

Family

The pandemic and family justice in Ontario

By Claire Houston, Rachel Birnbaum and Nicholas Bala



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(February 10, 2021, 3:11 PM EST) -- The COVID-19 pandemic has profoundly affected families and children involved in Ontario's family justice system and dramatically impacted family justice professionals. In March 2020, family courts suspended all regular operations and courthouses were closed. Initially, only "urgent" matters were heard, and hearings were conducted by telephone or videoconference, or based only on e-mailed documents.

At least initially, there was a dramatic reduction in access to family lawyers and various services like mediation, legal aid and the Office of the Children's Lawyer, and most child protection agencies suspended contact between children in care and their parents.

Today, nearly one year later, more matters are proceeding, but almost all of them still remotely, and there is a growing backlog of cases. Electronic filing continues. Law firms and various service agencies, including child protection agencies, have shifted to providing remote services, some very quickly and others more slowly.

The pandemic has reduced access to justice in a system already plagued by access to justice concerns such as delay, inaccessibility, complexity and the rise of self-representation associated with the costs of legal representation. At the same time, the pandemic has forced the family justice system to implement changes, such as electronic filing, long advocated as a means of improving access to justice in the system.

Survey of Ontario family justice professionals

To better understand the impact of the COVID-19 pandemic on families and children, and to consider how innovations adopted during the pandemic might be tailored for future use, we recently undertook a survey of family justice professionals in Ontario, including judges, lawyers and mental health professionals and received more than 100 responses.

High conflict and access to justice

Most of the respondents believed that the pandemic had disproportionately affected vulnerable groups. Approximately 50 per cent of respondents reported that there had been more "high conflict" families involved in the family justice system during the pandemic, and that the pandemic has increased their levels of conflict. As one lawyer observed: "The pandemic has thrown gasoline on high conflict families."

The pandemic has offered more issues to contest, such as whether or not a child should attend school in person or online. Many respondents spoke to the difficulties of high conflict families having less access to the courts: "High conflict families have turned more to simply ignoring orders or using self-help. The courts have not been there to enforce obligations." There was also concern about the impact of increased parental conflict on children.

Self-represented litigants

Respondents also noted the impacts of the pandemic on access to lawyers. Nearly half reported more SRLs in the family justice system. Many described the difficulties SRLs are facing because of limited access to court staff, duty counsel and courthouse-based Family Law Information Centres: "It has made it impossible for most [SRLs] to function in our system."

Some respondents worried about the added complexity of pandemic-related court procedures: "I cannot imagine how a self-rep would navigate the constantly changing rules." Others commented on how SRLs were more likely to have limited access to technology to file documents and participate in remote hearings.

Speaking of marginalized groups generally, one respondent warned: "Access to justice now means access to technology."

Family violence and abuse

Survey respondents also commented on the dangers of the pandemic for victims of intimate partner violence (IPV) and children. Approximately 75 per cent of respondents said there was more IPV at the beginning of the pandemic (March to July 2020), and around 50 per cent reported more IPV from July 2020 to the present, though recognizing that many victims have not been able to access services and face barriers to leaving an abusive home (i.e. stay-at-home directives, rising housing costs).

Over 50 per cent of respondents believe there was more child abuse and neglect in the initial lockdown period, and 30 per cent believe the increased levels of child abuse and neglect have continued from July 2020 to the present, acknowledging that reports to child protection agencies have fallen because community professionals, like teachers and doctors, have had less contact with vulnerable children. Respondents attributed higher rates of IPV and child abuse to increased stress in homes.

Respondents also spoke of the challenges facing families in the child welfare system. Many described how children and parents suffered because of the suspension of in-person contact. Others noted that parents were not able to access necessary services, and some spoke of how the pandemic had delayed decisions about children's permanency. A few respondents noted that parents who were self-representing were especially disadvantaged by lack of physical access to the courts.

Positive changes in family justice

Despite the many negative impacts of the pandemic, most respondents identified new technologies as a silver lining: "The only good thing to come out of the pandemic in family law is the technology advances." Many reported that electronic filing of documents and remote hearings improved efficiency and reduced cost, for example by reducing travel time. Respondents overwhelmingly viewed e-filing as a positive development that should continue post-pandemic.

Most respondents thought videoconferencing (through platforms such as Zoom) should continue post-pandemic for some mediations and certain court hearings (i.e. "to be spoken to" appearances), although some described challenges in building trust remotely and lost opportunities for settlement when parties and counsel are not together in the courthouse.

The pandemic has been challenging for families involved in the family justice system. Our survey of professionals suggests that certain groups — high conflict families, SRLs, IPV victims, children experiencing abuse and neglect and families involved in the child welfare system — have been disproportionately impacted by the reduction in family court access and related services caused by the pandemic.

As new pandemic-related conflicts arise and the backlog of cases remains, the family justice system will likely be strained for some time. Moving forward, we must build on the useful innovations while addressing the growing gaps in the system to better serve families.

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