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- The family courts are very complex to navigate without a lawyer (court forms, procedures, are complex, arcane and poorly accessible). However more than 50% of family litigants now come to court without a lawyer across Canada.
- Furthermore:
 - The most important reason is lack of funds ([Macfarlane, 2013](#)). Similar results are reported in studies conducted in the US, England and Wales, New Zealand, Northern Ireland). The gap between those funded by Legal Aid Ontario (threshold, under \$19,000 pa) and those who can afford more than minimal legal assistance is now massive.
 - More than half of those without lawyers began with legal representation but ran out of funds and were forced to go it alone.
 - Self-representation is close to 80% in downtown Toronto (Jarvis, Sheppard) and other provincial centres
- Court outcomes are [significantly worse / less favourable](#) for those without legal representation

The result is a travesty of justice for many Ontarians who are not getting a fair chance. This is completely unchanged by whatever legal name you give to “custody” or access”, or even the definition of “best interests of the child” (as this Bill enacts).

What family justice reforms would begin to change this picture?

- Greatly enhance access to assistance by more affordable professionals. We know from research that SRLs need help especially in relation to forms and procedures. This does not require a licenced lawyer since this is “legal information”, but many community justice workers who can support family litigants are constrained by concerns that they will be seen as practising law and subject to prosecution. This is a Canada-wide problem for court registry staff, agency advocates (shelter workers, homelessness support workers etc) and could be fixed by amending the *Legal Profession Act* or pressing the

Law Society of Ontario to make a clear statement eschewing prosecutions (which do happen!) other than in cases of exploitation or public harm.

- Be prepared to amend the *Legal Profession Act* to allow for a new class of paralegals for family matters (presently there are no family paralegals officially permitted in Ontario) IF the Law Society of Ontario fails to agree this reform this fall (there is an [ongoing consultation process](#), but the last one ended with no result and there are signs this may get hijacked again by those who oppose any work being done by anyone other than a lawyer – but most of the public cannot afford lawyers.
- Make family mediation mandatory for all cases, with an exemption system for cases where this is inappropriate (for example in cases of domestic violence). The family mediation community has developed many such screening and exemption protocols in the last decade.
 - Research shows clearly that opt-in (optional) mediation has far less take up and less efficacy than opt-out (mandatory with exemptions) mediation (Macfarlane, numerous, RAND Report, 1997).
 - Dozens of studies since the 1990's that show that mediation-connected programs report average of 40-60% rates of resolution (Wissler, 1997 Quek, 2010).
 - There is no difference in party satisfaction levels between mandatory and voluntary mediation (Stienstra, 2004)
- The Bill holds out some hope for an expansion of the role of the [Dispute Resolution Officers](#) program, but there is much more that needs to be done to make mediation and early dispute resolution a default step for families and one that everyone feels comfortable considering.
- Invest not only in technologies such as e-filing to enhance access (something that [MAG is starting to address](#)) but also in recreating and simplifying legal forms themselves with built in interactive assistance. There has been talk of doing this for a decade, but efforts are always piecemeal and we need a new focus on user accessibility and the creation of plain language court guides to help those without legal training and without a lawyer. The process of recreating court forms needs much more user input, which NSRLP can facilitate (we are already doing this for other justice ministries).