



# Increasing Access to Non-Adversarial Resolution of Family Law Matters

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**Access to Justice Advisory Committee:**

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***Note: The Benchers considered this report at their October 16, 2021 meeting, at which time they approved Recommendations 1-6 and 8-12, and rejected Recommendation 7.***

September 23, 2021

Prepared for: The Benchers

Prepared by: Policy and Planning Department

Purpose: Discussion and Decision

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# Committee Process

1. At the beginning of the year, the President asked the Committee to consider how the Law Society might advocate for greater access to non-adversarial dispute resolution in family law matters.
2. The Committee discussed the topic at its meetings from January through July 2021. This included meeting with Jane Morley, Q.C., who is involved in Access to Justice BC's Transforming the Family Justice System Collaborative ("TFJS Collaborative"),<sup>1</sup> Stephen McPhee, Q.C., Chair of the CBA BC's Family Law Working Group, and Kerry Simmons, Q.C. Executive Director of CBA BC Branch in May, and with Nancy Carter, Q.C. Executive Director, and Darryl Hrenyk, Legal Counsel, at Family Policy, Legislation and Transformation Office of the Ministry of the Attorney General in June, to discuss a range of concepts under the broad heading of "non-adversarial family law." The Committee is grateful for their participation in this process.
3. In addition, the Committee considered materials authored by Nancy Cameron, Q.C., J.P. Boyd, Q.C., Ms. Morley, the CBA BC and CBA National branches, and Access to Justice BC, as well as policy memoranda from staff.<sup>2</sup>
4. The Committee received staff support from Michael Lucas, QC., Jason Kuzminski and Doug Munro, and administrative support from Amanda Kerr.

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<sup>1</sup> The TFJS Collaborative is an initiative of A2JBC to create "a cross-sectors collaborative to transform the family justice system in BC by focusing it on achieving family well-being", see: [Family Justice Collaborative - Access to Justice BC](#).

<sup>2</sup> This included, Access to Justice BC, "Report of the Working Group on an A2JBC Family Justice Leadership Strategy" (November 2020) ("A2JBC Family Justice Report"), CBA BC "Agenda for Justice 2021, CBA National, CBA Task Force Report on Justice Issues Arising From COVID-19, "No Turning Back" (February 2021), John-Paul E. Boyd, QC, memorandum dated January 6, 2020, "Potential amendments to the FLSC Model Code of Professional Conduct", and Nancy Cameron, QC, "Transforming the family justice system by focusing on family well-being."

## Executive Summary

5. The Access to Justice Advisory Committee was tasked with making recommendations about how the Law Society might advocate for greater access to non-adversarial dispute resolution in family law matters.
6. Through its research and consultation the Committee learned about the effect Adverse Childhood Experiences (“ACEs”) have on the developing brain, and long term wellness. Being subject to adversarial family disputes can be an ACE and can exacerbate existing ACEs. The data that has been collected, when considered alongside the long-recognized belief that adversarial family law dispute resolution can be harmful to those involved, requires the Law Society, lawyers, the government, courts, and other justice system stakeholders to recalibrate how family disputes are resolved in order to minimize harm and promote well-being.
7. The report contains a series of recommendations divided into two general categories based on the Law Society’s Access to Justice Vision:<sup>3</sup> 1) matters the Law Society can control, and 2) concepts the Law Society can influence through advocacy, collaboration and consultation.
8. Central to this report is examining a policy that would align the Law Society with the long term goal of increasing the number of non-adversarial resolution options in the family law justice system while ensuring that such options are properly supported by government, the courts, lawyers, and funded agencies such as Legal Aid BC.

## Resolution

9. The Committee recommends the following resolution be adopted by the Benchers:

THAT the following recommendations of the Access to Justice Advisory Committee relating to increasing access to non-adversarial family law processes be adopted:

**Recommendation 1:** The Law Society will align its family law access to justice policy development and strategic initiatives with A2JBC’s object of reforming family justice services based on data about ACEs, and join the TFJS Collaborative;

**Recommendation 2:** The Law Society will explore how to use its communications tools to better educate stakeholders about ACEs;

**Recommendation 3:** The Law Society will explore ways to use its communications tools to better educate policy makers and the public about the benefits of resolving

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<sup>3</sup> Included for reference at Appendix 1.

family problems in a non-adversarial manner, including making available information about available services that support non-adversarial dispute resolution;

**Recommendation 4:** The Law Society will generate and support the creation of content for continuing professional development and PLTC around ACEs and non-adversarial family law dispute resolution;

**Recommendation 5:** Law Society staff will review ways the Lawyer Directory can be improved to provide the public more easily accessible information about what services are provided by Law Society lawyers accredited as mediators, arbitrators and parenting co-ordinators, and report to the Benchers with options for improving the Directory;

**Recommendation 6:** The Law Society's will explore how to use its communications tools to inform the public of the services that are available to support children whose families are navigating the family justice system;

**Recommendation 7:** The Benchers will encourage the Executive Director to consider which staff would benefit from training in ACEs and the statutory duties of family law lawyers;<sup>4</sup>

**Recommendation 8:** The Law Society will explore with the government, the courts, lawyers and other justice system stakeholders, including the Canadian Bar Association and Trial Lawyers' Association of BC, the types of change required to incorporate options for non-adversarial processes, taking into account current and emerging data on ACEs;

**Recommendation 9:** The Law Society will explore with the government, in particular the Ministries of Education and Health, the creation of courses and content in high-school about law, civic rights and responsibility, and particularly with respect to family law, educate students about non-adversarial family law options and about ACEs;

**Recommendation 10:** The Law Society will work with Government, Legal Aid BC, the Association of Legal Aid Lawyers and the Law Foundation of BC to support proper funding for non-adversarial dispute resolution options for family law issues;

**Recommendation 11:** The Law Society will explore opportunities to consult with and collaborate with professionals in health and social services fields to support a multidisciplinary approach to helping families resolve family disputes.

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<sup>4</sup> Recommendation 7 was not adopted by the Benchers.

**Recommendation 12:** The Law Society will explore with the Provincial and Federal Government the possibility of creating tax credits or deductions for people who access private, non-adversarial dispute resolution for resolving family law issues.

## Terminology

10. In this Report, the Committee uses the term “family law” to refer to matters that arise under the *Divorce Act* and *Family Law Act* such as child support, spousal support, parenting time, guardianship and parenting responsibilities, or asset and debt division. “Family law” in the context of this report is not meant to include MCFD matters or adoption.

## Background

11. The Law Society has long recognized that family law problems occupy a unique position of importance to the public and, consequently, to the administration of justice. From 2006 to 2012 the Law Society’s Family Law Task Force worked on a range of matters to improve the quality of service and access to justice for individuals facing family law issues. The Law Society’s Legal Aid Task Force prepared “A Vision for Publicly Funded Legal Aid” (March 2017) that highlighted the importance of better supporting family law dispute resolution and the professionals who serve them within the legal aid system. Furthermore, every year since 2014, the Law Society’s \$60,000 access to justice fund, administered by the Law Foundation, has been allocated to support matters related to family law, children, or the delivery of services such as unbundled independent legal advice to support family law mediation.
12. This report continues that focus on family law problems and proposes recommendations for the Benchers consideration that the Law Society could implement to reform the resolution of family law disputes.

## The Problem

*Adversarial Family Law Processes May Not Engender Lasting Resolutions Where a Continuing Relationship between the Parties is needed*

13. The problems associated with resolving family disputes through an adversarial system are well known and have been the subject of discussion amongst family lawyers, legal researchers and academics for many years. Chief amongst the problems is that many people engaged in a family law dispute need to maintain some form of an ongoing relationship with the other party to the dispute. The classic example is the need for parents to continue to work together to raise children. Approaching these disputes in an adversarial manner entrenches a resolution process that creates “winners” and “losers,” and is often less likely to result in resolution that both sides can live with.

14. Change is taking place. British Columbia has seen the rise of collaborative family law, family law mediation, the advent of parenting coordination, as well as the efforts to reform family law and court processes. The Provincial Court in particular has been at the forefront of reform, embracing innovative pilot projects and placing mediation at the front-end of the court process. The provincial government has created justice access centres, support recalculation programs, and family justice centres to name but a few initiatives. But despite these developments, change occurs slowly.
15. Family law lawyers know the benefits of non-adversarial options for resolution of family law matters and in fact have duties under the *Divorce Act* and the *Family Law Act* to recommend such options where appropriate.<sup>5</sup> However, many members of the public are not represented by lawyers and are not aware of the benefits of non-adversarial processes, nor the potential for harm caused by adversarial processes.
16. Another significant problem is that the majority of current funding goes towards adversarial systems and services. Proper funding is critical in order to increase access to non-adversarial options for resolving family disputes. It would create an even greater problem to shift from a funded adversarial model to an underfunded non-adversarial model.

***Adversarial Family Law Processes can generate Adverse Childhood Experiences***

17. During its research and consultation the Committee learned about the effect that Adverse Childhood Experiences (“ACEs”) can have on the developing brain and long term wellness. Being subject to adversarial family disputes can be an ACE and can exacerbate existing ACEs.
18. The Committee’s interest in ACEs came from research conducted by Access to Justice BC (“A2JBC”)<sup>6</sup> regarding the impact of ACEs on brain development. Based on a review of available scientific evidence, the A2JBC Family Justice Report observed:

*The research on [ACEs] identifies ten childhood experiences that potentially create toxic stress and risk negative immediate, long-term and intergenerational impacts. Divorce and parental separation is an ACE, as are other family justice related issues such as child neglect (physical and emotional) and abuse (physical, emotional, sexual), and household*

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<sup>5</sup> Non-adversarial family law processes may not be appropriate where a family law dispute resolution professional has screened for family violence and has determined that a particular non-adversarial process is inappropriate (pursuant to obligations in the *Family Law Act* regulations and the *Divorce Act*).

<sup>6</sup> The Law Society has been a participating member of A2JBC since its inception and attempts to align its policy development regarding access to justice with the policy development of A2JBC, when appropriate.

*dysfunction including mental illness, substance abuse violence and incarceration.*

*The more ACEs experienced by children, the higher the risks of immediate and future negative outcomes. The presence of adverse social conditions and historical trauma also increase risks and lead to intergenerational impacts.*

*The news is not all bad, however. Resilience, inherent in all of us and strengthened through healthy brain development, helps with the management of stress. There is something that can be done to ameliorate the negative impact of ACEs: negative experiences can be reduced, resilience strengthened and positive supports provided. [Internal reference omitted]<sup>7</sup>*

19. It is not surprising that, when people who, as children (whether past or in the present) have experienced ACEs are involved in a protracted, adversarial family law dispute, they experience new ACEs related to the court process, and their existing problems that arose from prior ACEs are magnified. Consequently, the existing adversarial model for resolving family problems can harm the developing brain of children and can lead to long term health and societal problems. An adversarial dispute resolution model can also have traumatic effects on adult participants who previously experienced ACEs.
20. In recent years the legal community has begun to better understand how legal, social, economic and health problems are connected. The data on ACEs reinforces an important aspect of this interconnectedness. The Committee has concluded that it is not enough for lawyers and other justice system stakeholders and policy-makers simply to take notice of the data and the interconnection. Rather, such actors must change their behavior based on that knowledge. Otherwise, we are failing to advance the public interest.

## **Evaluation Criteria**

21. The Committee explored a range of ideas when analyzing what the Law Society can do to promote greater access to non-adversarial dispute resolution services for family law issues. It analysed those ideas against the policy goals and mandate of the Law Society, as well as in regard to specific organizational considerations.

### ***Unified Family Courts***

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<sup>7</sup> A2JBC Family Justice Report” at page 6.  
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22. Early on in its work, the Committee considered whether British Columbia might develop a modernized, unified family court (“UFC”), which brought together a specialized bench and technology similar to that found in the Civil Resolution Tribunal and emerging artificial intelligence to help manage family law problems more effectively. Ultimately, the Committee decided against pursuing this line of inquiry for several reasons. The main reason is that a UFC would still likely be an adversarial model of dispute resolution, and that is not what the Committee is tasked with considering. In addition, unless the UFC was truly transformative in the sense it was a fully utilised and funded non-adversarial option, the Committee is of the view it would represent an incremental, but insufficient, improvement. The Committee concluded that something more transformative is required.

### ***Particular Organizational Evaluation Criteria***

23. To address the issue, the Committee explored whether there are additional factors, beyond those that informed the development of the Strategic Plan, to support increased forms, and use, of non-adversarial dispute resolution, and then focused on what can be done to *advocate for greater access to non-adversarial dispute resolution in family law matters*.

24. Some factors that are relevant to the Committee’s analysis are set out below.

- The public interest is served by society having dispute resolution mechanisms and laws that support the ability of people to function effectively, to avoid legal problems where possible, and to manage such problems efficiently when they arise so people can live full and productive lives. As suggested above, resolving family problems in an adversarial manner often prolongs conflict and causes ongoing harm to those involved. Family law lawyers know this. However, the general public is not as aware. Consequently, the public interest supports the idea of the Law Society using its authority to bring about and influence constructive change by supporting non-adversarial systems of solving or preventing family disputes whenever appropriate.
- The cost/benefit of a move away from adversarial family models to greater utilisation of non-adversarial resolutions is difficult to quantify in the abstract. Change, especially the type of systemic change required to shift to non-adversarial dispute resolution, will cost money. It is possible in the short term there will be greater costs in order to create adequate systems, modify existing systems, and educate the public involved in the various system changes. However, it is anticipated that in the long run cost savings would be realized by decreasing the adversarial aspect of matters, which can lead to repeat and chronic use of court processes and endless disputes. In addition, in light of the data on ACEs, the Committee is of the view that there is an even greater societal saving/benefit that can result by reducing the mental health issues caused to those who would otherwise have to resolve family disputes in an adversarial system.

- The Committee is of the view that public relations as well as relations with lawyers in general and family lawyers in particular should not be harmed by the Law Society advocating for non-adversarial family law dispute resolution. Most family law lawyers are well aware of the benefits of resolving matters in a non-adversarial manner early on in a file in order to prevent harm. Family law lawyers will be an excellent resource in terms of advancing and implementing reform as they have on-the-ground experience.

25. The Committee notes that recommendations may require an equity, diversity and inclusion analysis before implementation. The Committee also notes that access to justice issues do not arise equally in society. We know from research such as that of Dr. Ab Currie,<sup>8</sup> that people who identify with various equity-seeking groups are more likely to experience more than one serious, difficult to resolve legal problem over a three year period than the national average. And the barriers to accessing services and justice can be more acute for members of equity-seeking groups. It is important, therefore, that a move towards more non-adversarial models of family law dispute resolution does not embed and perpetuate existing systemic biases and barriers to their access.

## Analysis

26. The Committee considered how the Law Society might best advocate for or promote non-adversarial resolution of family law disputes. Consistent with the Law Society’s Vision for Access to Justice, the Committee categorized options into ideas the Law Society can control and ideas the Law Society can influence and participate in.

27. The ideas considered by the Committee that the Law Society can control include:

- Endorse A2JBC’s approach to ACEs and align the Law Society’s family law policy development with the object of reducing the harm caused to families by adversarial dispute resolution by joining A2JBC’s TFJS Collaborative;
- Use the Law Society’s communications tools to better educate lawyers and particularly the public about ACEs;
- Use the Law Society’s communications tools to better educate the public and other stakeholders about the benefits of resolving family problems in a non-adversarial manner, including making available information about existing services that support non-adversarial family law dispute resolution;

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<sup>8</sup> See, for example, Ab Currie, “The Legal Problems of Everyday Life: *The Nature, Extent and Consequences of Justiciable Problems Experienced by Canadians*” (Ottawa: Justice Canada, 2009).

- Generating and supporting the creation of content for continuing professional development and PLTC around ACEs and non-adversarial family law dispute resolution;
- Use the Law Society’s communications tools to inform the public regarding the services that are available to support children whose families are navigating the family justice system;
- Encourage the Law Society to provide staff who investigate family law complaints with training on the statutory obligations mentioned above, as well as training regarding ACEs.

28. The Law Society can work with the following groups to advance non-adversarial resolution of family disputes:

- **Lawyers** –family law lawyers work hard to help their clients resolve matters in a non-adversarial way where appropriate. The Law Society can reach out to family law lawyers to get a better understanding of what the Law Society can do to help these lawyers continue this important work, and advocate for necessary change;
- **Government** – the Law Society can consider supporting government efforts to develop programs that are designed to promote non-adversarial family law resolution, and to help inform the public about such programs; The Law Society can also work with the government, in particular the Ministries of Education and Health, to explore the creation of courses and content in high-school about law, civic rights and responsibility, and with respect to family law, educate students about non-adversarial family law options and about ACEs;
- **Government and the courts** – the Law Society can liaise with government and the courts in order to explore ways to increase options for non-adversarial resolution of family disputes, taking into account current and emerging data about ACEs;
- **Government, Legal Aid BC, the Association of Legal Aid Lawyers and the Law Foundation of BC** – the Law Society can engage in advocacy to support proper funding for non-adversarial dispute resolution options for family law issues;
- **Medical and social health professionals** – recognizing the interconnection of law, health and social well-being, the Law Society can explore opportunities to consult with and collaborate with professionals in health and social services fields to support a multidisciplinary, non-adversarial approach to helping families resolve family disputes. A2JBC is interested in hosting joint session with doctors and the Law Society in the fall of 2021 or early 2022 regarding family justice transformation and ACEs.

***Aligning Future Policy Development around ACEs and Communication on ACEs to the Profession and Public***

29. If the system for solving family disputes is harmful, it is incumbent on the Law Society to work within its statutory mandate to advance the public interest in the administration of justice by finding ways to reduce harm caused to families.
30. The Committee believes that the evidence about ACEs collected by A2JBC is cogent. Hence, the Committee recommends that the Law Society endorse the objective of working towards a change in how family law disputes are resolved, taking into account current and emerging data regarding ACEs. The Committee also recognizes that such change will require the coordinated efforts of government, the courts, lawyers and others (including those in the medical and social sciences). The Committee is therefore not asking the Benchers to adopt a solution, but, rather, is recommending the Benchers to commit the Law Society to support efforts within the justice system where better solutions are identified and pursued.
31. The recommendation has the object of reducing harm and will inform the nature of future work at the Law Society. For example, the Law Society can consider how it might augment lawyer education (whether through PLTC or continuing professional development) to better equip lawyers to help clients who have, or may otherwise, experience ACEs. A decision to align with the objectives identified by A2JBC would also influence how the Law Society advocates with government and the courts regarding substantive and procedural changes to the justice system with respect to family law disputes.
32. The Committee believes that the research on ACEs reinforces the need to work towards reform to develop a system that reduces harm to families, and creates functional results.
33. The Committee therefore believes the Law Society should develop future policy and regulatory reform related to family law in a manner that has the object of reducing harm to participants, and reflects current and emerging data on ACEs.
34. As a starting point, the Law Society can explore using its Communications tools to better inform lawyers and particularly the public about ACEs and the TFJS Collaborative. The Committee anticipates that initial efforts would focus on the policy reasons to resolve matters in a non-adversarial manner where appropriate, and the information on ACEs would provide parties a broader framework for understanding why it is important to pursue less-adversarial solutions.

***Modifications to the Lawyers Directory***

35. As part of its discussion about how to make information more available to the public, the Committee considered potential modifications to the Lawyer Directory. At present, the Lawyer Directory permits lawyers who are Law Society-accredited family law mediators,

arbitrators or parenting coordinators, to have that designation listed by their entry in the directory. The Committee considered whether the Law Society should expand on this by allowing other practice preferences and classification to be listed, as well as improve the search functionality of the Directory so people could search based on services and not just by name.

36. The Committee recognizes there may be discrete policy and practical matters associated with reforming the Lawyer Directory, so at this stage the Committee is of the view that staff should explore ways to improve the content and functionality of the Directory, and advise the Benchers on next steps. Trying to find ways to improve the public's access to information about different ways of resolving family law problems is important, and the Lawyer Directory is a resource within the Law Society's control that might prove useful.

***At least one Member of the Discipline Committee and Staff working in investigations having a background in family law practice and ACEs***

37. While discussing changes the Law Society might make to its processes to move towards a culture of non-adversarial family law dispute resolution, the Committee discussed the relation between regulation and that policy objective. The Committee explored the idea that there should always be at least one family law lawyer on the Discipline Committee, as well as the idea of Law Society creating opportunities for staff to receive training in ACEs and statutory obligations of family law lawyers, are related.
38. The Committee sought input from senior staff in the Professional Regulation Department. With respect to the idea of requiring the Discipline Committee composition to include at least one family law practitioner, the Committee heard that a review of complaints and files that proceeded to the Discipline Committee revealed a low incidence of matters where input from a family law lawyer at the Discipline Committee was determinative. The Committee recognizes that the President, when appointing the Discipline Committee, needs to balance the representational skills and experiences of its members to achieve a range of functions, and prescriptive requirements from various practice areas could become limiting.
39. The Committee accepted the feedback of staff and do not recommend pursuing this option.
40. Concerning the question of whether staff hired to investigate complaints have training in the substantive legal obligations of family lawyers as well as training on ACEs, the Committee notes that some staff already have family law backgrounds and staff lawyers communicate with each other when needing help with analysis of issues. Many staff in Intake and Early Resolution also have training in trauma-informed practices.
41. Qualifications and training of staff is an operational matter for the Executive Director to address. Therefore, the Committee hesitates to make a recommendation in the form of a directive. However, in keeping with the policy objects of shifting towards a culture of non-adversarial family law, the Committee believes the Law Society can take a leadership role by

ensuring its staff receive current training on the issues, similar to the Law Society's commitment to providing staff training on mental health matters. The Committee suggests that the Benchers encourage the Executive Director to explore suitable opportunities to keep staff up to date on the type of training the Society will expect of family law practitioners regarding ACEs and non-adversarial dispute resolution.

***Matters outside the Law Society's sphere of control***

42. With respect to matters that are beyond the Law Society's authority to control, the analysis of most options will depend on the nature of consultation and collaboration engaged in.
43. If non-adversarial processes are ever to become a primary method of resolution of family law disputes, it is essential to engage the courts, the government and the legal profession in the discussion. While the Law Society cannot control the process, it can start by making the policy declaration that it believes the shift in how family disputes are resolved is necessary, and commit to working with government, the courts and the profession to bring about the necessary change.
44. One concept the Committee favours, which requires a few additional comments, is the idea (already engrained into the current Law Society Strategic Plan) of collaborating with the Ministries of Health and Education regarding high-school course content.
45. On several occasions over the past 15 years the Committee has discussed the potential for the Law Society to influence the high school curricula to teach students basic legal life skills and knowledge about the main legal issues they will likely experience in their lives. Education about legal issues, rights, responsibilities and services that exist to help people navigate the legally complex world is an important part of helping people have access to justice and requires moving beyond the traditional conception that access to justice only occurs in court or on the doorstep to court. The Committee believes there is merit in the Law Society working with government to introduce essential legal life skills, including a focus on non-adversarial family law resolution, into the high school curriculum. This could include expanding the curriculum beyond "Law 12" to explore opportunities through social studies or related courses from Grades 8-12.
46. The Committee also discussed the importance of exploring with the Provincial and Federal governments the possibility of creating tax credits or deductions for people who try to resolve matters using private, non-adversarial dispute resolution models. The Committee is of the view that such tax credits or deductions would improve access to justice by reducing some of the financial burden that exists due to the fact that government does not currently fund non-adversarial family law dispute resolution. The Committee considers that family law mediation, including the mediation aspect of a Med-Arb arrangement, should be eligible for tax credit or deduction. The details of a submission to governments on this concept would need to be

worked out. At this stage, the Committee is recommending the policy directive and that the creation of such a submission, or outreach, take place.

47. The Committee is of the view each of the options listed above regarding collaboration and outreach are worth exploring, recognizing that the Benchers will have opportunities down the road to make determinations regarding policy issues that may arise, and that the Executive Director will retain oversight and decision-making authority regarding any operational matters.

## Resource Implications

48. Some of the recommendations the Committee proposes will have resource implications for the Law Society. The main impact will be allocation of staff and funding towards developing communications content to support non-adversarial family law dispute resolution, including better educating lawyers and particularly the public about what services are available and the need for change. In addition, recommendations related to continuing professional development and PLTC will also impact staff and funding. At this time, the resource impact cannot be estimated. If the Benchers accept the Committee's recommendations, the development of specific proposals will fall to the Executive Director and staff to prepare a resource analysis for consideration by the Benchers before making a final recommendation regarding implementation.

## Recommendations

49. The Committee asks that the Benchers adopt the following recommendations as part of the Law Society's efforts to advocate for greater use of non-adversarial family law resolution services and systems:

**Recommendation 1:** The Law Society will align its family law access to justice policy development and strategic initiatives with A2JBC's object of reforming family justice services based on data about ACEs, and join the TFJS Collaborative;

**Recommendation 2:** The Law Society will explore how to use its communications tools to better educate stakeholders about ACEs;

**Recommendation 3:** The Law Society will explore ways to use its communications tools to better educate policy makers and the public about the benefits of resolving family problems in a non-adversarial manner, including making available information about available services that support non-adversarial dispute resolution;

**Recommendation 4:** The Law Society will generate and support the creation of content for continuing professional development and PLTC around ACEs and non-adversarial family law dispute resolution;

**Recommendation 5:** Law Society staff will review ways the Lawyer Directory can be improved to provide the public more easily accessible information about what services are provided by Law Society lawyers accredited as mediators, arbitrators and parenting co-ordinators, and report to the Benchers with options for improving the Directory;

**Recommendation 6:** The Law Society's will explore how to use its communications tools to inform the public of the services that are available to support children whose families are navigating the family justice system;

**Recommendation 7:** The Benchers will encourage the Executive Director to consider which staff would benefit from training in ACEs and the statutory duties of family law lawyers;<sup>9</sup>

**Recommendation 8:** The Law Society will explore with the government, the courts, lawyers and other justice system stakeholders, including the Canadian Bar Association and Trial Lawyers' Association of BC, the types of change required to incorporate options for non-adversarial processes, taking into account current and emerging data on ACEs;

**Recommendation 9:** The Law Society will explore with the government, in particular the Ministries of Education and Health, the creation of courses and content in high-school about law, civic rights and responsibility, and particularly with respect to family law, educate students about non-adversarial family law options and about ACEs;

**Recommendation 10:** The Law Society will work with Government, Legal Aid BC, the Association of Legal Aid Lawyers and the Law Foundation of BC to support proper funding for non-adversarial dispute resolution options for family law issues;

**Recommendation 11:** The Law Society will explore opportunities to consult with and collaborate with professionals in health and social services fields to support a multidisciplinary approach to helping families resolve family disputes.

**Recommendation 12:** The Law Society will explore with the Provincial and Federal Government the possibility of creating tax credits or deductions for people

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<sup>9</sup> See fn. 4.  
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who access private, non-adversarial dispute resolution for resolving family law issues.

## **Subsequent Steps**

50. The subsequent steps that are required are predicated on which recommendations the Benchers adopt. Obviously, a number of the recommendations require resource allocation, time commitment, and possible costs. In the abstract it is difficult to assess the likely requirements or impacts of each recommendation on resources.
51. The Committee is of the view that it is important to frame these unknowns within the observation that the type of transformational change that is contemplated will take some time to be fully realized. A consequence of this is that the Executive Director will retain discretion as how best to allocate resources as this work unfolds over the coming years, so that work is undertaken in a manner that is both consistent with the policy objective to be achieved but within the broader operational and strategic demands of the organization. What is important is that the Law Society commits to the journey, not that the work all needs to be completed in a calendar year or even a Strategic Plan cycle.

/Appendix

## Appendix:

### Access to Justice Vision for the Law Society of British Columbia

#### Preamble

Meaningful Access to Justice means that our justice systems, and the legal services that support them, are available, affordable, understandable and effective. Meaningful Access to Justice not only provides essential service to the people who must resort to our legal systems, but also sustains the rule of law on which our democracy depends. Without Meaningful Access to Justice, people do not receive the legal help that they need and public confidence in the rule of law and indeed, in democracy itself may falter.

The Law Society believes that:

1. Democracy depends on the rule of law and Meaningful Access to Justice is necessary to maintain it;
2. Meaningful Access to Justice can be achieved through several means, including the vindication of legal rights through our formal and informal dispute resolution systems, through law reform, and through political reform;
3. Legal service providers, including lawyers who are authorized to provide legal services for a fee, have an obligation to make their services appropriately accessible to the public;
4. Access to legal services has a regulatory component, and the Law Society should take appropriate steps to allow for legal markets and services to develop to address those needs;
5. Meaningful Access to Justice requires digitization of justice systems and legal services, as well as transformation of how those systems and services are delivered in order to reduce or eliminate the barriers identified below;
6. As the justice systems and legal services are modernized, particularly through technological solutions, it is important to ensure the solutions do not create new systemic barriers to Meaningful Access to Justice. This requires thoughtful design at the creation phase of any new approach to achieve the goal of equal access for all.
7. There are many barriers to Meaningful Access to Justice, including:
  - how our laws are developed - particularly their scope and complexity;

- how law is implemented, enforced, interpreted and how disputes are resolved;
- how our rules governing practice may prevent lawyers from creating new business models, new partnerships, new services and products, and keep out potential innovators who have made other industries more efficient, effective and resilient;
- the cost of delivering legal services;
- how lawyers direct their services, and how the government funds or does not fund legal services;
- how geographical barriers affect access to legal services and the justice system;
- historic disadvantages due to individual circumstances, including but not limited to economic means, education, race, religion, language skills, sexual orientation, disability, and gender; and
- the systemic barriers people face in accessing the systems and services that exist for managing and resolving legal problems.

## **The Vision**

The Law Society plays an important role in reducing barriers to and enhancing Meaningful Access to Justice in British Columbia. The Law Society will address barriers to Meaningful Access to Justice by:

1. reviewing its regulatory and strategic policy, as needed, and making the necessary changes to reduce or remove barriers that are within the Law Society's authority to control guided by its statutory obligation to ensure the public is well-served by competent and ethical legal professionals;
2. understanding the nature of the barriers that lie outside the Law Society's authority to control and by exploring whether the Law Society has a role to play in helping people and groups overcome those barriers, whether by lending its voice to law and policy reform or by other advocacy efforts;
3. applying Access to Justice BC's Triple Aim measurement framework (which requires improving access to all British Columbians, including groups with particular interests, improving user experience, and improving costs in proportion to the benefits) to the Law society's development of strategic and regulatory policy;
4. analyzing available data and taking an objective, evidence-based approach to the Law Society's decisions and engagement with others in the justice sector;

5. listening to and learning from the diversity of perspectives of British Columbians; in particular, by understanding how some groups are particularly disadvantaged or face acute barriers to accessing justice, and by striving to develop policy that is responsive to those realities;

6. demonstrating leadership to help British Columbians achieve Meaningful Access to Justice. This leadership may include spearheading policy and rule reforms, and supporting government and other justice system stakeholders in developing new and innovative services. The Law Society recognizes that, from time to time, it will be necessary to advance transformative changes to our laws, legal system and related services.

While the Law Society recognizes that the challenges of access to justice and the barriers people face often manifest themselves as the problems of individuals, they are, in fact, shared problems in our society. Recognizing this, the Law Society commits to advance its Access to Justice Vision in a collaborative and constructive manner, with the Society's public interest mandate at the heart of its efforts.