Access to Justice in Ontario's Family Courts: The Parents' Perspective

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ACCESS TO JUSTICE IN ONTARIO'S FAMILY COURTS: THE PARENTS’ PERSPECTIVE

Michael Saini, Rachel Birnbaum and Nicholas Bala*

I. INTRODUCTION: A LACK OF ACCESS TO FAMILY JUSTICE

Transitions resulting from separation and divorce are often a period of uncertainty and conflict between parents and stress for their children. During this transition, many parents turn to the family courts to assist in resolving disputes about the restructuring of their relationships. Until recently, little research has been done to understand the effects of the legal process on parents experiencing a family breakdown or on how the process might be improved to reduce the short and long term negative effects of using the court system to resolve family disputes.¹ Recent articles and reports have identified the lack of effective access to the family justice system in Canada,²

* Michael Saini, Associate Professor, Factor-Inwentash Faculty of Social Work, University of Toronto, Toronto, Ontario.

Rachel Birnbaum, Professor, Cross-appointed Childhood & Social Institutions (Interdisciplinary Studies) & Social Work, King’s University College, Western, Ontario.

Nicholas Bala, Professor, Faculty of Law, Queen’s University, Kingston, Ontario.

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including issues of cost and delay\(^3\) and the growing incidence of selfrepresentation.\(^4\) Lack of access to appropriate legal information, advice, and representation may result in unjust outcomes and exploitation of the vulnerable, particularly for children and victims of domestic violence. There is a growing awareness that there is a need to improve the court services to ensure that all family litigants receive affordable and accessible access to justice. This includes reducing the delay and cost of the family justice process and increasing access to non-adversarial methods of dispute resolution. These recent reports have attempted to explore ways to improve access to justice for parents involved in family law disputes. Recent research has also focused on increasing the understanding of how the views of children can be appropriately taken into account in the family dispute


\(^4\) LCO, “Increasing Access to Family Justice”, supra note 2 at 23-24; Macfarlane, supra note 2 at 32-34; Cromwell, supra note 2 at 40; Birnbaum & Bala, supra note 2 at 122; Bala, supra note 2 at 291; Birnbaum, Bala & Bertrand, supra note 2 at 68; DA Rollie Thompson, “No Lawyer: Institutional Coping with the Self-Represented” (2002) 19 Can Fam LQ 455 at 455.
resolution process.\(^5\) Yet there remains a lack of research on the efficiency and effectiveness of court-related services within the family justice system\(^6\) and even less about services being offered to family litigants by mental health and legal professionals outside of the court process.\(^7\)

Understanding the views and experiences of parents involved in family disputes is critical for developing sound family justice policies that better address the needs of those attempting to resolve their dispute in court or by alternative means. In this paper, we briefly review the existing empirical research and literature on the views of parents who have been involved in the family court process, and report on our study of the experiences and perceptions of parents about the family justice process.

### II. FAMILY JUSTICE PROGRAMS AND SERVICES IN CANADA

Over the past four decades, there has been a significant growth of publicly funded programs and privately paid services for separating families in Canada. There have been similar trends in other developed countries, with increases in such services as education programs that provide information for separating parents, mediation, arbitration, parent coordination, collaborative lawyering, child custody assessments, child legal representation, and views of the child.

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\(^6\) Bala, supra note 2 at 274; Birnbaum, Bala & Bertrand, supra note 2 at 69-70; Thompson & Reierson, supra note 2 at 529.

\(^7\) Bala, supra note 2 at 303; Alfred A Mamo, Peter G Jaffe & Debbie G Chiodo, Recapturing and Renewing the Vision of the Family Court (London, ON: Centre for Research & Education on Violence Against Women & Children, 2007) at 39, online: <www.learningtoendabuse.ca>.
The growth of these services and programs is due, in part, to an increased emphasis on the father’s involvement in the lives of children post-separation, which has resulted in more disputes about parenting plans between the parents. There is also a greater recognition of the harms to children caused by domestic violence, parental drug and alcohol problems, and mental health issues of one or both parents. There is also a concern about the negative impact that conflict has on children’s adjustment post-separation when their parents engage in ongoing acrimonious family disputes.

Due to government fiscal constraints over the past decade across Canada, programs and court services, including legal aid plans, have often been expected “to do more with less”, which has correlated with a marked increase of self-represented litigants in the family justice system. In Ontario, policy analysts, lawyers, judges, academics, mental health professionals, and litigants themselves, have called for changes to the family law justice process to provide for a more effective dispute resolution system. While there is a consensus

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8 See generally Peter Salem, “The Emergence of Triage in Family Court Services: The Beginning of the End for Mandatory Mediation” (2009) 47:3 Fam Ct Rev 317 [Salem]; Birnbaum & Bala, supra note 2 at 117-18.

9 Birnbaum & Saini, supra note 5 at 110.


12 Birnbaum & Bala, supra note 2 at 100-01, 104; Birnbaum, Bala & Bertrand, supra note 2 at 68, 74-75; Macfarlane, supra note 2 at 32-34.

that there is a need for change, there are serious disputes about how, when, and where to change government funded programs and policy, and how to intervene given the different stakeholders involved and the private versus public court-based services for separating families.  

Similar to developments in other Canadian provinces and territories, a number of court-related services have extended and developed in Ontario that focus attention on early resolution of family disputes. These developments include the following:

- Access to information, including “mandatory attendance” at a program offering free information on the emotional and legal implications of separation. Attendance is required at a two and a half hour information session presented by a mental health professional and a lawyer for all litigants who file an application or response in a family proceeding in Ontario. These sessions provide basic information about the family court process, the value of mediation, and the effects of separation and divorce on parents and their children;

- Improved information services at courts with special support services for domestic violence cases. These are primarily information and referral services provided by non-lawyers and do not formally triage cases;

- Improved access to legal advice through counsel at the courts provided by Ontario Legal Aid for low-income litigants at family court. The access remains limited, and provides only relatively brief consultation sessions with low-income

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14 See Ministry of the Attorney General, News Release, “Province Seeking Feedback to Make Family Legal Services More Accessible” (9 February 2016), online: <www.news.ontario.ca> (the Ministry of Attorney General, Ontario and the Law Society of Upper Canada announced that they are seeking submissions about whether to change policies and regulations to allow certain family justice services to be provided by a broader range of legal service providers such as paralegals, law clerks, and law students).


16 See Joanna Hunt & Jaclyn Sopik, “The Misplaced Information Program? A Study of Ontario’s Mandatory Information Program” (2015) 35:1 Can Fam LQ 31 at 49 (although it is called a “Mandatory Information Program” in that litigants are required to attend in order to proceed with their cases in court, this requirement is often ignored and many do not attend).
thresholds for eligibility. Access to full representation from Legal Aid for family cases is limited to the lowest income groups\textsuperscript{17} for a limited range of cases, with greater access if there are domestic violence issues.

- Early access to alternatives to litigation. This includes providing court-connected mediation services with government-subsidized access for low and middle-income litigants.

- Efforts to increase use of judicial case conferencing and case management. Use of judicial case management continues to vary across the province, and between levels of court, with more case management in the Ontario Court of Justice than in the Superior Court of Justice.

- Continued access to the services of the Office of the Children’s Lawyer, which may provide legal representation for children, clinical investigations, or both. These services are provided without charge but only for a limited number of cases.

The intention of these changes and extension of these services, referred to by the Ontario government as the “Four Pillars” of family justice reform,\textsuperscript{18} has been to provide litigants with more knowledge about the options for resolving disputes, information about the legal process, and to help families resolve their disputes efficiently and effectively, often outside of the courts. However, there has not yet been comprehensive, coordinated research about whether, and how, these services and interventions in Ontario impact families and children. Furthermore, there has not even been research regarding whether services and interventions are appropriately matched to the needs or level of conflict in a given family or result in better outcomes for children.\textsuperscript{19} This lack of evaluation is concerning as there has been

\textsuperscript{17} Legal Aid Ontario, News Release, “The Details on Legal Aid Ontario’s New Financial Eligibility Guidelines” (31 October 2014), online: <www.legalaid.on.ca> (while the threshold for Ontario Legal Aid financial eligibility increased by six percent each year starting in 2014 until 2016, it still remains below the poverty line).


\textsuperscript{19} The Ontario government does collect statistics across the province about the number of agreements reached in government funded mediation, issues that were
substantial public investment in time and money in providing these services to family litigants.

It is also noteworthy that the Law Society of Upper Canada has introduced regulations to facilitate the “unbundling of legal services,” formally allowing lawyers and clinics to have “limited scope retainers” to provide some assistance at a lower cost to family clients, without requiring full representation. In theory, this should allow for more affordable access to legal services, but no research has been undertaken to study the impact of unbundling in Canada.

In contrast, researchers in England, Australia, and Ireland have been examining and evaluating court-based family law services for some time. Of significant note, John Eekelaar and Mavis Maclean mediated, and reasons for not reaching agreements, both for mediations undertaken at the court and off-site mediation services. However, there is limited research undertaken into the implementation of its mediation programs and the impact on children and families. As well, there is no long-term follow-up or studies on effects of mediation on re-litigation (See Ministry of the Attorney General (Ontario), Evaluation Report: Family Mediation and Information Services (Toronto: MAG, 2013). Email communication on February 9, 2016 with Ontario Ministry of Attorney General about these statistics and the above discussion (contact Birnbaum at rbirnbau@uwo.ca for April, 2013 statistics on these issues). See also Ministry Attorney General satisfaction survey on their FLIC’s, online: <www.attorneygeneral.jus.gov.on.ca>. The British Columbia government completed an evaluation of their mediation services in 2005 (See Family Mediation Practicum Project: A Pilot Launched in 2004 (Vancouver: MAG, 2004), online: <www.cfcj-fcjc.org>. Additionally, the Quebec government in 2008 surveyed the quality of the service and satisfaction of litigants with mediation (See Ministère de la Justice du Québec, Enquête multiservice (Québec: Justice Québec, 2008) <www.justice.gouv.qc.ca>.


have done extensive empirical work on the actual operation of family courts and the family law process in England. Their work recognizes the extent of lawyer led negotiation as a means of family dispute resolution and establishes that family judges are as much cases managers as adjudicators. Barlow et al also report that the English courts have a critical role in protecting legal rights and providing fair adjudication for the minority of cases that cannot (or should not) be resolved by negotiation or mediation.

Governments and policy makers in Canada clearly accept that there is an important pubic role in the provision of services to assist separated parents and spouses in resolving disputes, especially those related to children. If the government is to properly fulfill this mandate, fiscal responsibility requires that there should be an evaluation of services provided, including an inquiry as to whether the users of these services, specifically parties attempting to resolve their disputes, are actually helped, and if so, in what ways.

III. RESEARCH LITERATURE ON PARENTS’ VIEWS OF FAMILY COURT PROCESS AND SERVICES

There is a growing body of research attempting to understand the views of family court users. However, rather than considering litigants’ overall experiences with the family justice process, or comparing perceptions of different services that may have been received, research has generally focused on litigants’ experiences of attending specific programs, such as those developed to provide families with information about the court process, education about parenting after separation, or alternative dispute resolution methods. This includes parenting education programs, views of attending mediation services, and views of parent coordination.


23 Barlow, supra note 21 at 19-20, 27.

More recently, research has sought to explore the experiences of self-represented litigants and the experiences of parents involved in the family court process following separation and divorce. Studies focused on the court system have found that many parents feel their experience could have been improved if they had access to more information at the early stages of the separation and divorce process. Parents have also reported less satisfaction with the court process as they spend more time in litigation. A common complaint by parents about litigating family disputes is that the process provides the opportunity for ex-partners to use children as a means of manipulation and retaliation for issues that occurred during the relationship. Many parents are concerned about the financial strain caused by litigation, as


29 Williams & Buckingham, supra note 29 at 179.

well as the emotional stress associated with the court process.\textsuperscript{32} However, opting out of litigation does not necessarily guarantee a better outcome for children and their parents. As English researchers Trinder and Kellett note, many parents who engaged in alternative dispute resolution also found the process "stressful and difficult".\textsuperscript{33}

Understanding the difference in the perceptions and experiences of parents involved in court procedures and services is critical for improving services in a way that addresses the unique needs of families involved in the courts and to ensure that the allocation of resources best addresses gaps in the family legal system.

**IV. OBJECTIVE OF THIS STUDY**

The primary goal of this study was to explore parents’ perceptions of family court, the procedures for addressing their disputes, and learn more about their perceptions of the legal and mental health services offered during a family breakdown. Guiding questions for this project included:

- How do parents perceive their involvement in the family law process?
- Are parents aware of the services that have been established to improve access to family justice and the outcomes for children?
- Based on the parents’ views, what are the barriers and facilitators for access to justice?
- How can reform in the family court system or changes in programs and services allow for family needs to be better addressed?

**V. RESEARCH METHOD**

In order to explore parents’ perceptions of accessing both legal and mental health court processes, this study used mixed-method

\textsuperscript{32} Liz Trinder & Joanne Kellett, "Fairness, Efficiency and Effectiveness in Court-Based Dispute Resolution Schemes in England" (2007) 21 Intl JL Pol’y & Fam 322 at 333.

\textsuperscript{33} Ibid at 329.
design that surveyed parents attending a mandatory information program. Further, a subsample of parents agreed to be interviewed six months after completing the survey.

Using a mixed-method design can provide greater confidence in a singular conclusion and can modify interpretations accordingly.\(^3^4\) The mixed-method approach was used in this project because it allowed for a large sample of participants to complete a written survey while engaging in thorough interviews with a subsample of participants to expand our understanding of the experiences of parents in the family law system.

VI. SAMPLING

Participants were recruited from mandatory family information sessions held at the Superior Court of Justice in Toronto to complete a survey about their experiences post-separation, in particular with family dispute resolution processes. There were several inclusion criteria for the study. First, participants must have been separated or divorced from a previous relationship involving marriage, cohabitation outside of marriage, or dating while not living together; the previous relationships were both opposite-sex and same-sex partnerships. Second, a parent could either be male or female. Third, participants must have had at least one child from that relationship under the age of eighteen at the time of completing the survey. Fourth, participants must have been actively involved in the parenting of the children in some capacity during the relationship. Fifth, participants had to provide a signed informed consent document. Sixth, participants had to be fluent in English in order to participate in the survey. Since parents volunteered to participate in this anonymous study, it was not feasible to match ex-partners.

VII. DATA COLLECTION

The survey included a brief questionnaire that explored the length of the parental relationship, number of children, the level of

cooperation and conflict with the other parent, the reasons for attending court, and the use of, and degree of satisfaction with, both legal and non-legal services. The average time to complete the survey was thirty minutes. The purpose of this survey was to gain insight about how parents access services post-separation and to recruit parents to later participate in the more in-depth interview about their experiences.

The in-person interviews were between one to two hours in length and were conducted at a local university. The purpose of the qualitative phase was to explore the experiences and perceptions of parents involved in the family court system, and to consider the implications of their experiences in order to provide recommendations in enhancing access to justice following the family breakdown.35

VIII. DATA ANALYSIS

Survey data were inputted into SPSS Version 23, a data analysis program. The assumptions underlying each statistical test were met. Interviews were audio-recorded, transcribed, and then imported into NVivo, a mixed-method research software, to assist in generating themes across participants.

IX. SURVEY RESULTS

(a) DESCRIPTION OF THE STUDY POPULATION

There were 241 respondents (59.8 percent female and 40.2 percent male) who took part in the survey. 78.8 percent were separated from their ex-partner, 10.8 percent were divorced, 2.9 percent were still living together, though in the process of separating, and 5.4 percent indicated that they were never married or cohabited but had a child together. Just over 50 percent had one child from the

35 The qualitative methodology that formed part of this research was selected to explore the participants' views and experiences about the challenges and barriers in accessing family justice in Ontario and not about generating large numbers and then generalizing to populations, which is the goal of qualitative versus quantitative research. See Juliet M Corbin & Anselm L Strauss, Basics of Qualitative Research: Techniques and Procedures for Developing Grounded Theory (Thousand Oaks, CA: Sage Publications, 2008).
relationship with their ex-partner, 39 percent had two children, 7.5 percent had three children and 2.5 percent had four children.

(b) REASONS FOR SEEKING ASSISTANCE FROM THE COURTS

Based on responses to a list of options, many parents reported both legal and non-legal reasons for engaging in the family court process (see Table 1). There were no significant differences based on gender regarding reasons for seeking assistance from the courts.

Table 1: Reasons for Seeking Assistance from the Court

<table>
<thead>
<tr>
<th>Reasons for attending court</th>
<th>Total %</th>
<th>Females %</th>
<th>Males %</th>
<th>p-value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Change or determine financial support obligations</td>
<td>58.5</td>
<td>63.3</td>
<td>51.2</td>
<td>p.= .08</td>
</tr>
<tr>
<td>Decrease inter-parental conflict</td>
<td>52.8</td>
<td>50.0</td>
<td>57.1</td>
<td>p.= 308</td>
</tr>
<tr>
<td>Improve communication with the other parent</td>
<td>50.2</td>
<td>51.2</td>
<td>48.8</td>
<td>p.= 737</td>
</tr>
<tr>
<td>Changes to which parent can make the final decisions for the child</td>
<td>52.4</td>
<td>50.0</td>
<td>44.0</td>
<td>p.= 396</td>
</tr>
<tr>
<td>Improve their ex-partners' parenting skills</td>
<td>40.2</td>
<td>44.9</td>
<td>32.9</td>
<td>p.= .08</td>
</tr>
<tr>
<td>Change the time that the other parent spends with the child</td>
<td>39.6</td>
<td>38.3</td>
<td>41.7</td>
<td>p.= .62</td>
</tr>
<tr>
<td>Improve their parenting skills</td>
<td>27.4</td>
<td>28.1</td>
<td>26.2</td>
<td>p.= 757</td>
</tr>
<tr>
<td>Control the amount of contact with the other parent</td>
<td>30.3</td>
<td>33.1</td>
<td>26.2</td>
<td>p.= 392</td>
</tr>
</tbody>
</table>

(c) LEGAL REPRESENTATION

Of the survey respondents, 72.6 percent stated that they received advice from a lawyer, while 27.4 percent did not. The majority of the participants, 64.7 percent, eventually retained a lawyer, but over a third, 35.3 percent, were self-represented for the court process. There was no significant difference in legal representation based on gender of the parents or the relationship status of the parties. Parents were more likely to retain a lawyer if they had concerns for the quality of the relationship between the child and the other parent ($X^2 (2, N=203)=7.103, p<.05$).
Of those who retained a lawyer, 75.3 percent had retained one lawyer, 16.7 percent had retained two lawyers, 3.7 percent retained three lawyers, 1.9 percent retained four lawyers, and 0.6 percent retained five or more lawyers. The number of lawyers retained was correlated with the length of the relationship \((r=.20, p.<.05)\), the time since the end of the relationship \((r=.293, p. <.05)\) and the number of children under 18 years of age \((r=.172, p.<.05)\). There was no significant difference in the number of lawyers based on the participants’ gender or age.

(d) REASONS FOR NOT HAVING A LAWYER

A substantial majority (74 percent) of the self-represented litigants (35.3 percent of the total sample) indicated that they did not have a lawyer because they were unable to afford the cost of representation; 7 percent stated that they had received legal aid, but it was cut off or not extended. About 5 percent indicated that they were not satisfied with their previous lawyer as the reason for not retaining a lawyer, and 3 percent indicated that they were self-represented because they only had to go to court once.

Open-ended comments provided a range of reasons why some parents decided not to have a lawyer. Some felt capable of representing their interests in the courts, stating, “I can handle it myself!” and “I finish[ed] law [in] university back home [country of origin].” Others commented on legal aid stating that they were still waiting to hear if they would get legal aid, including: “Applied for legal aid, waiting but answers must be given [in court process] asap.”

Others did not see the need to retain a lawyer as the other side was also self-represented. One respondent commented that “if the other party self represents, a lawyer is not required.”

A major concern expressed by many of those who did not have a lawyer was that they were not able to afford the cost of retaining a lawyer. Some stated that “because I have no job and legal aid rejected my application;” “I won’t be able to afford it anymore;” “My ex husband tries to tie up my finances with endless legal threats;” and “too expensive, hoped to go once, see no benefit from lawyer.”

Some parents felt that the other parent was not hiring a lawyer to further stall the process stating the “biggest challenge has been that
my ex will not hire a lawyer, which has made the divorce, equalization, and parenting plan lengthy and complicated.”

(e) ACCESS TO SERVICES

Based on a list provided, the respondents reported that they used a number of different services following the family breakdown (see Table 2). Apart from seeing a lawyer, 42.2 percent of participants used a therapist for dealing with issues related to a relationship breakdown. Of these participants who met with a therapist, 75 percent were either very satisfied or satisfied with receiving therapeutic support. Females were more likely to access support from a therapist ($X^2 (1, N=180)=4.937, p<.05$). There was no difference in accessing a therapist based on age, length of relationship, or time since the end of the relationship. Participants who received advice from a lawyer were more likely to receive services from a therapist compared to those who did not receive advice from a lawyer ($X^2 (1, N=177)=4.376, p<.05$). Participants who retained a lawyer were also more likely to seek support from a therapist ($X^2 (1, N=177)=7.332, p<.05$).

More than a third (38 percent) of the participants stated they accessed a family law website; over half of those who did were very satisfied or somewhat satisfied, about a third were neutral, and just over one in ten was dissatisfied about their experiences of using a family law website. There was no difference in accessing a family law website based on gender, age, length of relationship, and time since the end of the relationship. Participants who received advice from a lawyer were more likely to access a family law website ($X^2 (1, N=169)=5.614, p<.05$), but no difference was noted if they retained a lawyer.

Just about a third (33.5 percent) reported that they had the assistance of a physician to deal with issues related to the separation or divorce. There were no differences for seeing a physician based on the participants’ gender, age, length of relationship, or time since the end of the relationship. Participants who retained a lawyer were more likely to seek support from a physician ($X^2 (1, N=169)=4.874, p<.05$), but not if they only received advice from a lawyer.

Just under a third (31.2 percent) of the participants stated they engaged in mediation. Participants who used mediation services tended to be older ($t (167)=2.206, p<.05$) and were involved in their
relationship with their ex-partner for a longer period of time \( (t (168),=2.562, p.<.05) \). Participants who retained a lawyer were also more likely to attend mediation \( (X^2 (1, N=168)=4.889, p<.05) \). Participants were also more likely to attend mediation if they received advice from a lawyer \( (X^2 (1, N=168) = 3.999, p<.05) \). However, of the participants who attended mediation, only 33.3 percent were either satisfied or very satisfied with the service, while more than a third were dissatisfied or very dissatisfied.  

Table 2: Use of Services

<table>
<thead>
<tr>
<th></th>
<th>Reported Attending or use %</th>
<th>Very Satisfied</th>
<th>Satisfied</th>
<th>Neutral</th>
<th>Dissatisfied</th>
<th>Very Dissatisfied</th>
</tr>
</thead>
<tbody>
<tr>
<td>Therapist</td>
<td>42.2</td>
<td>52.8</td>
<td>22.2</td>
<td>12.5</td>
<td>6.9</td>
<td>5.6</td>
</tr>
<tr>
<td>Family Law Website</td>
<td>38.0</td>
<td>13.6</td>
<td>39.0</td>
<td>35.6</td>
<td>8.5</td>
<td>3.4</td>
</tr>
<tr>
<td>Physician</td>
<td>33.5</td>
<td>47.1</td>
<td>19.6</td>
<td>23.5</td>
<td>3.9</td>
<td>5.9</td>
</tr>
<tr>
<td>Family Mediation</td>
<td>31.2</td>
<td>13.7</td>
<td>19.6</td>
<td>29.4</td>
<td>9.8</td>
<td>27.5</td>
</tr>
</tbody>
</table>

X. THEMATIC RESULTS OF INTERVIEWS

Twenty-two unmatched parents (sixteen mothers and six fathers) agreed to be interviewed. All but one parent had been involved in a marriage prior to separating. Participants were involved in various stages of the family court process at the time of the interviews. Parents provided a range of experiences about their involvement with the family courts. While the themes that emerged from the qualitative interviews may not be generalizable to the larger sample of separating and divorcing families, they highlight the various barriers and facilitators that parents may experience in using the

36 Family mediation was used as an umbrella term, which may include onsite, offsite, non-for profit, and for profit mediation services. The duration of involvement with mediation and the potential impact of the number of sessions on satisfaction levels were not explored. But given the large percentage of neutral and dissatisfied participants who attended mediation, further research should focus on the factors that are related to mediation as well as differences, if any, in service providers (i.e., lawyer, mental health professional, etc.).
family courts which can assist in resolving their disputes. Themes that emerged are discussed below.

XI. BARRIERS TO ACCESS TO JUSTICE

Many of the interviewees commented on their negative experiences with the court process. The majority described the court process as inadequate for addressing their needs, resulting in decreased finances, increased stress, and increased conflict. Specific themes regarding this dissatisfaction include the length of the family court process, the lack of enforcement of court orders, financial strain, emotional strain, social risks, the lack of helpful online resources and free legal advice, and access to therapeutic support.

(a) LENGTH OF FAMILY COURT PROCESS

Several participants commented on the length of the court process to deal with matters after separation and expressed dissatisfaction with the length of time and the lack of judicial engagement in attempting to resolve these matters. As one participant who seemed unaware of alternative dispute resolution services that may have been available stated:

Once you['re] caught in the mess, it takes years to clear up. I believe the family court system needs to set up some sort of a program to try to resolve issues before this goes to trial or case conference or anything. Just have a judge [at a case conference] say you try to work it out, if not you'll be back here. And that’s it [deep breath].

(b) LACK OF ACCESS TO MENTAL HEALTH SERVICES

Interviewees expressed the need for better access to mental health services, in addition to the court services, to meet their emotional needs. One participant summed up this issue stating:

I think the main thing is having some kind of, I mean even just having gone through illness and you’re provided with the
access to a social worker and the social worker will tell you how to talk to your kids about it. And you don’t have that with divorce. I mean this is something where I went out and found somebody.

Another participant stated that she wished she could have found a group as she believed that it would have helped with the transition of the breakdown by providing her the opportunity to receive support from others in a similar situation. She stated that “it’d be nice to find a group. Where you can go and talk to people who may have similar issues like that. That’s casual and you trust each other.”

(c) LACK OF ENFORCEMENT

Some participants expressed concerns about the lack of monitoring and enforcement by the courts when orders were made to resolve child custody and access disputes. One interviewee noted that there are “very little repercussions for somebody not following through on their commitment: separation agreements—as far as I can tell—are not worth the paper they’re written on.”

(d) FINANCIAL STRAIN

The financial strain of using the court system to resolve the family dispute was a common theme that emerged from the interviews. One participant voiced their displeasure of spending financial resources on litigation, highlighting seemingly easier alternatives. This individual stated that “spending tens of thousands of dollars [is] nonsense, when two parents can end this issue verbally.” Another participant said “… stay away from the courts [and] the court system because it’s just not fair. It will drain you financially.” Another participant expressed similar profound frustration about the costs of justice:

Like you got to reform or do something to fix it right. So they have to look at everything and analyze it. And then just have a true equality [of access to justice].... They do it in Sweden and Norway; how come they can’t do it here? Because it [costs]... a lot of money. It’s a new industry; so we get rid of
manufacturing, we get divorce (laughs). So hey it makes money.

(e) EMOTIONAL STRAIN

Another common theme that emerged in the interviews was related to the stress, anxiety, and emotional turmoil of trying to navigate the court system, as well as the emotional impact of the court process that seemed to exacerbate emotional vulnerabilities related to the family breakdown. One participant stated that “just dealing with this court procedure is really stressful, [including] dealing with lawyers [and] the whole system in general.”

(f) SOCIAL RISKS

In addition to the financial and emotional strain, others commented on the social risks related to their involvement in the court system and having to deal with their private family matters within the public institution of the courts. One interviewee stated that “your neighbors, your friends are seeing you go in there and they start gossiping, that’s why people are afraid to go get information.” Another participant reported:

I would also tell them to stay away from the courts... because it’s just not fair. It will drain you financially. I guess I came into this thinking that if you do the right thing you know, that there would be repercussions for the other person if they don’t, but it’s not true. It’s just the system so screwed up that unfortunately I don’t think it works in the favour ...of the children.

(g) LACK OF HELPFUL ONLINE RESOURCES

A number of interviewees were either unaware of online resources specific to family law or they did not find these adequate in helping them gain information to navigate the legal system. As one interviewee noted: “I find the online services for understanding the legal process are very unhelpful and unclear.” Another reported: “I think the information online is not helpful, it makes it sound like it is
super easy and anyone can do it. And you want to believe that because obviously you rather do that than go to court, but it’s not relevant for the majority of people who are out there who are separating.”

**(h) LACK OF ACCESS TO FREE LEGAL ADVICE**

Some interviewees who were financially eligible appreciated the opportunity to receive free legal advice from the Ontario Legal Aid Advice Counsel to assist them, but a number reported that they wanted more time with a lawyer at the Advice Clinic. A participant noted that “people have concerns they really need to know answers to, and half an hour with a free lawyer is not enough. That’s fifteen minutes to ask your question and fifteen minutes to get an answer.” Another commented that “people just don’t have money. It’s very difficult to get legal aid, especially for court now. They really cut the hours and stuff and I wish there was more, maybe Service Ontario could just have a whole sections.”

**XII. FACILITATORS TO ACCESS TO JUSTICE**

Some of the interviewees reported favourably on legal and mental health services that were available to them. These services included access to legal information, access to legal representation, linkages to community resources, access to therapeutic services, access to neutral third party professionals such as mediators, use of alternative dispute resolution, and the role of the family court.

**(a) ACCESS TO LEGAL INFORMATION**

A number of interviewees who received legal information (both online and offline) were satisfied with the content and they generally found value in the information. One participant stated that “it’s been quite an education, and...I’m all about learning so it’s really been interesting. If it wasn’t so painful it would just be fascinating.”

**(b) ACCESS TO LEGAL REPRESENTATION**

Those who received legal aid or could afford to retain a lawyer and opted to do so, appreciated the advice, support, information and
advocacy provided by their lawyer. As one participant stated: "I'm lucky I had a good lawyer and I knew where to go and I knew what to do."

(c) LINKAGES TO COMMUNITY RESOURCES

One way to improve access to justice may be to explore creative ways to provide parents with legal advice and information. For example, one interviewee stated that she wished she had additional services offered to her to help her better navigate the system: "I wish there was more people, maybe even students in social work, or junior lawyers that can go and just give people half an hour of their time to just give them a direction of where they need to go."

(d) USE OF ALTERNATIVE DISPUTE RESOLUTION (ADR)

In contrast to the mixed degree of satisfaction in the survey about mediation, the majority of the interviewees almost all appreciated the opportunity to be assisted by ADR professionals, including mediators, and considered this a helpful part of the court process. Many parents who were interviewed acknowledged that they were unable to resolve the dispute with the other parent without the help of a professional due to the emotional tensions between the parents. One stated that "you can step outside it, you can use it, and I'm glad it's there because it means that my partner and I are not having to negotiate on this very, very, very deeply contentious and... emotional issue of who are children are going to live with..."

Interviewees who participated in mediation and other forms of alternative dispute resolution generally saw value in these services as a way to resolve the dispute without prolonging the court process. However, one participant expressed deep frustration with collaborative law:

Yeah, I find that I was counseled to go to the collaborative legal process, but I wasted a lot of money, and a lot of time there. Because it was a nice idea, but what I learned there was that the person who has whatever it is, in this case money or access, money really in our case, is the one who gets the ability to say no. And if you say no, then there's no recourse, to the
other person. So it’s really a, not helpful process for the overwhelming majority of people who have tried it, that I am aware of.

(e) THE ROLE OF THE FAMILY COURT

Of those who appeared before a judge, some seemed to appreciate the accountability and increased compliance of the parties involved. There was a sense from the participants that there are cases and issues that are better served by going to court and being in front of a judge, especially in cases of violence, abuse, and intimidation where one parent needs the protection of the court to feel safe. As one female respondent stated:

Before he was very aggressive, there was a lot of manipulation. He was an abuser as far as psychological manipulative abuse. And since I’ve obtained a lawyer, he’s now a little lamb. So now he’s kind of playing by the rules and we’re able to be on the same page. So I guess it was, it was obtaining a lawyer that has helped me a lot.

Other interviewees, however, expressed a negative view of the legal system:

I think that the laws, the legal process is, it ...doesn’t help to reduce the conflict, it propagates the conflict or a severe way of making it so that ...the weaker person in the battle [should be] protected better. And I don’t think that the measures that are in place now do that, I think if somebody wants to say no then they’re the king of the castle and they can say no as long they want because you’re in charge, so the person who’s the weaker person, is just totally exposed.

XIII. DISCUSSION

Despite the efforts since 2010 to increase family dispute resolution services in Ontario, with a particular emphasis on mediation, at best many parents continue to experience dissatisfaction, while at worst many feel overwhelmed with the emotional and
financial strain during a family breakdown. In this study, we found that many reported that they either do not know enough about what services there are or how to access them. This is consistent with what has been found in previous studies.\(^{37}\) While we argue that it is important to have government services available to participants, more research should be undertaken to evaluate what is working and what is not for children and parents as they engage with the family justice process.

Similar to other studies, there are limitations to the information collected. This paper reports on 241 parents with twenty-two follow up interviews with individuals who were voluntarily recruited, using non-random sampling strategies. Therefore, the sample may not be fully representative of the diversity of parents post separation, as the sample was drawn from a mandatory information program where parents were already involved in the family court process. It would be important to follow participants over the duration of their disputes to understand more about what was helpful and what was not. Moreover, parents who separate and are able to negotiate post-separation parenting plans, with either a lawyer or between themselves, but without going to court, may provide different experiences.

Since we did not collect data regarding the income level of the participants, financial considerations (such as those who can and cannot afford a lawyer) were not addressed in this study. As the sample was drawn from litigants in the Superior Court of Ontario (e.g. this court handles divorce and property issues) and a majority had lawyers, it may be speculated that this was a relatively higher income group of participants compared to other court samples that do not involve property issues as in Ontario Court of Justice.

Despite these limitations, the findings highlight that participants were not fully aware of the various legal and non-legal services available to assist them through the court process. For example, another approach for providing legal and non-legal information about separation and divorce could be through community agencies, doctors’ offices, schools, and other public forums, in order to reach a broader group of people who may be thinking of separating or are in need of basic information about family law. In turn, greater

\(^{37}\) Birnbaum, Bala & Bertrand, supra note 2 at 86; Macfarlane, supra note 2 at 118, 127; LCO, “Increasing Access to Family Justice”, supra note 2.
awareness of these services can lead to creating greater use of family justice services that meet the unique needs of those using the system and their children. The results point to not only providing strategies to enhance public information about the resources that have been developed to assist parties in the Ontario family justice system, but also to identify and direct cases to the type of service and program that matches the different levels of conflict (a process often referred to as triage). 38

The subsample of twenty-two parents interviewed was conducted six months after their attendance at the mandatory information program. It is important to understand what various pathways were used in accessing services post-separation and whether the services being used were meeting their needs. It would also be important to follow these parents as they make their way through the various services, interventions, and programs to learn more about what works best for them and their children. This type of longitudinal research would be valuable to government and policy makers in identifying areas where services may be more or less needed. It would also aid in implementing the second pillar of the family justice initiatives of “early triage”. 39

This study also highlights the need for a broad public policy discussion about the appropriate role of government in meeting the needs of families and children post-separation. This discussion needs to reflect the views and concerns of litigants, as well as involve professionals, such as judges, family lawyers, mediators, mental health professionals, and policy makers from both provincial and federal levels of government, as well as researchers in family justice research. In our view, government has a significant role to play in the lives of families and children post-separation. Without increased government involvement, many will be denied access to appropriate family dispute resolution services, which will cause parents and their children to suffer.

38 Salem, supra note 8 at 384-85.
XIV. FUTURE DIRECTIONS FOR RESEARCH

Separation is a challenging and difficult time emotionally and financially, and can negatively impact peoples’ abilities to move forward in their parenting relationships post-separation. Collaborative, interdisciplinary research involving government and academic researchers (e.g., social sciences and law) is needed to guide the courts, as well as legal and mental health practitioners, in determining which services, legal interventions, and programs to use to individual families make post-separation plans and adjustment. Such research will also assist policy makers in applying evidence-based solutions for families and children. It is essential to have informed research to understand what approaches, interventions, and services are effective and cost-efficient for specific cases, if there is to be improvement in the justice system’s response to the resolution of family disputes. In addition, the experiences of represented and self-represented litigants in family law matters, as well as their children, need to be included in the development of appropriate responses.