

# **AFCC-Ontario: Intersection of Domestic Family Law Cases and the Child Welfare System – Next Steps to Improve our Responses to Families Experiencing High Conflict (February 2017)**<sup>1 2</sup>

## **1. Statement of Principles:**

- a. There should be a single family court at all Ontario sites that has jurisdiction over domestic (divorce, support, custody, access, equalization of net family property, and trust claims) and child welfare matters, commonly known as Unified Family Court. It would be highly desirable for that court to also have jurisdiction over criminal cases where there are concurrent family or child welfare proceedings.
- b. Services for family court litigants should be available to them in a timely, financially accessible (free or subsidized for low income individuals) including: information and education for post-separation parenting; mediation for domestic matters, and mediation for child protection cases; supervised access centres, for visits and exchanges, therapeutic supervised access services; legal information and advice; legal representation for litigants; child legal representation; child custody assessment services, including views of the child reports; timely judicial decision-making; and a source for referrals to counselling and parent coordination. Reunification and therapeutic access should be prioritized, and increased funding made available to agencies providing these services.
- c. Every court location and family law services should be culturally sensitive with costs proportionate to income. For example, interpreters should be available to all litigants, as well as access to legal information and advice in various languages.

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<sup>1</sup> The priorities listed in paragraphs 1(a to e,g), and 2(a,d,f,I,j,k,l,m,n) and 3(d) of this summary paper were adopted from the Association of Family and Conciliation Courts (“AFCC-O”) Ideal Family Court (Revised 2014). Various attendees at the AFCC-O Symposium, the Intersection of Domestic Family Law Cases and the Child Welfare System (held on November 25, 2016), identified the remaining priorities described in this paper.

<sup>2</sup> For further information and recommendations please see the 2015-2016 AFCC-O Research Project, The Challenge of High-Conflict Family Cases Involving a Child Protection Agency: A Review of Literature and an Analysis of Reported Ontario Cases; and, High-Conflict Family Cases Involving a Child Protection Agency: Report on Experience of Child Welfare and Family Justice Professionals and Suggestions for Good Practices, by Claire Houston & Prof. Nicholas Bala, [www.afccontario.ca](http://www.afccontario.ca).

- d. There should be a sufficient complement of specialized family court judges in each jurisdiction to ensure that cases are scheduled and progress appropriately. A maximum time standard should be established for court and service processes and this time standard should be available to all litigants, along with information about the local ability to meet those standards.
- e. Court processes and forms should be simplified, and the Family Law Rules amended, to provide for more efficient and effective access to justice. Information about the court process and court services should be readily available to all litigants.
- f. Many families face a diverse set of issues, including those related to the mental or physical health of parents or children, addictions, immigration, poverty, high conflict and/or domestic violence. Providing opportunities for a dialogue between the various disciplines that deal with these issues would be helpful. Local meetings can be held involving hospitals, pediatricians, psychiatrists, psychologists, social workers, police, community agencies, family lawyers and judges.
- g. Services should include an evaluation component with regular feedback to the local court and community partners.
- h. Family lawyers (including those employed by Legal Aid Ontario (“LAO”), members of the private bar, clinic lawyers and government employees) should attend mandatory and ongoing training in the following areas: effective representation of legal aid clients; negotiation and collaborative law; dispute resolution; cultural sensitivity; the impact of conflict on children; and, accounting for the children’s best interests in custody and access disputes. Educational programs could include GoAnimate modules that would be available on-line.
- i. Where children need assistance from a community agency or private services, all parties should agree that the content of counselling sessions will not form part of any court case, and that any professionals involved will not be required to testify at court or produce their file. At present, many agencies decline to provide assistance where there is an ongoing court case. Early intervention can prevent conflict and constrain costs.
- j. All professionals working with families experiencing conflict should consider how their actions may affect the children’s best interests, and ensure that the support they provide is in line with the children’s best interests.

- k. Various branches of the provincial and federal governments should engage in discussions with other stakeholders in the family justice system, the police and the social service community to identify how to better respond to families experiencing high conflict, and to address the proposals set out below. Sustainable and sufficient funding for the family justice system, the child protection system and LAO (Family) is imperative to the effective and efficient delivery of services and support for these families.
- l. Given the high rates of complaints against mental health professionals to their licensing bodies, consideration should be given with respect to possible amendments to the Ontario Regulated Health Professionals Act, in order to protect child protection workers, assessors and counselors from frivolous or vexatious complaints.

## **2. The Domestic Family Court and Child Welfare Court:**

- a. ``One Judge for One Family`` should be the norm from the beginning of the case until the door of trial, and for Motions to Change and child protection proceedings. The trial judge should remain seized after orders are made and be responsible for the follow-up enforcement related to parenting and contempt issues.
- b. The family court plays an important role in the resolution of family law disputes, which should not be devalued. Judges fulfill the following roles: dispute resolvers; case managers; and, neutral evaluators. Some families require the authority of the court, as the parents will only listen to a judge.
- c. Judges can conduct case conferences to help the parties identify: child-related issues; disclosure and evidence; resources; timelines.
- d. Formalized and regular communication between the court and the service community, including child protection agencies, public health and educators, should be established.
- e. The domestic court should address issues related to third party disclosure and confidentiality at an early stage, to provide the judge and the parties with relevant information and evidence.
- f. In particular, there should be protocols on information sharing and service sharing for children whose families have court matters in more than one type of court (i.e. criminal and domestic, domestic and child welfare...).

- g. When information is needed from a child welfare agency, judges should consider whether to request a summary letter of involvement, file disclosure or the attendance at court of the child protection worker or lawyer.
- h. Protocols and partnerships should be developed between the court and local service-providers that are consistent with the principles outlined above.
- i. Affordable legal advice at the intake stage, and affordable assistance with the completion of court forms (for domestic and child protection matters), should be readily available to lower-middle and middle-income families.
- j. Family Law Information sessions should be mandatory in all court centres and a second session should be mandatory for all litigants and their children, if the children are involved in the case. Children should be provided with general information; such as the effect of parental separation on children and living in two homes; stepparents; stepsiblings; domestic violence; and the family dispute resolution process, including mediation, assessment and litigation; and the rights of children, both to be heard and “to remain silent”.
- k. Every court Location should have Liaison and Resource Committees.
- l. Every court location should regularly develop and assess needs and priorities for its court, related to these principles and best practices.
- m. Family courts should make use of modern technologies, which could assist in the efficient and accessible operation of the court.
- n. Family courts should continually assess tasks that require routine, uncomplicated, procedural, and consensual decision-making for fast-track processes.
- o. The *Family Law Rules* enable the Court to conduct focused hearings and summary judgement motions.
- p. Delay in the progression of a high conflict case should be avoided as delay always benefits one parent and never benefits the children.

### **3. The Children’s Aid Society/Societies (the “CAS”):**

- a. Where there is a concern of emotional harm, a referral to the CAS should be made at an early stage, and the CAS should consider whether child protection mediation, family group conferencing or other dispute resolution mechanisms may be appropriate.

- b. The child protection worker should obtain parental consent to communicate with any lawyer or clinical investigator, appointed by the Office of the Children’s Lawyer (“OCL”), at the initial stage of involvement and on an ongoing basis, and consider any role for the OCL in the resolution of the dispute.
- c. Where a clinical investigator is engaged in the preparation of a s.112 report pursuant to the *Courts of Justice Act*, the child protection worker should advise him/her of the outcome of the CAS investigation as soon as possible, in order to avoid further delay in the completion of the report (as the clinical investigator’s role is put on hold during a child protection investigation).
- d. File disclosure and file summary letters should be provided in a timely manner when there is an ongoing domestic matter; the consent of parents should be sought for disclosure of such letters to the family court, and if consent is not forthcoming, there should normally be an order disclosure.
- e. If the CAS commences a child protection proceeding, consideration should be given as to the utility of requesting an OCL lawyer for the child.
- f. The child protection worker or OCL should consider taking on the role of “case manager” when there are multiple agencies / professionals involved with the family. Ensuring that there is open communication, case coordination and multi-party meetings can be an effective tool in the reduction of parental conflict and to ensure that effective support is being provided to parents and children.
- g. Child protection workers, supervisors and managers need specialized training in the following areas: high conflict separation and divorce; identifying, investigating and responding to emotional harm; educating parents about these matters; and, bias (favouring one parent over the other). This training should be interdisciplinary.
- h. Training components should include: the impact of conflict on children; strategies to improve communication between parents; coordinating services and supports for families in conflict; managing hostile behavior and angry parents; alienation; and, sexual abuse allegations. Staff who respond to the initial telephone calls also require training as their responses have an impact on how the cases move forward.
- i. Cases involving high conflict families should be directed to specific child protection workers or teams who are best equipped to respond to these cases.

- j. The CAS should develop clear policies and practice directions that inform how child protection workers respond to families experiencing high conflict.
- k. The CAS should adopt a better and more consistent definition of “emotional harm” across Ontario.
- l. Think globally act locally. The Societies should meet regularly to discuss best practices with respect to how they respond to families experiencing high conflict.
- m. The CAS should reach out to the broader community, including the AFCC-O, to develop better relationships with various stakeholders. Involving local professionals from outside of the CAS (judges, lawyers or mediators) may provide new training options and the opportunity for open discussions about changes that should be implemented.

#### **4. Legal Aid Ontario (“LAO”)**

- a. Staff and panel lawyers employed by LAO should be provided mandatory training by LAO, in the areas described in paragraph ( #1 (h) above, by.
- b. To ensure that lawyers have the necessary skills to represent parents in family law disputes, LAO should consider a re-empanelment process.
- c. At present, LAO does not provide the same services across Ontario. Each court should have duty counsel and advice counsel available whenever family law matters are being heard in Court.
- d. Financial eligibility for Legal Aid Ontario Services should be expanded, particularly for clients who receive Family Law Service Center court document preparation services as well as post-mediation ILA certificates.
- e. LAO should initiate a pilot project that provides a minimum number of hours so that experienced lawyers in domestic proceedings can assist in the early stages of high conflict cases where the parties do not otherwise qualify financially for LAO services.