wished to do so. Judges are therefore not necessarily against providing tools for people to represent themselves. In short, comparable to the relationship between lawyers and others, the relationship between judges and others involved in the family justice system is an area that needs to be explored in thinking about reform.

## **C. Entry Points**

### *1. General Remarks*

Consultations participants identified factors that influence why people find themselves at one entry point or another. These factors and corresponding examples include:

- How people see their problem, for example as legal, economic or spiritual,
  - someone who wants to save their marriage may consult an authority from their faith community;
- Whether they have financial resources,
  - someone who has financial resources would more easily get professional help;
- How serious the conflict is,

- more serious conflicts lead people to legal or mental health professionals, courts, violence against women services, policing and child welfare services;
- Whether recourse to the family justice process was voluntary,
  - if a person who needs social assistance does not feel that they have a choice but to sue their ex-common law partner for spousal or child support,<sup>23</sup> or
  - if a third person called a children's aid society;
- What stage of the relationship they are in, whether pre-committal, ongoing relationship, separation and dissolution,
  - if a person has been in a long-term relationship for many years and all aspects of their lives are tied to the other person, they may be isolated and find it difficult to find close friends or family members to talk to;
- Whether and to what degree they are aware of family justice related services,
  - if someone knows they are entitled to child support, they may go to a local legal clinic or on the Internet to try to get more information;
- Whether they are in a difficult emotional state when issues arise,
  - persons living with depression may feel isolated and only reach out for help during an extreme crisis by phoning emergency lines;
- How they perceive the justice system,
  - the last thing people who lack trust in lawyers would do is to phone one up; and
- Whether children are involved,
  - parents find themselves more frequently around schools than non parents and therefore have access to information their children's schools provide about legal, health or social services.

These factors and examples demonstrated how understanding users' experiences helped evaluating their likelihood of finding themselves at one entry point or another. They are therefore important to take into account when trying to improve network and referral systems between entry points. The LCO will continue identifying other relevant factors during the last phase of its research.

## 2. Selected Examples of Entry Points

Consultations helped better understand various entry points' functioning and provided helpful entry point case studies. This section will present entry point case studies provided by 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 FLICs. The LCO will take these remarks into consideration while developing recommendations for reform.

### A Professional Who is a Member of a Racialized Minority

*A woman comes into the office of the head of an interpretation service with a huge black eye and tells her story. The head of the service happens to be South Asian and qualified as a lawyer but does not practice anymore. The woman has a seventeen year old child. One day, she decided that she didn't want to put up with husband's behaviour anymore. She left her home. Later on, when she came back to pick up her computer, she discovered that another woman was in the house with whom her husband had a relationship. Her reaction was to yell and scream, following which her husband punched her. She dropped her computer and was in pain. She started banging her head on the ground. The husband called the police and told them his wife was going crazy. She did speak English but didn't want to speak when the police officer arrived so the police officer took her husband's statement only. The police officer gave her his card and told her to go to the station if she wanted to make her statement. She wasn't sure if she had been charged with anything. No one called the hospital. There was no follow up. Now, she doesn't know what statement to make to the police. She wants to separate and to have equity in the house. She tells the head of the interpreter service that she doesn't know where to go to get help. The head of the interpretation service knows that she came to her because they belonged to the same racialized minority group and because she knew that she was a lawyer. The head of the interpretation service feels that women shouldn't have to walk in her office to ask about family issues and that family services that include criminal law issues should be more accessible. (Case study provided by an interpretation service)*

This interpretation service manager saw herself as an entry point because she had a combination of characteristics: she was a member of a racialized minority group and a



lawyer. It was therefore the combination of her skills and identity characteristics that made a difference. Many professionals who participated in consultations reported being identified as entry points by members of their identity-based communities (racialized, language-based or LGBTQI communities, for example). Such professionals can be helpful entry points if they are able to direct people to appropriate services. In this case, for example, the woman could be directed to a community centre that offers services to women who faced domestic violence, and preferably to South Asian women in their mother tongue. This would be a safe way for this woman to access information regarding mental health and legal services.

### Language and Culture Specific Community Organizations

*Ms. Liu<sup>24</sup> and her husband have been married for many years. The children are all grown up. Neither of them works but they own a house which is rented out to tenants. They live in separate rooms. Ms. Liu has moved into the basement, while her husband remains in their bedroom. He told the tenants 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 went online to look for Chinese speaking lawyers. She has phoned up several lawyers but has not met with any. She was told by lawyers that even if they draft an agreement for them, her husband may still change his mind anytime and the case will go to court. If she uses her savings to pay for a lawyer, she will have no money to live on. If only she knew that an agreement would work, she would be willing to spend on legal fees but if it's not the case, then it is a waste of her money. In her mind, the law does not mean anything to her husband, and there is nothing she can do. Ms. Liu went to see her MPP who then referred her to a legal clinic serving the Chinese population. Ms. Liu has never heard of any family law information websites.*

*She does not understand English and must rely on Chinese speaking lawyers. Even the information brochures need to be in Chinese. If she cannot understand the brochures, someone has to explain them to her. She is in her 50's, and 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. (Case study provided by a culture and language specific legal clinic)*

In this scenario, as in the first one, the woman involved first talked to a professional who belonged to her own language and cultural group. Because she was resourceful, she went as far as to talk to her MPP, which led her to find an appropriate legal clinic that provides information about family law in her mother tongue. However, after learning about her legal options, she was not be able to continue further because she could not find a Chinese-speaking lawyer who would be willing to take her case on a *pro bono* basis or, if she qualifies, through Legal Aid Ontario. Even well intentioned services, which could be helpful entry points, are unable to be helpful because of the lack of free or affordable supplementary services, such as legal services in this case.

### French Language Services

The previous case study provided an example of barriers faced by Ontarians who do not speak English. Consultations confirmed that barriers faced by the Ontario Francophone population are quite different. The Francophone population in Ontario expects to receive services in French because of the legal and cultural framework for the provision of French language services in Ontario. However, consultation revealed that this legal and cultural framework is still generally poorly understood by both users and workers in Ontario. Ontarians are, of course, aware of the existence of two official languages in Canada. They are also aware of the existence of a Francophone minority in Ontario, especially if they live in a region where there is a high concentration of French speakers. However, they are not always aware of the legal requirements to provide services in French. Consultation revealed that some Francophone users are not aware of their rights to receive services in French and many Anglophone workers, as well as users who do not speak either official language, do not understand how to identify Francophones and provide adequate services to them, which does not help Francophone workers reach out to people who need their help. Consultation participants discussed this situation in great detail in the context of family law but mentioned that the problem of French language service delivery in Ontario was not restricted to this area.

As we have seen in the previous case study, in the context of family justice, the connection between culture, language and emotions is important. At a cultural level, as for other language or cultural groups, receiving services in French and in a way that acknowledges cultural differences, helps in dealing with difficult emotional issues.

In relation to other language groups, including English speakers, the Ontario Francophone population is placed in a delicate position. On one hand, they are perceived as privileged in that they benefit from a legal framework protecting their rights to receive services in French. On the other hand, when they try to obtain services in French, they are often met with surprise and unresponsive attitudes from workers who are not aware of their rights or of appropriate ways to respond. The Project Head, for example, phoned or walked into FLICs in Toronto and direct service workers appeared to be surprised to be addressed in the French language. When they were able to recognize the French language and knew that there was an employee who spoke French at their office, they appeared to hesitate before transferring the call or not to have an effective system in place to respond. This left the impression that one would be referred to any French speaking employee and not necessarily to an employee who knew the answer to the question. Based on these observations, it is likely that people who face highly emotional family problems will not find government services, which promise but do not deliver French services, to be helpful entry points.

Workers mentioned that even when they were able to offer services in French, users would sometimes decide to proceed in English for fear of delaying the process, for example if they had to wait to have access to a bilingual judge. This appeared to be frustrating for many workers who make efforts to provide services in the French language. Their efforts at providing such services were fruitless unless more workers in the system had the same capacity. Even in Ottawa, the LCO was told that it was not that easy to find a Francophone or bilingual family law lawyer.

Workers who have various levels of French language capacity can become important entry points for the Francophone population. However, they need to make their

language capacity visible. For example it is important that, at the first moment of contact, the worker or the service has a welcoming message in French. Even if the user starts the conversation in English, it is up to the worker to signal that they can offer services in French. The Law Society of Upper Canada's (LSUC) front desk in Toronto is a good example. The Project Head noticed that the front desk person always responded to her in French when she visited the LSUC in person.

As mentioned before, Francophone workers reported resistance from Anglophone workers to refer users to Francophone centres. Again, this appeared to be connected to a lack of capacity to identify Francophones and a lack of understanding or willingness to work collaboratively beyond cultural differences. In addition, some Francophone workers perceived the issue to be related to funding structures. They believed that the emphasis on statistics regarding the number of clients when it comes to receiving funding creates tension. They observed that some Anglophone centres' appeared to be afraid of losing both clients and funding if they made referrals.

Francophone workers have identified their own strategies to raise awareness about the need for French languages services and improve service delivery:

- Putting emphasis on the emotional need to be served in one's own language, especially when it comes to intimate details about family life, because of the connection between language and emotions;
- Making efforts to establish good relationships with key workers in the family justice area and to identify people who have French language capacity;
- Explaining to Anglophone peers that receiving services in French is a question of culture, a way of living, and not just a question of language;
- Asking questions to Anglophone colleagues such as "how can I work with you?" or "What service can I offer you?" in a collaborative, diplomatic way rather than a confrontational way such as asking people why they do not refer Francophone clients to them or reminding them that they are not a translation service at the disposition of Anglophone agencies; or

- Making a complaint about the lack of French services if nothing else works.

In the context of family law and in relation to the connection between language and emotions, consultation participants explained that consulting with a lawyer was usually foreign and stressful for people and that being able to express yourself in your first language was important. They also mentioned that not having access to French speaking workers can also result in receiving poor services, for example if there are miscommunications. The area of child protection was mentioned as one where there was a lack of French-language services and where miscommunications could have severe consequences on users.

Consultation participants mentioned that it is important to note that the Ontario Francophone community is diverse. Many members of this community emigrated from French-speaking African countries, for example. Some consultation participants also discussed links between the Métis and the Francophone communities. Two consultation participants who identified primarily as Francophones mentioned during the discussion that they were also Métis. However, in their particular experiences, they mentioned growing up facing marginalization as Francophones in a small town and having developed a habit of not mentioning their Métis ancestry for fear of suffering double marginalization. Despite this difficulty, a Francophone woman running a service for domestic violence victims explained that she developed excellent relationships with women of various Aboriginal ancestries who, according to her, developed effective healing processes from which women of various cultural backgrounds who faced family violence could benefit. As the preceding example demonstrates, although in any cross-cultural exchanges there can be significant obstacles, the LCO had an opportunity to learn about examples of fruitful collaborations between various groups that can make family justice entry points more responsive to users.

#### Court-Based Family Law Information Centres

Many users and workers discussed the court-based Family Law Information Centres (FLICs). There is disagreement about how helpful they are as entry points. Some of

them, in London for example, appeared to be helpful entry points. According to consultation participants, the London FLIC was the first FLIC in Ontario.<sup>25</sup> The concept of FLICs emerged out of this region and evolved into a collaborative service delivery model. This FLIC now has a social worker working on site. They have a protocol of “in” and “out” service, that is, to determine what services are provided internally and externally and how to better coordinate them. They invested in community building for many years and therefore have an ability to make referrals. Their community building efforts also mean that they have quality control capacity, which allows them to detect the circulation of wrong information and organize training sessions to stop this. There may be a user fee for certain services, such as interpretation during mediation. Consultation participants reported that their funding model sustained providing service to about 48 people per day, which may not be realistic to implement across the province. In short, consultations revealed that there are FLICs in Ontario that appear to be helpful entry points.

In other regions, consultation participants mentioned that FLICs are entirely different. In Ottawa, one participant mentioned that the FLIC was very court centered and did not have the capacity to encourage collaborative processes. In Timmins, the LCO was told that the office is only opened a few hours a day. In the North West region of Ontario, Superior Court of Justice judges mentioned that there are no FLICs, duty counsel or mediators attached to the court. Therefore, the first case conference is often an information session about the family law process provided by the sitting judge. Judges consider this a waste of resources. Having no FLIC is unhelpful but, when they are in place, some FLICs appear to be less helpful than others.

Some consultation participants mentioned that domestic violence victims need a different physical waiting space at FLICs, for security reasons. At the Oshawa FLIC, the LCO Family Justice Project Head also observed first hand, when walking by, that there was a lack of privacy within the Advice Counsel’s and the Information and Referral Coordinator’s offices.<sup>26</sup> Clients could be seen from the large open space inside of the court building because the blinds of these offices were not pulled down during

consultations. Having to share a waiting space with an abuser or risking to be seen consulting a lawyer raises both confidentiality and security issues for domestic violence victims.

The physical space can also impact the accessibility of FLICs. In Mississauga, a legal clinic worker reported that family law duty counsel services spent one day at the clinic and provided summary advice at a shopping mall one night per week, under the 2-hour Legal Aid Ontario certificate program. The use of more or less intimidating or “friendlier” spaces than courts, such as shopping malls or community centres, may also help improve access to FLICs.

As with other entry points, FLICs can therefore be more or less helpful depending on the geographical location, funding, staffing, outreach efforts, knowledge and language capacity.

### Policing Services

*A man phones the police and tells the officer that his wife is hysterical. A police team arrives at their house. The woman who is yelling and crying doesn't speak English. She is originally from Somalia. A female police officer asks the woman to stay in a separate room. She stays with her and waits fifteen minutes. The female police officer calls for an interpreter. The interpreter arrives. With the help of the interpreter, the female police officer finds out that the woman has allegedly been sexually assaulted and that she is screaming because an object was inserted in her vagina. The police officer and interpreter team handled this case at this family's house. The woman finally calmed down after she received appropriate help. (Case study provided by an interpretation service)*

Although this example relates to criminal law, police officers who work primarily in this area frequently find themselves to be entry points into the family justice system. In this scenario, the collaboration between a police officer and an interpreter allowed for the alleged victim of a sexual assault to explain her situation. This required a great deal of sensitivity on the part of the police officer as well as knowledge about domestic violence

issues. In order to be an effective entry point, the next step in this scenario would be that the police officers refer the people involved to services where they can get information about criminal and family law. Consultation participants pointed out that police officers should refer users to sexual or domestic assault centres as well as to legal clinics that specialize in this area. The Barbra Schlifer Commemorative Clinic in Toronto and Luke's Place in Oshawa are examples of such places.

As consultation participants mentioned, police officers can be helpful entry points if they are provided with regular training on domestic violence and family law issues. A consultation with a police officer who specializes in domestic violence issues revealed that there has been such training in Ontario in the past decade.<sup>27</sup> She mentioned that police officers are generally more used to working within a criminal law framework, which means that they are not always familiar with family law, including terminology. She also mentioned that police officers in some Ontario cities, including Toronto, have a “don't ask” policy with regards to immigration status in domestic violence situations, which helps them to respond more effectively to people who may encounter a range of issues related to family, criminal and immigration law.<sup>28</sup> However, since police officers do not have a “don't tell” policy, some users still do not feel comfortable using policing services.

### Schools

*A mother contacted a community legal worker at her local legal clinic. The mother explained that her child's school discovered that the father of her child was abusive against the child. The school called the children's aid society. However, they didn't call her and didn't realize that the mother may feel unsafe because the father would think that the mother – and not the schools – called the children's aid society. She said that she was afraid of retaliation. (Case study provided by a Northern Ontario legal clinic)*

In this scenario provided by a consultation participant, the legal clinic situated in a small town was a helpful entry point for the mother. The community legal worker provided emotional support to her. However, the community legal worker thought that the school should have been a helpful entry point not only for the child but also for the mother, because it is more likely that the mother would have interacted with the school first



before going to the legal clinic. The lack of awareness of the risk of retaliation against the mother prevented the school from being helpful for two categories of users instead of only one. As in the previous scenario, knowledge about domestic violence was key for these entry points to be useful.

### 3. *Other Entry Points*

In addition to the examples provided above, consultation participants discussed many other entry points that we will not be able to discuss in detail here. Among those were children's aid societies and Ontario Works, for example. Regarding Ontario Works, one survey participant who is a Family Support Worker, mentioned the following:

*People come to us before they go to the courts, especially sole support parents.... They get their immediate needs such as food taken care of then they go to the justice system.*

Participants also mentioned that safe physical spaces such as public libraries, bookshops, shelters, community centres, services related to domestic violence and even property owned by a user in a different location from their main residence (another safe place), were helpful entry points.

Consultation participants also mentioned the difference between rural and urban entry points in Ontario. Regarding legal clinics situated in smaller towns, referred to above, a legal clinic lawyer from Manitoulin Island mentioned that his legal clinic was the third most frequently accessed service after the school and the hospital. In this case, it is therefore not difficult to identify entry points. However, in smaller towns where a clinic or its satellite offices are supposed to respond to a large geographical area, it may be a challenge to make the services known. The LCO will take these factors into account in formulating its recommendations.

In brief, consultations demonstrated that there are multiple entry points into the family justice system, which are more or less helpful. Consultations confirmed that everyone does not seek help in relation to family problems at the same place. The first step in making entry points effective is inevitably to continue identifying existing ones and encouraging collaboration between people who find themselves at these entry points.

## D. Service Delivery Models

In addition to identifying emotional dimensions of family problems, main issues related to entry point service delivery as well as entry point case studies, consultation participants discussed various service delivery models from an operational viewpoint. The main aspects of service delivery that were discussed were a holistic approach, networking, information, screening and referral systems as well as different fee systems.

### 1. Holistic Approach

Many consultation participants communicated that holistic models of service delivery were more attractive than single focus ones. It was mentioned that a holistic approach may include offering legal, health and immigration services, for example. Some consultation participants believed that one way to offer multiple services was to have a one-stop-shop or storefront at an accessible location for the targeted user group. Users could then drop by, express their needs and obtain quick referrals to appropriate services that would be located close by. In smaller regions where transportation is an issue, some mentioned that the same objective could be achieved by developing a mobile clinic to which a network of professionals could be attached and that would periodically visit these regions. One of the LCO-commissioned research papers explores further holistic service delivery models.<sup>29</sup>

In their written submission to the LCO, the Brantford & District Supervised Access Service provided an example of a one-stop-shop approach using technology to bring users and workers together, which is particularly helpful in cases of domestic violence:

*We are ... part of a community group called 'BRAVE' that allows for a [domestic violence] 'victim' to attend a 'one stop' approach using the internet & a virtual agency. Thus a victim does not have to keep telling her story over and over again – but a wrap around service is provided for her, that is less traumatizing and also cost effective for agencies.*

The Brant Response to Violence Everywhere Committee (BRAVE) system, a Brant County initiative, responds 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.<sup>30</sup>

Other consultation participants provided examples of holistic approaches developed by Aboriginal communities. In their written submission, the Ontario Native Women's Association described, for example, the Healing Continuum of the Aboriginal Family Healing Strategy:

*[A] process by which the understanding of family violence, individual prevention measures and strategies, dealing with crisis, curative and rehabilitative strategies, and the promotion of stability for individuals, families and communities are required to be part of the reform measures and made available to those utilizing the justice system.*

Aboriginal Legal Services of Toronto's Child Welfare Community Council<sup>31</sup> is another example of a holistic alternative for people who do not want to use Native Child and Family Services of Toronto. According to consultation participants who work closely with Aboriginal communities, holistic approaches are more in keeping with Aboriginal traditions.

Part of developing a holistic approach to service delivery can be to take users' culture and religion into account. The Muslim Children's Aid and Support Services was cited as an example of a non-profit agency designed to supplement children's aid societies' services by providing emergency services for members of the Muslim community. Consultation participants also observed that some cultural or religious specific organizations, such as Jewish Family and Child Service of Toronto or Catholic Children's Aid Society of Toronto, are also now open to all, even though most of their clientele is either Jewish or Catholic. This openness creates more options for users and allows for developing links between various communities in addition to maintaining cultural and religious competency.

## *2. Networking, Information, Screening and Referral Systems*

Consultation participants stressed the importance for workers to develop trusting relationships to be able to share information, increase their knowledge, refer clients to each other and work collaboratively. In this section we will explore in more detail what we heard from them about the significance of putting in place networking, information, screening and referral systems, and provide relevant examples.

### *a. Networking and Relationship Building*

A worker from Kapuskasing provided an example of a successful networking initiative in her region. She explained that she started a networking event in Kapuskasing that then spread to Hearst, two Northern Ontario regions that have significant Francophone populations. Four times per year, each of these two regions separately hold gatherings where various government and community service providers have booths and make 15-minute presentations about their activities. She mentioned that this helped tremendously to know what was going on in the region. Since she initiated the first gathering, others took over and organisers change every year. She attributed the enthusiasm for this initiative to the fact that workers see the positive effects in their daily work.

### *b. Information Circulation*

*Some people “think” they know their rights! (Sudbury city employee)*

Most agree that providing basic family law information is both necessary and useful. One lawyer believed that it was even more important to provide information as the population is increasingly mobile and family law is different from province to province, as well as from country to country. Most also agree that information about parenting, the effects of a separation on children, and the emotional dimension of family challenges and problems as they affect adults, is also helpful. Overall, consultation participants believe that receiving a combination of both legal and psychological information early on in the dispute resolution process is crucial. The Ontario Association of Family and

Conciliation Courts' Public Information Forum Working Group is an example of a group that started exploring in detail what the content of information sessions should be.

Some mentioned that many aspects of the information that circulates about the legal and emotional dimensions of family justice can be improved. Some users pointed out that such materials should include a section directing them to services because information in itself was not sufficient. Domestic violence victims mentioned that the most difficult moment for them was when they started thinking about getting information. Some workers also mentioned that general information needed to mention that this information may not apply in cases of abuse. Some consultation participants mentioned that people cannot retain information when they are in shock and crisis and therefore believed that it was important to provide information about domestic violence at earlier stages of family life. Some thought that the information should be relevant to the particular stage of a relationship people have reached. Others thought that the same information about the impact of separation and dispute resolution mechanisms should be given to everyone at any stage of their family life, including before they enter a relationship or form a family. Some participants believed that family justice information should be taught to children in school.

The LCO attended information sessions designed for people who are involved in the Superior Court of Justice and the Ontario Court of Justice systems in Toronto. We concluded that these sessions seemed helpful for litigants that were present but did not necessarily answer all their questions. The Ontario Court of Justice-based session answered the need expressed by some consultations participants, which is to have a question period where both a lawyer and a social worker can respond. However, without getting into the specifics of each litigant's case, information sessions should be frequent and long enough to answer all their basic questions, which did not appear to always be the case.

In addition to court-based information sessions, some consultation participants noted that community radio shows and local newspapers can be useful tools to disseminate

family justice information. A community legal worker working in a Northern Ontario small town but whose legal clinic covers a large region mentioned, for example, that after her clinic did a one-year local media campaign about legal information and social assistance, their case load was reduced by about 40%. Many pointed out that information should be accessible to people with disabilities as well as in various languages. Some mentioned that Ontario Disability Support Program cheque inserts, for example, were a good way to advertise information sessions. Consultation participants also believe that all professionals involved in the family justice system should be informed themselves and spread the word about publicly available materials and sessions, which would help advertising them.

Regarding existing family information websites, the provincial and federal government websites were the most known and used by consultation participants. Other alternative sources, such as materials geared at women, were not as well known. Some pointed out that web pages should not be overburdened with content and clear links corresponding to people's needs, for example "if you are in an abusive relationship, click here", should be included.

Some mentioned that quality control mechanisms are also important to ensure that users and workers are not misinformed. One worker said that in her region, for example, there had been an incident where the police had given wrong advice to people involved in domestic violence situations. Her region's FLIC became aware of this problem and their resource liaison sub-committee organized a one-day conference, which community members could attend for a \$10 fee, and in which police officers participated, which successfully addressed the situation. The idea was to bring everyone together to clarify legal information that applied to domestic violence situations. Such quality control mechanisms could be applied in other sectors. Participants mentioned, as another example, that settlement workers who are important entry points into the family justice system because they often speak users' languages, should be better informed about family justice. Others reported that court clerks should be more careful in spreading information about who qualifies for Legal Aid Ontario to ensure that they do not stop

users from inquiring further into their eligibility. As we have seen, networking and relationship building between workers situated at various entry points can help increase the quality of information that circulates at each of these entry points.

*c. Screening and Triage Systems*

Discussions about screening and triage systems often came up in relation to court services but also to other entry points. 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 users' needs. This step already requires that people or organizations realize that they are an entry point into the family justice system and that they identify users' needs. The next step is to respond to users' needs by treating different needs differently or, when impossible to offer the required services, to refer users to other appropriate services.

Consultation participants provided examples of what they believed helped in conducting quality screening and triage activities in the area of family justice. These examples included asking appropriate questions according to the type of entry point as well as the users' identity and experience, identifying both the physical and non-physical violence that users may experience and screening parents for anxiety and post traumatic stress disorders that may have an impact on their attempts to solve their dispute. They therefore believed that conducting screening and triage activities can require specialized training.

Discussions about the skills required to conduct screening and triage activities led consultation participants to consider who should conduct them. They agreed that it should be someone with appropriate knowledge. It was also clear that, similarly to the content of information sessions, knowledge of both social work and law is required to respond to family justice system users. Some people thought that even with appropriate knowledge it was difficult to know enough about someone's situation at an early stage to triage this situation properly. Others asked whether the triage person should obtain both sides of a story before categorizing a case. Some believed that family justice triage

systems should be uniform at every entry point to ensure that they were not reduced to the uninformed personal opinion of a worker. It was also noted that the triage person needed to understand the fine line between providing information and advice, and that their role was strictly to provide information.

Given that there are multiple entry points into the family justice system and that challenges and problems arise at different stages of family life, it appears to be inevitable that several workers will find themselves doing triage and will probably do it differently.

#### *d. Referral Systems*

Referral systems are linked to all others discussed above, as they require information about various services offered in Ontario and in specific communities. They must also build relationships with these service providers. When screening for a specific need is done at an entry point that does not have the capacity to adequately respond, referrals are a good way to help users find the resources and information they need to address the issues they are facing.

Although many participants acknowledged that making referrals was important, several also recognized that it was a challenge to build, maintain and make public quality referral lists. They believed that any government agency, including Legal Aid Ontario, would be reluctant to keep referral lists. They would fear being perceived as “endorsing” certain professionals or service agencies and lack the capacity to implement effective quality control mechanisms. Other non governmental agencies and private services appeared to share this concern. Solicitor-client privilege was also mentioned as an obstacle to developing effective referral systems, especially if it involved sharing information about users. Building on this concern for professional liability, a non-governmental organization suggested that health and legal professionals should have the obligation to make referrals to each other across disciplines but should only be held accountable for referrals they made within their own discipline and not for cross-disciplinary referrals because this is beyond their subject-matter expertise.



Nevertheless, consultation participants believed that referrals were necessary and many workers made them whenever appropriate. Legal clinic workers, for example, mostly make non legal referrals. If someone is going to be cut off social assistance when it is clear that they should be on Ontario Disability Support Program, the legal clinic worker will refer them to a nurse to get a medical report at a community health centre nearby. Others mentioned making referrals internally, which may be easier to handle but still requires putting in place an effective process. In cases of violence, Jewish Family and Child Service of Toronto refer men and women to the relevant programs that they offer. The Centre Francophone de Toronto's legal clinic refers clients they represent to the Centre's medical clinic. The Centre mentioned, however, that they have no system in place to refer people who come in for summary advice only, to the medical clinic. Another basic point that was made was that referral systems work as long as there are services to refer people to, which is not always the case.

An example of the difficulty of maintaining effective referral lists that was mentioned during consultations was the Legal Aid Ontario (LAO) lists of lawyers who accept LAO certificates in the area of family law. One legal clinic lawyer explained that LAO keeps lists of family law lawyers that include, perhaps by mistake, lawyers who do not in fact take legal certificates but insisted to be on the list. He believed that this explained why users sometimes had to phone up several lawyers before finding one. This lawyer thought that, unless the list was better managed, there is no point in having such a list.

In smaller regions where service providers know each other, a legal clinic lawyer working closely with both Aboriginal and non-Aboriginal communities mentioned that it was not enough to give a name taken from a list. He believed that it was important to establish a meaningful connection with the person to whom users were referred. This would allow users to feel more comfortable contacting this person and, more importantly, to feel that they could trust him or her.

### 3. *Fee Systems*

The cost of legal and other professional services constantly came up during consultations. Such cost prevents access to many entry points into the family justice system. In order to make entry points into the family justice system more accessible, there needs to be a variety of fee systems that reflect Ontarians' various levels of income. Conversely, some Ontarians would probably benefit from learning about the cost of family justice services before family challenges and problems arise. The fee systems that were mentioned during consultations include *pro bono* services, Legal Aid Ontario services, sliding scale fee systems and market rate fee systems.

#### *a. Pro Bono Services*

Many professionals who participated in consultations, including lawyers, do *pro bono* work. The most important comment that was made by lawyers during consultations was that many lawyers decided to do *pro bono* work rather than taking Legal Aid Ontario (LAO) certificates in the area of family law. They found that given the low LAO rates, the insufficient number of hours allocated to their case, as well as the administrative burden of having to report to LAO, accepting LAO certificates was simply not worth it. Although *pro bono* work helps, and many professionals will continue to offer *pro bono* services, consultation participants appeared to believe that these efforts were not enough to respond to the needs of low income Ontarians. According to them, *pro bono* services can only provide a partial solution to the lack of accessible family justice services.

#### *b. Legal Aid Ontario Services*

The Legal Aid Ontario (LAO) system was undergoing change during family justice consultations. Consultation participants who were aware of current debates about LAO observed that the debates were related to some of the historical debates about how family justice services should be delivered to economically marginalized Ontarians. They believed that cuts to LAO funding a decade ago explained why few family justice services were offered by LAO today. Their experience was that for the past decade, LAO family law services were delivered through family law certificates, with a few exceptions where clinics offer family law advice, whereas in the past more legal clinics used to offer family law services.

Consultation participants agreed that LAO should offer family justice services. However, they were divided about whether these services should be offered through legal clinics. The reason why some participants believe that legal clinics should offer family law services is that they see legal clinics as significant entry points. Legal clinics have managed to become known in their communities and community members have come to consider them entry points for any legal matter. Another reason may be participants' dissatisfaction with the certificate system. Users and workers reported frustrations with LAO offices for their lack of transparency as to what cases they accept and for being unfriendly with users. Some mentioned that the lawyer referral lists kept by the LAO were inadequate and users had to make several phone calls before finding a lawyer or giving up. They therefore concluded that if the certificate system did not work, perhaps offering family law services through legal clinics would work better. Despite their diverging views about service delivery, the main issue appears to be that LAO should put more resources into family law services.

In some regions of Ontario, such as Moosonee, most people would only be able to access family legal advice through LAO, and currently through LAO certificates. Family law lawyers also do not have much opportunity for other paid work. If these lawyers stopped accepting LAO certificates, it would be the end of family law services in the region as none of these lawyers could afford to do *pro bono* work. This clearly illustrates the need for some minimal support to family law services in many smaller regions across the province, for the least privileged.

Some observed that if the LAO certificate system was to continue and be improved, attention should also be paid to the quality of services. They believed that there should be more oversight and lawyers who accept certificates should be required to be members of a panel to ensure that they are sensitive to the situation of users. Others mentioned that in order to be on the domestic violence LAO panel, lawyers only needed to have a half-day of training about the subject matter, which they could fulfill by signing out a DVD.<sup>32</sup> They believed that professional development requirements were

insufficient for lawyers who accept LAO certificates and that such training should also address the issue of legal bullying. This reveals a concern for maintaining a social justice approach and service quality for LAO certificate users.

Another comment that was made was that the financial threshold for qualifying for LAO family law services is extremely low and that Ontarians who qualified often received only partial services, for example if they had complex criminal and housing issues in addition to family ones. Some suggested that if this low threshold was to remain, LAO should at least ensure that the poorest of Ontarians receive complete and not partial services.

#### *c. Sliding Scale Fee Systems*

Privately or publicly funded sliding scale fee systems are other options for family service delivery. During consultations, examples came up of services that appeared to be working well on a sliding scale basis. The Mediation Centre of Simcoe County's services, which are funded by the Ontario government, are one example. The Family Services Toronto program "Families in Transition," which is entirely funded through private donations, is another. Government-funded supervised access services are a third example.<sup>33</sup> Some lawyers mentioned that they occasionally offer flexible payment plans and work for a smaller fee, for the same reasons that they would do *pro bono* work. One lawyer mentioned that she is prepared to work for less in about 10-20% of her files. Another lawyer said that she has a client who regularly pays her \$50 per month for past services. In her experience, people with higher incomes are more reluctant to pay their bills than people with lower incomes. When discussing *pro bono* versus sliding scale fee services, one lawyer believed that minimal fees, rather than no fees, could work as an incentive for people to make choices, which would help them resolve their problems.

#### *d. Market Rate Professional Services*

Workers mentioned that users who have significant financial means can have access to professional services. They can use private arbitration as opposed to courts if they prefer that their case remains confidential. They can hire lawyers, as well as other types

of professionals, if they wish. If both sides in a family dispute are wealthy, the people involved face the complexity of their case, be it related to legal or emotional issues; obtaining legal representation is not an issue, however. However, in most cases, there is a financial power imbalance, which family law has been designed to correct through spousal support and property division. In the process of trying to obtain such support or division of assets, financial imbalances can still have an effect on the likelihood of success of certain dispute mechanisms. Lawyers have mentioned, for example, that if one party is ready to recognize that the other party is less economically privileged and that they have the right to spousal support, and if the more privileged party acts in good faith, collaborative dispute resolution processes may be possible. However, if this is not the case, and if it is a high conflict situation, the court may be the only solution, which can end up being costly not only for the wealthy party but for taxpayers who support the court system.

#### **IV. CONCLUSION**

This paper shares what the LCO heard during consultations from over a hundred users and workers involved in the family justice system, broadly defined and including all its multidisciplinary facets. The LCO gathered their ideas through close to fifty telephone and in-person meetings as well as an online survey. Opinions found in this paper do not by any means represent the views of all Ontarians. However, consultations still provided an opportunity for the LCO to ensure that its research and future recommendations relate at least to some extent to what goes on in practice. The final LCO report on family justice will take consultation participants' opinions and experiences into account but will also connect them to broader issues found in family justice literature and in the research initiatives of other organizations addressing family justice reform.

In the end, many questions remain about what can generate change. What are people's incentives to prevent and solve family problems? What are the provincial government's incentives to do the same? If people need money, want to see their children, want to get out of a relationship or feel that their physical security is threatened, they probably have an incentive to solve these problems. However, these factors experienced by many

people may work in different ways. The need for money or to see children may be an incentive to remain in an unpleasant or even abusive relationship. Fear of economic insecurity, losing relationships with children or of violent retaliation for breaking a spousal relationship may also act as a disincentive to solve family issues. Maintaining relationships despite significant problems may also have historically been perceived as an important factor in maintaining social stability but the cost of such basis for social stability has now been denounced by many, including users who would like see the state investing in social conditions that increase the likelihood of Ontarians building and maintaining healthier relationships.

The LCO will need to take these questions into consideration in thinking about the final stage of this project. This last stage will involve conducting additional research and developing recommendations for family justice reform. In early 2011, the LCO will produce an interim 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.

## **V. CONSULTATION PARTICIPANT LIST**

The LCO provides, below, a list of organizations that participated in consultations. This list includes organizations with whom the LCO consulted in person or by telephone, as well as groups that made written submissions or participated in our survey. This is not an exhaustive list of all consultation participants. For confidentiality reasons, the LCO did not include the names of individual users, workers, or private law firms.

Aboriginal Legal Services of Toronto  
Action ontarienne contre la violence faite aux femmes  
ADR Institute of Ontario  
ARCH Disability Law Centre  
Association for Better Care of Children  
Association of Family and Conciliation Courts

Burlington Counselling & Family Services  
Canadian Equal Parenting Council  
Centre for Addiction & Mental Health Sudbury  
Centre Francophone de Toronto  
Children's Aid Society of the County of Simcoe  
Employee of the City of Greater Sudbury  
Clinique juridique du Grand-Nord  
Community Advocacy and Legal Centre  
Downtown Legal Services  
Equal Parenting for Canadians  
Ernestine's Women's Shelter  
Family Services Ottawa  
Family Services Toronto  
Fédération de la jeunesse franco-ontarienne  
Jewish Family and Child Service of Toronto  
Keewaytinok Native Legal Services  
Luke's Place  
Manitoulin Legal Clinic  
Metro Toronto Chinese & Southeast Asian Legal Clinic  
Officials of the Ministry of the Attorney General  
Mouvement des Intervenant.e.s en Communication Radio de l'Ontario (MICRO)  
Multilingual Community Interpreter Services  
LGBTQ Parenting Network  
Mississauga Community Legal Services  
Ontario Bar Association  
Ontario Collaborative Law Federation  
Ontario Court of Justice  
Ontario Native Women's Association  
Ontario Works Sudbury  
Superior Court of Justice  
The Advocates' Society

The Mediation Centre of Simcoe County

Toronto Police Service

Toronto-based group of transitional and housing support workers

Vanier Community Service Centre

Women's Community House



## ENDNOTES

<sup>1</sup> Law Commission of Ontario, “Best Practices at Family Justice System Entry Points: Needs of Users and Responses Workers in the Justice System”, Consultation Paper (September 2009), online: Law Commission of Ontario < <http://www.lco-cdo.org> > (last accessed: 15 Sep 2010).

<sup>2</sup> For more information about the results of this summit, see Barbara Landau, Tom Dart, Heather Swartz & Joyce Young, “Submission to Attorney General Chris Bentley : Creating a Family Law Process that Works” (November 2009) online: ADR institute of Ontario, < [http://www.adrontario.ca/media/INTERIM%20REPORT%20FINAL%20BL%20Dec%2010-09%20\\_2\\_.pdf](http://www.adrontario.ca/media/INTERIM%20REPORT%20FINAL%20BL%20Dec%2010-09%20_2_.pdf) > (last accessed: 20 May 2010).

<sup>3</sup> For gendered characteristics of families before and after separation, including families that are not working within a heterosexual framework, see Robert Leckey, “Families in the Eyes of the Law: Contemporary Challenges and the Grip of the Past” (2009) 15:8 IRPP Choices.

<sup>4</sup> See Noel Semple, “Cost-Benefit Analysis of Family Service Delivery: Disease, Prevention, and Treatment” (Paper commissioned by the Law Commission of Ontario, June 2010), online: Law Commission of Ontario <<http://www.lco-cdo.org>> (last accessed 15 Sep 2010).

<sup>5</sup> See 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: Law Commission of Ontario <<http://www.lco-cdo.org>> (last accessed 15 Sep 10).

<sup>6</sup> Some consultation participants thought that the PAR program for men was, for this reason, not very effective (see Ministry of the Attorney General, Partner Assault Response Program, online: Ministry of the Attorney General < <http://www.attorneygeneral.jus.gov.on.ca/english/ovss/programs.asp#partner> > (last accessed 14 May 2010)).

<sup>7</sup> MDR 2006 CanLII 19053 (ON S.C.); *General R.R.O.* 1990, Reg. 1094.

<sup>8</sup> See *Processing and Distribution of Semen for Assisted Conception Regulations*, S.O.R./96-254, s.1, 2, 4.

<sup>9</sup> See *Processing and Distribution of Semen for Assisted Conception Regulations*, S.O.R./96-254, s. 20; *Health Canada Directive: Technical Requirements for Therapeutic Donor Insemination*, July 2000, s.2.; Donor Semen Special Access Program, online: Health Canada <<http://www.hc-sc.gc.ca/dhp-mpps/brgtherap/applic-demande/guides/semen-sperme-acces/index-eng.php>>.

<sup>10</sup> To preserve confidentiality, we will not identify individuals or organizations unless they made a written submission.

<sup>11</sup> The Law Society of Upper Canada published documents that explain what people can expect when dealing with a lawyer. See for example The Law Society of Upper Canada, “Lawyers and Paralegals: Helping You With Your Legal Needs” *Brochure* (December 2009), online: Law society of Upper Canada <[http://www.lsuc.on.ca/media/lawyers\\_paralegals\\_public.pdf](http://www.lsuc.on.ca/media/lawyers_paralegals_public.pdf) > (last accessed: 14 May 2010); or, *F.A.Q.s – Your Lawyer and You*, online: The Law Society of Upper Canada <<http://www.lsuc.on.ca/public/a/fags-finding-a-lawyer/>> (last accessed: 14 May 2010).

<sup>12</sup> See “Criteria for Accredited Family Mediators” (2003) online: Ontario Association for Family Mediation < <http://www.oafm.on.ca/mediators/AccFM%20Criteria.html> > (last accessed: 15 July 2010).

<sup>13</sup> Although accreditation is not required, the Ministry of Attorney General encourages Ontarians to select mediators who have qualifications that meet the standards set out by the Ontario Association for Family Mediation (see “Finding an Appropriate Mediator” (2008) online: Ministry of the Attorney General <[http://www.attorneygeneral.jus.gov.on.ca/english/family/divorce/mediation/family\\_mediation.pdf](http://www.attorneygeneral.jus.gov.on.ca/english/family/divorce/mediation/family_mediation.pdf)> (last accessed: 17 May 2010)).

<sup>14</sup> See Karen Howlett and Kate Hammer, *The Globe and Mail*, “McGuinty Backs Down on Frank Sex Ed”, April 22, 2010, online: *The Globe and Mail* < <http://www.theglobeandmail.com/news/politics/mcguinty-to-shelve-sex-ed-plan/article1543479/> > (last accessed: 15 July 2010). See online: Ministry of Education < <http://www.edu.gov.on.ca/eng/curriculum/elementary/health.html#display> > (last accessed: 15 July 2010) for 1998 and interim 2010 versions of the curriculum. The interim version is the revised 2010 curriculum

that leaves out the controversial sections on “Human Development and Sexual Health” and replaces these with the 1998 curriculum’s “Growth and Development” sections.

<sup>15</sup> See online: Ministry of Education <<http://www.edu.gov.on.ca/eng/curriculum/elementary/healthcurr18.pdf>> (last accessed: 23 July 2010) at 168 of the interim 2010 version of the curriculum, which replaces the controversial “Human Development and Sexual Health” sections of the proposed curriculum with the 1998 “Growth and Development” sections.

<sup>16</sup> The original 2010 version of the curriculum that was proposed was taken down from the government website, however it is still available online here: <<http://docs.google.com/fileview?id=0B-rAJktBqis9MDhmYzNjNDAtMmY0YS00MTU2LTliOWEiNTVmZDRiMDM2Y2Y3>> (last accessed 23 July 2010) [2010 Proposed Curriculum] at 170.

<sup>17</sup> 2010 Proposed Curriculum, note 13 at 170.

<sup>18</sup> One example of a current public education initiative in Ontario is the “Neighbours, Friends and Family” (NFF) campaign. NFF is a public education campaign that attempts to raise awareness of the signs of woman abuse, in order to encourage those close to the victim to help. The campaign offers a variety of informational materials, including information, training and free campaign resources to start an NFF campaign in your community. *Neighbours Friends and Family Campaign*, online: Integra for Children and Adults of Prescott-Russell, <<http://www.neighboursfriendsandfamilies.ca/>> (last accessed: 14 May 2010).

<sup>19</sup> Here are a few examples of services for men in Ontario:

- The Kanawayhitowin Campaign, which is also part of the Neighbours Friends and Family campaign (see previous endnote), is a campaign that seeks to address woman abuse in Aboriginal communities across Ontario. The website and community action kit provides information for victims and abusers, as well as a list of community resources available to the Aboriginal community (see Kanawayhitowin, “Community Action Campaign to Prevent Woman Abuse in the Aboriginal Community” online <<http://www.kanawayhitowin.ca/pdfs/KanaMan.pdf>> (last accessed: 17 May 2010)).
- Jewish Family and Child Services provides an abuse prevention program and support groups for men who are abusive (see Jewish Family and Child Services: “Woman Abuse Program” online JF & CS <[http://www.jfandcs.com/Client/JFCS/JFCS\\_LP4W\\_LND\\_WebStation.nsf/page/Woman+Abuse!OpenDocument](http://www.jfandcs.com/Client/JFCS/JFCS_LP4W_LND_WebStation.nsf/page/Woman+Abuse!OpenDocument)> (last accessed: 17 May, 2010)).
- The Partner Assault Response Program (PAR) is part of Ontario’s Domestic Violence Court Program and includes a 16 week education course for the offender, as well as help with safety planning, referrals to community resources and progress reports on the offender for the victim (see above note 6).
- Family Service Toronto offers the Next Steps (Partner Abuse Response Program) for men who have been court ordered to enrol in the program. Referral services are available for men who would like to participate voluntarily. The organization also offers the program for LGBTQ persons who have been ordered to enrol in the PAR program. See *Next Steps: Partner Abuse Response Program*, online: Family Service Toronto <<http://www.fsatoronto.com/programs/nextsteps.html>> (last accessed: 20 May 2010).

<sup>20</sup> For more information about this project, see the LCO website, online: <http://www.lco-cdo.org>.

<sup>21</sup> *Family Law Rules*, O. Reg. 114/99.

<sup>22</sup> According to the LGBTQ Parenting Network, thirty years ago, 88% of lesbians who fought for custody lost (written submission to the LCO dated January 14, 2010).

<sup>23</sup> See for example *Ontario Works Act 1997*, O. Reg. 134/98, s. 13(1), which requires that a person eligible for assistance make reasonable efforts to obtain financial resources.

<sup>24</sup> The LCO uses a fictitious name in this scenario.

<sup>25</sup> According to a conversation with a Ministry of Attorney General law librarian, seventeen FLICs were created in November 1999 in the seventeen Unified Family Courts. The London FLIC was one of them. Between 1999 and 2004, FLICs were expanded to all courts. Prior to 1999, there was a service in London, but it did not offer all the services that the FLICs now offer.

<sup>26</sup> The Family Justice Project Head stopped at the Oshawa FLIC and courthouse in fall 2009, prior to a consultation with a community-based organization.

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<sup>27</sup> See for example the Ontario, Ministry of the Solicitor General, *Policing Standards Manual: Domestic Violence Occurrences*, LE-024 (February 2000).

<sup>28</sup> See the Toronto Police Service “don’t ask” policy, online: Toronto Police Service < [http://www.torontopolice.on.ca/publications/files/victims\\_and\\_witnesses\\_wthout\\_legal\\_status.pdf](http://www.torontopolice.on.ca/publications/files/victims_and_witnesses_wthout_legal_status.pdf) > (last accessed: 22 July 2010).

<sup>29</sup> See Professors Lesley Jacobs and Brenda Jacobs’s paper, above note 5.

<sup>30</sup> See the BRAVE website, online: Brant Response to Violence Everywhere Committee < <http://www.brant-brave.org/> > (last accessed: 15 July 2010). For more details about the BRAVE system, see Professors Lesley Jacobs and Brenda Jacobs’s paper commissioned by the LCO, above note 5 at 68-70.

<sup>31</sup> See the Aboriginal Legal Services of Toronto’s website, online: Aboriginal Legal Services of Toronto < <http://www.aboriginallegal.ca/council.php> > (last accessed 15 July 2010).

<sup>32</sup> See the Advice Lawyer – Domestic Violence sub-panel standards, online: Legal Aid Ontario < [http://www.legalaid.on.ca/en/info/panel\\_standards\\_advicelawyer.asp](http://www.legalaid.on.ca/en/info/panel_standards_advicelawyer.asp) > (last accessed 15 July 2010).

<sup>33</sup> For a description of supervised access services, see the Ministry of Attorney General’s website, online: Ministry of Attorney General < <http://www.attorneygeneral.jus.gov.on.ca/english/family/supaccess.asp> > (last accessed 15 July 2010).