

AFCC-O Family Justice Reform Colloquium
Shely Polak, RSW, Ph.D. (s) & Barbara Fidler, C.Psych., Ph.D.

On November 15, 2013 AFCC-Ontario Chapter held the '*Family Justice Reform Colloquium*'. The aim of the colloquium was to discuss key issues and challenges driving the need for family law reform initiatives and to provide a sampling of several different services, programs and research projects occurring across the provinces. The event was co-chaired by Professors Nick Bala and Rachel Birnbaum at the Factor-Inwentash Faculty of Social Work, University of Toronto. Members of the bench, lawyers, researchers and mental health professionals from across Canada shared their latest research, provided information on services and interventions, and discussed areas that continue to remain a challenge to family law professionals.

To set the context and foundation of the day we welcomed Dr. Patricia Hughes, Executive Director of the Law Commission of Ontario. Her presentation entitled '*Reforming the Family Justice Process to Respond to Today's and Future Challenges*' began by describing family law as one of the most difficult areas of practice. Lawyers not only see clients at a difficult and emotional time, but family disputes often involve issues of domestic violence, mental health and other family issues that require a holistic response. One of the main issues identified is the increasing number of self-represented litigants (SRL's) in Ontario, and its contributing factors including the high cost of legal representation, greater access to free online information, language barriers and the availability of unbundled services being offered. Dr. Hughes discussed the need for systemic changes where court is not the entry point and only solution for disputants. Alternatively, other ADR services linked to the court should be available. This would be less costly, less adversarial, and more timely relieving the backlogged court system. This service, while relatively new, is being implemented and promoted in Australia and New Zealand. The research is in its preliminary stages.

Ms. Nicole Aylwin, Executive Officer at the Canadian Forum on Civil Justice, presented "*Access to Family Justice in a Civil Justice Context.*" Her presentation focused on the notion of the access to justice crisis in Ontario. Ms. Aylwin identified the need to develop a broader understanding of access to justice, where justice may differ depending on where an individual resides and available resources. She highlighted the need for disputants to move away from the idea of going to court to resolve disputes and access justice as the first and only path. Ms. Aylwin reported on the need to increase and develop prevention services, integrate more mediation and alternative resolution practices, offer other front-end services and have a unified family court system to improve the access to justice crisis in Ontario.

Presentations by researchers, lawyers and mental health professionals from across Canada followed. The presenters shared information on the different services and programs offered across the provinces and preliminary research outcomes.

Ms. Irene Robertson, Provincial Director, Family Justice Service Division, British Columbia spoke about Family Justice programs offered in British Columbia. With the trend to

consider alternatives to court as the entry point for disputants, significant collaboration between the court and partners of the justice system have attempted a more rights based system. There are twenty-one publically funded Family Justice Centers across the province providing varied services. Four locations require parties to meet with a justice family counselor before going to court and seventeen locations mandate parent education post-separation. Dispute resolution, particularly mediation, is a key service provided. Ms. Robertson emphasized that the overall goal is to help families' resolve issues outside of court with more early on and holistic approaches.

Ms. Diane Shearer, Senior Manager, Alberta Justice and Solicitor General, discussed the programs offered in Alberta. Ms. Shearer identified the province's goal is to make information more accessible and to triage by providing upfront services before families can enter the court system. Their website utilizes a decision tree format where the public gains information about how the legal process works. Intake is the starting point for all disputants. During the intake, referrals are made to internal or external mediation, educational services or court assistance. Mediators specializing in parenting issues (custody/access) and financial issues (child/spousal support, equalizing assets) are available. Education services include "*Parenting After Separation*" (PAS) which is a mandated 6-hour course offered in 21 sites. "*Focus on Communication in Separation*" (FOCIS), is a 6-hour skill based intervention that aims at reducing inter-parental conflict; this course is voluntary and provided at no cost. Court assistance is provided by family court counselors, mostly social workers, helps families resolve their issues before parties see duty counsel or enter the courtroom.

Professor Francine Cyr, discussed two pilot projects in Montreal and Quebec City. The first pilot "*Parenting Coordination Project*" evaluates the role of the Parent Coordinator in reducing inter-parental conflict and litigation rates. The second pilot, "*Case Management of High Conflict Couples*" evaluates a new initiative being implemented in Quebec City that consists of a judicial component and a psychosocial component. The judicial component requires one judge per case, a maximum of one hour per hearing and requires professional collaboration among the lawyers. The psychosocial component requires parents to attend an educational/interpersonal group intervention specifically designed for high conflict families. In both studies, families report on their experience with the process and express their perceptions through semi-structured interviews and online surveys. The projects are currently in the data collection phase with results expected in the coming year.

Professor Michael Saini discussed differential responses currently implemented in Nova Scotia. The differential response emphasizes diversion from court whenever possible and the need to triage between low, moderate and high conflict parties with different individuals requiring services. Five typologies and service recommendations were described:

- 1) '*Stampers*' describe parties who already have an agreement in place. These parties only require the court to register the agreement and a quick 'stamp' to leave the system;
- 2) '*Contemplators*' describe parties who are contemplating settling the matter on their own. Parenting Information Sessions, resources and information are helpful for this subgroup to navigate the matter outside of the court system;

3) 'Nudgers' describe parties who require some 'nudging' to work things out on their own. These parties are low conflict and can make use of brief interventions or ADR services; 4) 'Entrenchers' describe parties characterized by moderate conflict. These parties require specialized ADR services; and, 5) 'Intractables' describe high conflict couples, a subgroup that is unlikely to benefit from information, and instead, requires more specialized high conflict education and the use of court.

Mr. John Boyd, Executive Director, Canadian Institute for Law and the Family, Calgary, Alberta discussed the development of Parenting Coordination in British Columbia. A PC Roster of Parenting Coordinators consisting of mental health and legal professionals was launched in 2007 (www.bcparentingcoordinators.com). A survey administered to lawyers and mental health professionals in August 2007 indicated that 82% maintained the FLA should be amended to allow the court to appoint parenting coordinators. A proposal was made for the new legislation to allow a court to appoint a PC without consent of both parties and to make several changes to the language in sections of the legislation. With the recent amendments to the B.C. Family Law Act, in force in March 2013, the focus is on ADR and resolutions outside the court, wherever possible. The Court can now order Parenting Coordination and those on the roster must satisfy practice, education and training requirements detailed in the Regulations.

The final presentation by Prof Nick Bala and Dr. Noel Semple summarized their report "*Reforming the Family Justice System: An Evidence-Based Approach*." The report identified three goals in family disputes: to advance children's interests, protect adult rights and ensure cost effectiveness. The presentation summarized the research on how the justice system responds to family disputes. Recommendations for government action based on empirical evidence are made while identifying unanswered system design questions that require further study. The speakers discussed interrelated challenges related to laws, structures and policies found in the justice system that impact the government and professionals. Three processes were found to be effective in achieving the identified goals: enforced adjudication, mediation and providing information. The speakers identified the evidence of their efficacy, alternative ways to provide them, ways to improve delivery and their limitations.

Knowing that these three processes work, four important unanswered questions remain: 1) Should services be delivered under a triage model, or through tiers? 2) To what extent should the state seek to consolidate and simplify separation-related services? 3) In what circumstances should users be required to pay for family justice services? 4) Should adjudicative functions and settlement-seeking/relationship-building functions be kept in separated spheres, or brought together?

Overall, it was an informative day hosted by AFCC-O with important discussion and interdisciplinary collaboration. We extend our utmost thanks to Professors Bala and Birnbaum for organizing and chairing this event and to all of the participants.