

## Family

## Following Australian lead to innovation in family law

By **Omar Ha-Redeye** and **Dan McAran**



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(July 27, 2021, 3:23 PM EDT) -- Canada is not alone among common law jurisdictions in struggling with how to deal with family law disputes. Looking to innovative initiatives elsewhere may help us identify solutions at home. Australia has already demonstrated itself a leader in family law innovation, with several different solutions emerging from that jurisdiction.

In 2020, the Australian government launched an AI chatbot called Amica through the National Legal Aid and the Legal Services Commission of South Australia, to make family law family centred, more affordable and less adversarial. One of the greatest challenges that separating parents face is with communication. This application helps separated couples make parenting arrangements and divide their money and property by looking at the parties' assets and circumstances, other agreements commonly reached by couples in similar circumstances, and how a court might handle a dispute of this nature.

Similar platforms are already used in Canada. OurFamilyWizard.com is routinely used by separated parties and even ordered by the courts to act as a buffer between parents.

In 2017, the British Columbia Court of Appeal reviewed in *L.C.T. v. R.K.* 2017 BCCA 64 the decision of the trial judge to order the use of OurFamilyWizard.com, where the mother had "usurped the respondent's role as the Children's father and guardian." The Court of Appeal declined to interfere with the order that the mother pay for all of the expenses for the site, because "she is the one who refuses to communicate with the [father] in a normal manner."

Reena Herian, an Alberta family lawyer, notes that the Alberta courts often encourage the use of the coParenter app, which provides live, on demand mediation. The founder went through their own expensive and unnecessary volatile divorce and wanted to develop a better alternative to family disputes.

Australia's use of Amica works slightly differently, with one party to the family law matter inviting the other party to voluntarily participate.

Automated platforms have already demonstrated some utility to separating parties. Dean Tania Sourdin and Bin Li of Newcastle University Law School in Australia reviewed the use of Adieu, another Australian family law technology product similar to Amica, and concluded in *The Conversation*,

We found by giving couples dominion over the separation process, they were less likely to be emotionally stressed. Although our survey sample was relatively small, 76% of participants reported not feeling emotional distress. Of those who did, most said this was the result of existing circumstances.

The disadvantages to using an AI tool that Sourdin and Li note are: (1) They are most suitable for simple matters where there is an amicable relationship between the parties, and (2) the financial suggestions offered may not be completely focused on the needs of the children, as opposed to the

interests of the parents. Sourdin and Li caution that Amica's success is still uncertain, as they need to collect more information over time.

The potential implications of the use of tools like Amica include reducing the number of billable hours on a file, while maintaining the hourly rate. A lawyer would provide advice at critical junctures through the technology, while parties seek a resolution themselves. The quality of the work would increase for the lawyer, and the value of the services received would improve for the client.

There will still be cases that need to go to court to be resolved. Lawyers who provide advice by the supplementing technology would help in identifying these cases.

Predictive algorithms could play a greater role in determining outcomes and the likely range of financial obligations of the parties to each other. For low-income litigants in particular, this could provide valuable information about strategic options for settlement.

Amy F. Salyzyn, an associate professor at the University of Ottawa's Faculty of Law, says there is already a way forward in this process. "The development of technologies of this type holds promise for improving access to justice but also carries potential risks to the public. To the extent that such tools are providing legal services, the LSO has a role in regulating and protecting the public interest," said Salyzyn. "The Law Society of Ontario's decision to launch a Regulatory Sandbox for Innovative Technological Service is a great step forward in this regard — it allows new tools to be launched in a controlled environment in which risks can be monitored and data can be collected."

Canadian law schools should become centres of excellence on technology use in this way, training future lawyers to work within a tech-centred family law process. Sourdin comments, "Our students need to be aware, engaged and think about how this will impact legal services into the future. The triage arrangements that some justice apps support can mean that people who previously had no legal support will be able to access a lawyer."

Several family law firms in Toronto have also moved in this direction, importing Settify in 2021, another Australian family law platform. The platform, which is already used by 400 firms around the world since 2017, uses AI and automation to streamline processes, enhance client experience and allows lawyers to focus on providing solutions to family law disputes. These firms expect to roll the platform out across Ontario and other provinces as well.

We have already moved to "Zoom justice" in many of our courts, with many proceedings already online, as long envisioned by Richard Susskind. Perhaps we could now further evolve dispute resolution systems to facilitate "online self-resolution." This model would reduce economic transaction costs associated with family law matters, reduce the use of scarce and expensive court resources and ultimately provide a way out of the family law crisis through innovation.

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