

Legislative
Assembly
of Ontario



Assemblée
législative
de l'Ontario

**Official Report
of Debates
(Hansard)**

JP-22

**Journal
des débats
(Hansard)**

JP-22

**Standing Committee on
Justice Policy**

Moving Ontario Family Law
Forward Act, 2020

1st Session
42nd Parliament
Tuesday 13 October 2020

**Comité permanent
de la justice**

Loi de 2020 faisant avancer
le droit de la famille en Ontario

1^{re} session
42^e législature
Mardi 13 octobre 2020

Chair: Roman Baber
Clerk: Thushitha Kobikrishna

Président : Roman Baber
Greffière : Thushitha Kobikrishna

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MR. SHELDON TENENBAUM
ONTARIO ASSOCIATION
OF CHILDREN'S AID SOCIETIES
DURHAM COMMUNITY LEGAL CLINIC

The Chair (Mr. Roman Baber): We're now joined by our second multi-presenter panel and our third testimony of the day on Bill 207. I'd like to welcome Sheldon Tenenbaum, Wendy Miller of the Ontario Association of Children's Aid Societies, and Omar Ha-Redeye and Anna Toth of the Durham Community Legal Clinic, who always provide helpful testimony at this committee. I invite the presenters to make their initial seven minutes of submissions, followed by questions from both parties and the independent member.

The Chair (Mr. Roman Baber):

We'll now proceed with the Durham Community Legal Clinic. Omar and Anna, please begin your seven minutes of submissions by stating your names for the record.

Ms. Anna Toth: Thank you. My name is Anna Toth. I'm a volunteer with Durham Community Legal Clinic, and I practise as a junior associate at Carpenter Family Law, in family and child protection law. Today I will be speaking about the need for an overall shift in family dispute resolution, because the framework, as it exists today, does not work.

Regardless of party circumstances, the process to separate and seek corollary relief through the courts is too complex, too expensive and too conflict-oriented. From a lawyer's perspective, it is disheartening to tell a client who is already suffering from heartbreak and uncertainty of separation that I don't know when the process is going to be over and I don't know how much it will cost. There are too many factors. Particularly if the other side is highly adversarial, it is possible to stretch a case on for three years, 10 years or more. The COVID-19 pandemic has only increased this uncertainty. This is enough to overwhelm adults, but imagine for a moment witnessing and experiencing this from the perspective of a child. Imagine being eight years old and learning that everything you do or say, including what you write in private emails and text messages, can be screenshot and sent to lawyers, psychologists, social workers and judges to be analyzed and picked apart. Imagine not knowing when the scrutiny and surveillance will end.

The shape and structure of family law should be designed with the best interests of the child at heart. I would argue that Bill 207 reflects this priority. For example, sections 33.1(1) and 33.1(2) of the Children's Law Reform Act establish an obligation to protect children from conflict, and where possible, resolve issues through mediation and negotiation. The importance of these sections cannot be underestimated. If enacted, I as a lawyer can point out those sections to my clients and say, "This is what we're striving for." I can refer other lawyers who are trying to make things more adversarial, and remind them of our obligation to our clients to encourage collaboration and efficiency.

Although further statutory and regulatory changes are needed to ensure proper implementation, this is a good start. ADR methods are cheaper, faster and less invasive. They're also more flexible, so they can be customized to fit the needs of the parties involved. To an extent, there is room for emotion, compromise, creativity and empathy—all the things that are needed during a separation. The process is also cheaper, so I think there might be a possibility that more people will be able to afford legal representation if one mediation, two mediations will solve the problem, instead of years of litigation. Having a lawyer there will address the commonly referenced disadvantage of ADR, which is that existing power dynamics can go unchecked. If both sides have a lawyer, we can address that. Thank you.

Omar?

Mr. Omar Ha-Redeye: Omar Ha-Redeye.

1120

The Chair (Mr. Roman Baber): Thank you. You have three and half minutes remaining.

Mr. Omar Ha-Redeye: New lawyers like Anna enter the field of family law knowing it is often the most important legal issue that many Ontarians will face. They are quickly confronted with the reality that family law disputes are far too complicated, far too acrimonious and far too procedural to be resolved effectively and efficiently. They also learn that far too many lawyers define their professional interests as separate from that of the justice system, and simply define the best interests of the child as the best interests of the client.

At the risk of sounding like a lawyer who cried wolf, I return to this committee once again to describe an access-to-justice crisis. However, the crisis in family law is worse than in any other part of the justice system. As the executive director of the Durham Community Legal Clinic, I can share that we receive hundreds of phone calls a year from our residents, who are desperately seeking family law assistance. Unfortunately, we do not provide family law legal advice, yet we could not ignore these pleas entirely without at least attempting to point these people in the right directions. Consequently, we are developing a family law triage program through our access-to-justice hub.

Bill 207 makes some very important changes to the Family Law Act and the Children's Law Reform Act. These changes, in conjunction with a commitment by this government to foster support and fund community-based, social, psychological and financial services relevant to family law, will invariably improve our justice system. They promote greater use of alternative dispute resolution outside of court, even before family law proceedings arrive at their doorstep of justice. These changes also introduce necessary definitions of family law violence, to properly recognize that power imbalances and coercive control can come in many different forms. Our justice system and society at large have a very strong, public interest in preventing this behaviour and ensuring that bad conduct is not inadvertently rewarded in the litigation process.

Bill 207 is not simply an attempt to mirror the federal amendments to the Divorce Act which come into effect next year. The constitutional responsibility for the operation of the courts is with the province. It is therefore the province's responsibility to make the necessary changes to the operation of our family law system, to make it more effective, efficient and accountable.

The Durham Community Legal Clinic supports the amendments found in Bill 207 and encourages the members of the committee to provide their support for these changes as well. It is very rare for me to arrive at this committee and provide my unqualified support to any bill, and so the fact that I am taking this position here will please, I hope, the members of the committee, but also perhaps surprise the Chair and the PA, who I see are in attendance in person in the Amethyst Room.

I'll leave the remainder of the time for questions. Thank you.

The Chair (Mr. Roman Baber): Thank you, sir. We'll now go back to the government for seven and a half minutes of questions. MPP Tangri.

legislation and provincial legislation—why it’s important from a practical perspective that there is consistency in the language used between those acts and some of the tests that judges are considering, that sort of thing.

Ms. Anna Toth: Everyone I’ve met—and I’m a new call—is just overwhelmed. When they come to a family lawyer, this is probably one of the worst periods of their life. It makes it very hard to learn things like the law, and lawyers are there, throwing out, “Look at this section. This is the case precedent.” It’s a new language and it’s a new world for them, so as much as possible, if we can make things consistent between the federal and provincial legislation so they’re not learning two times the vocabulary they need to move around in that world—we tell our clients, “When we’re in front of a judge, you have to make sure that you’re calm, even if you’re angry and you’re heartbroken.” There are so many moving parts. Learning two laws when maybe one would do is of great help to our clients, if possible.

1130

Tenenbaum. Just based on some of the comments that you have made, I wanted to ask if you have participated in the federal Divorce Act consultations. Were you asked to participate in that, or did you present to them before their changes?

Mr. Sheldon Tenenbaum: No, I didn’t.

Mrs. Nina Tangri: I’m just going to pass on to the Durham legal clinic, to ask you the same question. Did you participate in that consultation?

Mr. Omar Ha-Redeye: What I can say is that I am in constant communication with many political representatives at all levels of government, including the PA to the AG, well before this particular initiative has been under way. My comments and positions as it relates to family law are very much built on Julie Macfarlane’s work. We have 40 pages of written submissions for Bill 207 that are here for the committee members, and many, many other submissions that I have made that were in fact used at the federal level.

The Chair (Mr. Roman Baber): With two minutes remaining, I invite MPP Park.

Ms. Lindsey Park: I’ll speak further with the Durham Community Legal Clinic. First of all, I want to thank you. For those on this call who don’t know, I am the MPP for Durham, so it’s always a pleasure to have representatives from our backyard showing up and participating in the democratic process here at committee.

I just wanted to get some further perspective from you, either Anna or Omar, on why, in your experience, consistency in areas like family law, where there is both federal

Miss Monique Taylor: Access to justice is definitely something that has been highlighted as we have continued to debate this bill and as we have heard from folks who have come to do deputations in front of us today.

I'll go to the Durham legal clinic. How are you feeling about this bill when it comes to true access to justice for the constituents you serve, who are typically, I'm sure, some of the most vulnerable in our community? Do you think this bill does anything to help these people when it comes to access to justice, particularly with the cuts to legal aid?

Mr. Omar Ha-Redeye: The comments related to cuts to legal aid are significant. That is going to be a challenge going forward. However, the problem with family law—this was alluded to on some of the previous panels—is not going to be fixed by money alone. The system itself is broken. The system itself is ineffectual. The system itself is conflict-oriented and adverse-relationship-oriented, and is therefore in its inherent nature not in the best interests of the child.

What the changes here—not only Bill C-78, but also Bill 207 here provincially—have done is to introduce formally in legislation an explicit reference to out-of-court dispute resolution. Ideally, that dispute resolution would happen before low-income or even middle-class individuals even go to court. That would be the ideal solution. What that would do is to then take off the pressure from the courts and allow them to actually properly focus on those cases that do have coercive control, domestic violence or, perhaps, even complex issues of law.

Family law is not an issue that should be solved within our court system, generally, and that should be the starting point. That's what the statute allows. As we allude to in our 40-page submissions, there is quite a bit more that needs to be done, but this is the framework and the starting point which we expect and we hope that this government will build upon even further.

The Chair (Mr. Roman Baber): Two and a half minutes remaining.

Miss Monique Taylor: As I'm sure you're aware, 50% to 80% of people who access our Family Courts do so without representation because of the lack of access to justice.

Do you think that this bill—yes, it will streamline some of the things, and yes, it will make wording easier for lawyers within the court system. But is there true access to

justice built into this bill that will make a difference in our legal system?

Mr. Omar Ha-Redeye: If “access to justice” is defined as simply having the ability to go to a family law trial, then no; in fact, nobody in all of Canada will have that. We have a backlog of cases which the Supreme Court of Canada has indicated, in cases like Jordan and Cody, need to be addressed from a constitutional perspective in criminal law first and foremost. Family law is not resolved in Ontario or anywhere in Canada through family law trials.

We agree: The level of self-represented rates—we actually go on Julie Macfarlane's work in our written submissions—is of concern. The major reason for those rates, though, is that those individuals are unaware and are not informed that the proper way to resolve their family law disputes is outside of court, because most family law disputes are actually not about the law at all. They're about financial issues; they're about social issues; they're about psychological issues; they're about mental health issues. Those are issues which lawyers and, quite frankly, the courts are very ill-equipped to deal with. There is consensus about that quite broadly, not only in the family law bar, but more importantly, within the court system and the bench as well.

I'm happy, perhaps in a subsequent question, to actually provide a defence to the judiciary, because I know some of the previous comments also made some critiques about them.

Miss Monique Taylor: One of the things that we have heard about this morning is the lack of training for judges when it comes to domestic violence and abuse. Is that something that you could see yourself supporting?

Mr. Omar Ha-Redeye: We would support—

The Chair (Mr. Roman Baber): In 10 seconds.

Mr. Omar Ha-Redeye: Sorry. I believe the Chair spoke.

Miss Monique Taylor: He said, “10 seconds.”

The Chair (Mr. Roman Baber): If you could kindly conclude quickly, please.

Miss Monique Taylor: Just yes or no.

Mr. Omar Ha-Redeye: I think that they do receive that training, and that's what I will say in the 10 seconds.

The Chair (Mr. Roman Baber): We'll now move on to the independent member, Madame Collard, with four and a half minutes.

M^{me} Lucille Collard: Thank you to each of you who came forward this morning to share your views and your expertise in that area.

We've heard that the appeal route is convoluted, that it involves more delays, and this is a very negative impact on families who seek justice. With the court process being something that's very costly, with the long delays and the conflict-oriented process that of course create a great deal of stress on spouses and also on children, do you believe that we need better support in terms of alternative dispute resolution, and more specifically, having mediators who have training to recognize signs of family violence, and also other professionals who can assist with all the other social aspects that Omar mentioned?

Omar?

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