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The Future of Family Law in Ontario: The Time for Change

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Despite the increasing use of mediation, arbitration and collaborative family law throughout Ontario, the Family Court system remains mired in delay and inefficiency.

Three of the most unsettling trends are: 1) the increased number of unrepresented litigants in the family court system; 2) the costs associated with the production of relevant disclosure; and 3) the increasing length of trials.

In order to confront these problems, the family law system in Ontario must undergo several important changes in an effort to better serve those who need its services. These trends must be dealt with, or Ontario could find itself with an irreparably clogged family court system.

The Dangers of the Unrepresented

Unrepresented litigants are a serious concern for the family law system. At its basic level, the courts were not designed for such individuals. The adversarial system depends on lawyers to vigorously pursue their client's case, bringing forth all of the relevant facts to the judge. The average person is simply not trained to present the facts of their case in a manner that is useful to the judge.

The Traditional Response

It has become a clichéd response to any concern about access to justice in Ontario that the solution is to provide more funding to Legal Aid, however in the modern economic climate, it is difficult to believe that the legislature would be eager to extend the sort of funding necessary to boost Legal Aid to an amount that would make a significant difference in the current system.

Legal Aid Ontario should not be expected to be the pressure valve for the family law system in Ontario. A more progressive change should be looked at which could help reduce the need for Legal Aid, rather than just boost the Legal Aid System.

The other solution that we often hear is for the Government to appoint more Family Court Judges. While we agree that this is a good idea, it is not realistic to believe that Governments are going to spend more money on Judicial Appointments in the current economic climate.



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A More Efficient System

Ultimately, most individuals do not want, specifically, to go through a trial—they just want a decision. Keeping this in mind, the Family Law system in Ontario could be improved by empowering judges to make such decisions in a more efficient manner.

Each case should have a case management judge. Such judges could be empowered to, where appropriate, make decisions on a more informal basis, based on affidavit evidence and conference briefs.

Many couples currently in the family courts in Ontario simply do not need a trial; they just require a decision that will let them continue with their lives. For most individuals, a trial will serve only to put additional financial strain on them during an already expensive time in their lives. There is simply no need for the expense and strain of a trial in most cases.

Providing couples with a decision that will let them continue with their lives with the least expense, is often in the best interest of individuals, even if they may not be aware of it.

It is also unfair to require taxpayers to pay for unnecessary trial time.

Changing the Role of Lawyers

One of the primary groups the current system is failing is individuals “caught in the middle”: those who have too much money to qualify for Legal Aid, but not enough to afford litigation are left in a nearly impossible situation.

Some lawyers in Ontario have begun to advocate for an unbundling of legal services, allowing a lawyer to do specific tasks within a case rather than handle the entire matter.

Such arrangements are popular in the United States and the Law Society of Upper Canada has created [draft rules](#), and has a working group investigating the implementation of such solicitor-client relationships. It would present lawyers with a different way to practice, specializing in negotiation or drafting agreements without being expected to represent the client throughout the entirety of their issue.

This would allow lawyers to provide some legal services to an individual without forcing them to incur the expense of fully retaining a lawyer.

Fix the System



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Ultimately, the suggested solution of putting more money into the Legal Aid system is not a way to fix the underlying problems with the family courts in Ontario.

The system must be reformed to better serve the people of Ontario. Creating a streamlined and efficient system it will help the individual save the individual, the courts, and the province money. The focus on trials is no longer offering the best result for couples in Ontario.

During these difficult economic times, perhaps, the province will choose to innovate, now that the traditional responses are no longer feasible.