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Making Separation Simpler

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The legal process for marital separation is expensive, slow, and damaging to families. However, past attempts to overhaul the family justice system made little headway. Now, at long last, Ontario has taken some steps in that direction. The reforms announced by the government over the past months came as a result of leadership and consensus among professionals in the field. The emerging system should result in more informed and less stressed families, but more is needed for wholesale change.

Each year, about 30,000 couples in Ontario get divorced, and even more just separate. Tens of thousands of separating or post-separation individuals use Ontario family courts each year (Statistics Canada, 2005; Mamo, 2007). Though the alternative dispute resolution (ADR) options have grown – mediation, arbitration, med-arb, parenting coordination, collaborative practice, divorce coaching, assessments, etc. – too many couples are still ending up in court. A growing number do not retain lawyers (about 70%), and they become lost in, and slow down, the overburdened system. Furthermore, it is likely that a silent majority, uninformed perhaps but wary of the costs, craft and sign their own separation agreements at their kitchen tables. Whatever the process, how well does the result serve these families going forward?

- Does it reduce harmful conflict between the parties?
- Does it provide sufficient resources in both homes? Hopefully the process itself did not eat up their reserves.
- Does it provide for the caretaking of the children at their age and stage, including a sensible allocation of responsibilities?

If these and other criteria are unmet, families will be overstressed and unable to move forward.

Calls for change were growing. In 2007, Alf Mamo, Debbie Chiodo and Peter Jaffe submitted an in-depth report to the Ministry of the Attorney General (MAG) entitled: *"Recapturing and Renewing the Vision of the Family Court"*. Inspired by those proposals, three leaders within the ADR community - Dr. Barbara Landau, Heather Swartz, and Tom Dart – organized a grassroots conference in December, 2009. The process itself was a tremendous achievement. It brought together a hundred or more mental health, legal, and ADR professionals. The delegates were divided into groups to discuss a draft reform proposal. From these discussions, a new consensus emerged, and was sent to MAG which endorsed much of it.

Some of the main recommendations included:

- Non-adversarial options should become the primary framework for resolving family matters.
- Instead of funding only litigation, legal aid should also fund cooperation, in the form of mediators, etc.
- Case coordinators and Family Information Sessions (FIS's) should be available in all family courts to help orient and educate people. The information should be available in a variety of languages (Landau, 2009).

A few weeks later, the McGuinty government began announcing the reforms, and the implementation has begun. Here are some of the key changes:

- Information and Referral Coordinators will be a point of contact for families as they enter the Family Justice System and help connect potential litigants to services in the community. This program will be expanded to all courts by summer 2011.
- The funding for Legal Aid Ontario (LAO) was increased by \$150 million, with more flexibility to fund non-adversarial approaches. In Brampton and Milton, LAO is piloting on-site mediation and triage of eligible clients.
- A free online program helps unrepresented parties to fill out court forms.

- Individuals are now required to make annual financial disclosure to determine appropriate levels of child support.
- Dispute Resolution Officers in courts will help resolve challenges in a case, and expedite a hearing.
- Parents who want to litigate must first attend a free FIS.
- Family mediation services will be expanded to all courts by summer 2011 (MAG, March and December, 2010).

Despite some of its pronouncements, insiders say that the Ministry has been less responsive to recommendations about the content of the FIS programs. Experts in the field want FIS to educate about the impact of separation, improved communication, parenting plans, new partners, process options, and basic legal information. Thus far, the new FIS program being tested in Brampton, Milton and Toronto (to go province wide this summer) tends to focus almost entirely on family law and the court system.

There were many other ideas proposed at the conference, and hopefully they too will be considered. Judges should be able to order couples to retain the services of a Parenting Coordinator to decide minor parenting disputes that need not tie up the court. Cases involving a delinquent payer of child or spousal support should be fast-tracked to court. Judges should award costs against any party who persists in frivolous litigation and ignores court orders (Landau, 2009). Most sweeping are the calls to reform the judiciary and the court system: "Ideally, properly serviced Unified Family Courts would be available across the province to replace the confusing patchwork of courts that currently exist. In the interim we recommend the use of specialized Family Court judges and where possible, that there be continuity of judges in each case" (p. 4). At present, "couples experience frustration and lost wages as their cases are repeatedly adjourned, often to a considerable variety of judges. We suggest that cases could be dealt with more efficiently and appropriately if the same judge heard the case

at each appearance. This is especially helpful for high conflict and child protection cases” (p. 19).

Ontario has started down the right track, and we can hope that marital separation will not always mean years of entanglement in emotional and legal battles. Mental health professionals play a key role in the healing, and arguably their services ought to be more accessible to families in this transition. It often takes two or more years for a family to emotionally move forward after separation, and much longer if it is embroiled in fighting and litigation. Children pay the biggest price, and then society as well. Now that the moment of change has come, let us seize it.

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References

Landau, B. et al. (2009). *Family Law Process Reform: Supporting Families To Support Their Children*. Submission to the Attorney General by The OBA Family Law Section, ADR Institute of Ontario, and Ontario Association for Family Mediation.

Mamo, A., Chiodo D. & Jaffe, P. (2007). *Recapturing and Renewing the Vision of the Family Court*. Prepared for the Ministry of the Attorney General.

Websites:

Ministry of the Attorney General of Ontario, News (December 9, 2010). Family Law Reform In Ontario. <http://news.ontario.ca/mag/en/2010/12/family-law-reform-in-ontario.html>

Ministry of the Attorney General of Ontario, News (March 1, 2010).

Better Protection For Children In Custody Cases.

<http://news.ontario.ca/mag/en/2010/03/better-protection-for-children-in-custody-cases.html>

Statistics Canada. *The Daily* (March 9, 2005). <http://www.statcan.gc.ca/daily-quotidien/050309/dq050309b-eng.htm>