

## Focus FAMILY LAW

# Battling court gridlock with tech tools

LUIGI BENETTON

A committee of the Canadian Forum on Civil Justice recently published a series of reports that advocate, among other solutions, an increased role for technology in promoting access to justice in civil and family matters.

Lawyer Garry Wise of Toronto's Wise Law Office has been hearing talk about improving access to justice since he started practising in 1986. He bluntly stated his views in a May 30 post on his *Wise Law Blog*: "The systematic failure to achieve digital court reform continues to be a direct cause of unnecessary litigation delays, lost and misplaced documents at courthouses and intolerable environmental waste. It makes the lives of lawyers, litigants, judges and all 'stakeholders'...more difficult and stressful. And it continues to cost our clients money they can't afford."

Dominic Jaar, KPMG's Montréal-based national leader for information management and e-discovery and former CEO of the Canadian Centre for Court Technology, wants courts to approach their services like a business. He decries the practice of well-paid people doing clerical work that technology handles elsewhere in society. "You could free up those people to do cus-

tomers service, more value-added work," he says.

Wise also wants to free up a lawyer's time on routine motions and appearances using "scheduled, time-slotted hearings by videoconference, conducted from the comfort of your own office," he wrote on tips.slaw.ca.

"Lawyers can stay in their offices. Judges call when the court is ready," he explained in an interview. "You don't waste time in court waiting for your case to be called. You can do other meaningful work. You don't have to bill clients for hours of waiting time."

Few people oppose initiatives like these. So why haven't they seen the light of day?

Despite the severity of the problem, Wise figures the issue doesn't carry the same weight among politicians that criminal law does. "It's difficult to engage the public in the same way in family law," he says. "As a consequence, legislators don't give it priority."

Markham, Ont.-based lawyer Russell Alexander attends Oshawa Superior Court, which he calls one of the newest and most modern courthouses in the province. But "only two courtrooms have the Internet connection needed for a Skype testimony or a Skype hearing," he says, adding the court does not offer building-wide Wi-Fi.

Lawyers who want to sidestep

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**Garry Wise**  
Wise Law Office

such challenges using cellular-enabled devices find themselves thwarted by the building's design. Hallways wrap around the perimeter and the courts are further inside, so Alexander has to step outside of court to get a cellphone signal.

Legitimate security concerns also hamper technology adoption. For instance, Wise wouldn't mind filing documents via e-mail. He admits that it isn't the most secure way to get documents to court, but neither is paper.

Jaar suspects that high-profile "failures" like Ontario's eHealth system make justice system decision-makers gun-shy. He also blames the "governmental" way in which court technology projects take shape. The process of getting an RFP comes with a big up-front cost, so bureaucrats are tempted to overload RFPs with projects instead of taking an incremental approach to improve the odds of success.

Among a group of entrepreneurs trying to make up for the justice system's technology shortcomings, Toronto lawyer Omar Ha-Redeye is general manager of My Support Calculator, which offers a free spousal support calculation. "Before this website was launched, there was no way for the public to do this," Ha-Redeye says. "The spousal support advisory guidelines are so complex

that there's no way a self-represented litigant could get it calculated." My Support Calculator earns revenues from lawyers who advertise on the site, using it as a lead-generation tool.

Jaar wants to unload another long-held assumption: that you need to be a mechanic to drive a car. "It's possible to apply the law without understanding it," he says, noting the existence of "decision trees" that help people interact effectively with systems they don't fully grasp.

The rules of civil procedure could be the foundation of a website that routes people when they answer questions. For instance, entering the value of a case can cause a decision tree to direct people to the appropriate court.

Wise wants to issue a call to arms. "We need to make our voices heard," he says. "We need to be seen as working with the public to create a better system."

"When you go to court, complain that they don't take electronic documents," Jaar exhorts. "Complain about all these things so that we build pressure around the system and ministers and clerks and courts know there's demand for these technologies."

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## Negotiate: New act seen as favouring mediation and arbitration

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with the consent of the other guardian in the absence of completing an onerous criminal record and Ministry file search. These provisions could operate unfairly against fathers in particular, for example, where the child is the product of a casual sexual encounter. Such fathers will be less likely to have ever lived with the child than the mothers. This could form the basis for a constitutional challenge to the act in the future.

The act contains a broad definition of "family violence" to include everything from physical abuse to indirect exposure of children to violence, and imposes a duty on family lawyers to assess whether family violence is present and the impact this may have on the client's safety and ability to negotiate. This raises the question of whether lawyers are properly trained and have the skills to make such assessments.

It also is not yet clear whether the act has had its intended impact of increased protection for victims of violence. It is

unfortunately not unheard of in contentious family law disputes for parties to falsely allege family violence. The potential for false reporting has produced skepticism among the legal community to such allegations. The act mandates care and caution in addressing family violence. It is as important as ever for the court to determine the veracity of such reports. A court-ordered joint psychologist's report under Section 211 of the act will assist the court in addressing family violence.

The changes under the act are equally far-reaching where property issues are concerned. Under the act, common law spouses must commence proceedings for division of property within two years of the date of separation. This provision applies retroactively such that common law spouses who separated in March of 2011 or earlier found themselves out of time to preserve their property rights under the act, even as it came into force. As the act has improved upon the enforceability of agreements gen-

erally, common law spouses have reason to feel hopeful about protection of their property rights under agreements.

By imposing a duty on lawyers to attempt to resolve family law disputes through negotiation, the act does appear to be pushing counsel and the courts towards alternative dispute resolution. Mediation can be ordered under the act, and parenting co-ordination is an exciting new step towards binding arbitration of family disputes. Arbitration is a much needed alternative to trial, particularly for high-conflict

parties. However, many of these measures require payment of hourly rates in the range of \$150 to \$300 per hour, putting them out of reach for the vast majority of family law litigants.

While the act provides the promise of positive change, more time is needed before the extent of the changes will be truly known.

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