

# Family law report calls for change

## Recommendations for revamping system realistic, lawyer says

BY JUDY VAN RHIJN  
For Law Times

The most recent report on family law reform is in the hands of an attorney general who has repeatedly said that while he's on board with many of the ideas, he's not able to bring in changes that require substantial funds.

The effort fleshes out what the authors say is a workable and practical family law system designed from the client's perspective that they and their supporters are now waiting for the government to implement.

Barbara Landau, a lawyer, psychologist, and mediator who co-wrote the report through a joint effort of the ADR Institute of Ontario Inc., the Ontario Bar Association, and the Ontario Association for Family Mediation, says work continues on making the proposals a reality. "In the meantime, we have been working on the attorney general's expert advisory committees to better flesh out the proposals, building more detail into the proposal and thinking out how it would work in a practical sense."

Landau worked on two committees, one of which dealt with mandatory family information sessions. "The pilot projects at Milton and Brampton have one session," she says. "We've recommended that two sessions be mandated. There will be one for everybody where they will get an overview of the non-adversarial options available to them other than court. They will also get an overview of the law and community resources to address the impact of the separation. The second session will be for people with children under 21 years of age. We will try to explain the impact of separation on children, the use of parenting plans, and introduce obligations for child support."

Landau notes that Alberta and British Columbia have required two sessions for parents for the last 17 years. In British Columbia, in fact, the province is now adding a third session for high-conflict cases. "So we are well behind," she says. "In Toronto, a three-hour information session devotes 13 minutes to children."

According to Landau, the extra sessions have proven to be effective in other provinces in relieving the burden on the courts. "Judges use their time on people who need it. A judge here in Ontario told me that she spends 40 per cent of her time recalculating child support. If people are mandated to attend information sessions, they will be better prepared, more focused on the issues, and know the right questions to ask."

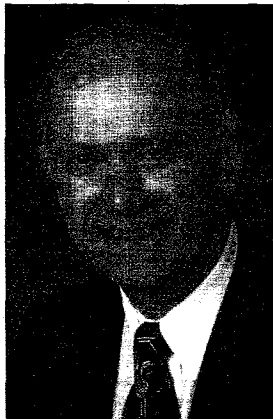
The changes recommended will have an impact on the pilot projects already underway if implemented. "In Milton and

Brampton, they are running one mandatory information session," Landau points out. "We revisited the program they've created with psychologists and mental-health professionals and made it more accessible and understandable for a range of education levels and the diverse society we come from. We then developed the session [on] parenting after separation, which is completely new in Ontario."

The second committee Landau was involved in was charged with fleshing out the triage concept. "A qualified triage person should meet with couples individually after the information session," she says. "We need a qualified mental-health professional with training in domestic violence and mediation and an understanding of the law in that role. That person will help people identify the resources they think will be helpful. They'll say, 'This is what I recommend you use, and here's where you'll find them.'"

Once again, the pilot projects will need to be adjusted. "They are using their existing staff, who may be highly experienced court staff, but we are recommending a more highly trained professional. We are asking them to move that up a level."

Tom Dart, past chairman of the OBA's family law section, was on two of the other committees. One looked at how to integrate alternative forms of dispute resolution into the



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system. "Ideally, we would hope to guide people away from the courts before they have even started an application," he notes, adding that's already happening through the Family Law Information Centres at Ontario's full Family Court jurisdictions.

Apart from a recommendation to set a centre up in each courthouse, the committee considered harnessing technology to provide online assistance and information through community organizations such as libraries. Other suggestions include advertising in the media and education in schools about the effectiveness of mediation. "We need to let people know there are better ways," Dart says.

The committee then turned its attention to the question of how to satisfy the need for mediators once the demand is there. "We are aware that mediation services aren't available in all areas of the province," Dart says. "We need to get them trained and accredited."

The second committee Dart was involved in looked at streamlining court services. "We are always thinking in the back of our minds that if ADR doesn't work, they'll end up back in court," he says. "How can we get people in and out of the system quickly?"

In response, the committee has endorsed the idea of directing people to a judge or officer of the court as quickly as possible to get the case on the right track, particularly when people represent themselves. Suggestions have also been made to the courts' rules committees for amendments to the rules to clarify, for example, when speedy form 14B motions can be made and what orders can be made at case conferences.

The committee also considered automatic orders as soon as an application is made to stop litigants from removing their spouse from their medical benefits plans and RRSPs or changing other beneficiary designations or the children's school. "This brings more civility to the process because people won't have to bring a motion," Dart points out. Such orders are currently available in

some parts of the United States and elsewhere in Canada.

Other recommendations include expanding the use of dispute-resolution officers and getting more uniformity across the province.

Landau, Dart, and their colleagues are now waiting for the attorney general and his staff to consult with the rules committee of each court and other experts. Landau is mindful of claims that there's no money to implement the reforms but keeps hoping nevertheless. "At the moment, they are relying on volunteers," she says. "Even the dispute-resolution officers are volunteer lawyers. Ultimately, that is no way to sustain a system and is not likely to attract highly qualified people."

Landau also believes society must look at the cost of doing nothing. "The courthouse is not functional," she says. "It is totally clogged with people. We must unplug the system."

If the issue is a matter of politics, Landau sees no impediment to change. "In the past, whenever people have put their toe in the water for family law reform, it has been very controversial and has divided along gender lines. But these proposals are not controversial. We did not find one group that was opposed to them, so it is a safe area for politicians to get into. It affects more than 40 per cent of the population. That's the figure for marriage breakdown, and many people aren't married. Why wouldn't they find some funds?"

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