

Barry Lillie
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It's time to fix our broken family law system

The opening of Waterloo Region's new consolidated courthouse provides a moment for the community to reflect on the value received for the estimated \$766 million cost (over 30 years) of the project.

The most troubling question is where are the desperately needed reforms to family law in Canada that were promised but never delivered? The region now has our legal version of Disneyland — the best court structure that money can buy. But the true measure of a legal system is not found in mortar and brick but in a system that relentlessly strives to ensure justice for all.

In 1998, there was a bold attempt to modernize Canadian family law. The report *For the Sake of the Children*, issued by a special joint Senate and Commons committee, received wide support, but in the end, special interests smothered the proposed reforms.

Canadians were left with a patchwork system of family law and a legal industry complacent with its monopoly. The strategy would be to roll out only enough reform to keep the critics away. The victims of this complacency were thousands of Canadian families.

Oddly, the advocates for Waterloo Region's new courthouse have taken pride in doubling courtroom capacity at a time when family law research finds best practices are found in alternative, non-adversarial approaches for parents who are separating.

The Law Commission of Ontario published a remarkable 2010 report, *Voices from a Broken Family Justice System*, that found the current legal process often turns solvable problems into unsolvable outcomes.

The consequences for separated families are: depression rates four to six times higher for separated moms and dads; children experiencing three times the normal rate of mental health referrals; partner and child abuse by parents who had no history of such behaviours; estrangement from children for a parent and grandparents; and staggering financial costs.

Family law is the most important area of law for most Canadians. Parents may experience their first contact with the adversarial process here. They will find, according to Beverley McLachlin, chief justice of the Supreme Court of Canada, a system that is too costly and unnecessarily complex. She has warned members of the legal profession that without reform, they risk losing the confidence of the middle class. At least the middle class has assets for a retainer.

The chief justice neglected to mention the working poor who are ineligible for legal aid (they have too much income), and have few if any financial assets prior to a family separation.

There are only ugly choices for these families: some combination of overwhelming debt, self-representation (estimated to involve 70 per cent to 80 per cent of litigants), or surrender and go home — except, of course, they may not have a home anymore.

To the chief justice's credit, she struck a committee within the Supreme Court with a mandate to review current family law practices, consider the impact on families and to set forth recommendations. This past month, that committee's findings exposed a deeply flawed system in desperate need of reform.

There is scant evidence to suggest that the family law system is capable of healing itself. It appears through these latest reviews that the legal profession is at war with itself. The silence of our legal community is disheartening for it reflects indifference in the face of devastating human loss.

Given the current malaise around reform, separating parents must take control of their family's destiny. From the moment the decision is made to separate, the focus should be on family renewal in these changed circumstances. Renewal begins by respecting the other parent and truly believing in your children's need to have both parents and extended families in their daily life.

Parents must reach out for support, wherever it exists, that removes every parent's fear that they could lose the relationship with their child.

By my desk sits a recent picture of my 10-month-old granddaughter snuggled asleep in my arms. On a nearby wall is a poster of a young expectant couple with dad's head resting gently on his partner's lap listening to their unborn child's heartbeat.

The message is simple: A parent and grandparent's love are forever and should never be demeaned by a broken family law system.

Mortar and brick over human resources is inexcusable.

Barry Lillie is the executive director of Kids 'n' Dad Shared Support in Kitchener.