

Empowerment, Technology, and Family Law

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Can ordinary people be empowered by the use of new technologies and online services to deal with problems that are as complex and layered with emotion as family law issues typically are? In British Columbia, at the Legal Services Society,¹ we have provided free, web-based self-help services since 2002 and know that done right, online self-help is empowering for many. We also know that technology supported by people is even more empowering, and that for some, online self-help is not a viable option. However, as technology evolves, the opportunity arises to bring the best advances to the public and not only make existing tools easier to use, but to increase the pool of potential users by providing services that are more accessible. By providing online services to the many that want them and are empowered by them, service providers can focus on enhancing in-person services where they are needed most.

The Legal Services Society (LSS) is British Columbia's legal-aid provider and is unusual in having a mandate which includes the provision of public legal-education and information (PLEI) services.² Traditional legal aid services focus on representation for low income people with an array of criminal and civil problems. Until 2002, in addition to PLEI, LSS was typical in this regard and covered poverty-related civil matters as well as a wide range of family law problems, from simple divorce to custody to property division. As the province entered a period of austerity in 2002, the LSS was required to

significantly reduce the number of people that could be legally aided, eliminating civil cases and curtailing family coverage. With few exceptions since then, family coverage has only been available in cases where violence exists or where there is an imminent risk of a child being permanently removed from the province.³

As a result of reduced family coverage, LSS significantly shifted its family PLEI program. From primarily informing people about their rights and listing resources for assistance through print publications, the LSS introduced a new website which featured self-help guides—Family Law in BC (www.familylaw.lss.bc.ca). On this site, information is presented to help users choose the correct self-help guide, which then walks them step-by-step through the paperwork and court processes necessary to have their issue adjudicated. Users are always informed of free public and private mediation options, but in the early years, the site focused on court-based self-help to replace the representation services lost due to coverage restrictions. The web-based information, self-help guides, and court forms could stand alone, but were supplemented with new services including family duty counsel and advice lawyers, and a telephone hotline where users could get legal advice. In addition, LSS provided widespread community education so that intermediaries in social service agencies could become familiar with the site, thus enabling them to help their clients experiencing family problems to access both the site and the new support services. LSS was able to undertake many of these initiatives to enhance access to justice in times of austerity as a result of the generous support of the BC Law Foundation⁴ and Notary Foundation of BC.⁵ LSS is the beneficiary of significant grants that enabled the launch of our family site and continued improvements to our web-based programs.

Some community intermediaries receive specialized advocacy training. In BC, these “advocates” are not lawyers but people from a variety of backgrounds who work as staff in social service agencies. They receive training to help people with specific legal problems, usually related to poverty issues, welfare, and other social service benefits. BC’s advocates are funded by the Law Foundation and are a significant part of the justice ecosystem.⁶ Many individuals who would never seek out counsel for fear of dealing with lawyers or of paying legal fees will enter the office of a trusted community agency. When we started the Family Law in BC Website (FLWS), these intermediaries were seen as the primary audience for the site. At that time, they were perceived as

being more likely than the general public, and certainly more than the traditional legal aid clientele, to have access to computers and the internet, and to have the skills and abilities to use these new tools. Since then, we have seen the digital divide diminish and the audience expand well beyond the initial, intermediary target.

While the divide has diminished, it has not disappeared. Barriers continue to exist. Impoverished people may not have access to a computer or internet at home; if they live in small or remote communities, they may not even have access through public-access computers in libraries.⁷ Some of the small Aboriginal communities which dot the province do not yet have internet access. In such communities, technology is not the tool that is turned to first or at all. Depending on age, education, and experience, even if there is access to a computer, a lack of digital literacy may prevent a user from taking advantage of it. Even in a sophisticated user, it is known that emotional state, as well as health issues as diverse as depression, cancer treatments, and diabetes, can affect a user's ability to assimilate and process information. Reading online is a different experience from reading print, and care must be taken in delivering services online in such a way as to consider the user interfaces and experience. Many intermediaries want to give their clients something to take away with them, or to review together when there is no online access. Print remains essential⁸ and LSS fulfilled orders for more than 250,000 print publications in 2013.

So with these barriers why pursue online services for low-income people? There are several important reasons. The web offers incomparable advantages for providing services 24/7—accessible whenever and wherever needed.⁹ Web services cover large geographic regions such as BC, at low cost. Low-income people access and use the internet in BC, and with increasing frequency by means of a mobile device. LSS has seen exponential increases in the visits to its sites from mobile devices and in clients providing mobile contact numbers over the last five years. As a result, LSS introduced a mobile website to ensure that information is available, and our newest website, Aboriginal Legal Aid in BC (aboriginal.legalaid.bc.ca) is fully mobile compatible.

The legal problems of low-income people, such as marriage breakdown, cut across socio-economic status. Increasingly, and regardless of economic background, people want to manage their own legal problems and are reluctant to engage counsel to do so for them, finding

legal fees to be poor value for their money or having run out of money before a solution is obtained.¹⁰ Legal-needs research suggests that people with legal problems want to be saved—and they want problem-solving processes that are easy to use and cheap. They want reasonably quick solutions and authoritative information that will assist them with processes that are transparent and lead to fair outcomes. People are looking for help and they want to get on with their lives.¹¹ They are looking to Google and the web for these results. Visits to the FLWS, described as “the Grand Central Station” for family law in BC, showed steady increases annually until 2013–14, when visits doubled to 65,648 visits per month. We attribute the increase in usage to two things: firstly, a modest advertising campaign (\$10,000) in conjunction with the introduction of new family legislation in BC; and secondly, focused improvements to the website. One might assume that such increases are the natural result of being a unique source of online family law information in BC, but this is not the case. BC has a robust PLEI environment with multiple sources of family PLEI online, delivered by a range of providers, from public agencies to private lawyers.¹²

The strategies for successful online service delivery focus on content, accessibility, collaboration, networks, and evaluation.¹³ We believe that these are essential to empowering the end user, even in complex and emotionally laden situations such as family law.

Content Is King

Legal content must be accurate, up to date, and trusted. Users need to trust the agency providing the content to keep it updated at all times and to alert them to changes in the law or process. We have achieved our reputation for reliable, accurate information through retention of a specialist family-law lawyer, strong relationships with government staff who can apprise us of changes in policy and the law, and dedicated staff who review multiple resources to keep up to date. Staff quickly respond to changes and post updates as required. RSS feeds alert subscribers to changes on the site and maintain a “What’s New” section for reference.

Accessibility

A good site must address physical accessibility issues, such as adjustable font sizes, but accessibility refers to much more than that.

Accessibility is a factor at every stage, from the instant a user lands on the site and decides whether to stick around, to whether the site engages their interest and motivates them to continue to move forward with their issue. If the site discourages and overwhelms users because of legalistic vocabulary, densely packed text, or poor navigability, it is not accessible.

In 2012, the LSS Accessibility Initiative included a review of our online services.¹⁴ While we were satisfied that we were meeting our content goals, we wanted to expand our reach. Our goal was to attract an audience beyond the traditional intermediary and sophisticated user in order to reach an audience more reflective of typical internet users. To the greatest extent possible, we wanted to include the least sophisticated users and provide a product that increased engagement of the original audiences at the same time. We wanted to extend our reach in order to serve the majority of people, who now expect to be able to use the web themselves for results and not be dependent on visiting an intermediary office for assistance. Self-help tools were expanded to include a live chat service. Users can now engage with volunteer law students who answer their questions (generally through pre-scripted answers) and direct them to relevant information. Such functional integration means the information provided is not only easy to understand, but also easy to find. This is a challenge when the content has expanded, as it has with the FLWS: the resource includes over 1,400 pages, and it continues to grow.

Additional support, such as LiveChat, empowers those who might otherwise be daunted by the site. Literacy levels across the general population in Canada are shockingly low, and BC is no exception: 40% of BC adults struggle with the skills necessary to do such everyday activities as read a newspaper, fill out a work application form, or read a map.¹⁵ While care has been taken to use plain language principles, our Accessibility Initiative saw us work not only with an IT consultant to recommend improvements to navigation and the user design/interface experience, but also with the province's literacy association, Decoda Literacy Solutions, and an Aboriginal consultant, Sa'hetxw, for advice on engaging Aboriginal audiences online.

As observed by British academic and commentator Roger Smith, user expectations of a non-profit-run information site are high and shaped by what they see on other sites, usually commercial and sophisticated.¹⁶ There is a matter of seconds during which a user

will assess a not-for-profit information site as credible and relevant, and those judgments are shaped by their experience with other online resources.

Collaborate

LSS values collaboration, and in site development collaborates with experts, agencies that provide PLEI, front-line family law services, and the public with legal problems themselves. Gathering the perspectives of many individuals who work on the site or assist others with it is invaluable in ensuring that online resources meet the user's needs. We receive advice on navigation improvement and common user mistakes, which enables us to correct the site in order to meet these needs. An advisory committee and broader community consultations support content development and provide practical feedback. Working with members of the public in user testing and listening labs have allowed us to design new court forms, and an interactive do-your-own separation agreement met with immediate success.

Network

LSS uses its own networks of offices, the network of Law Foundation funded advocates and other community intermediaries, all of whom attend public legal education workshops to create a user base for the website. LSS has also engaged members of the private bar who saw the value in referring clients to the site for unbundled services, and identified the site as an education tool to allow paying clients to appreciate the work necessary to move a case through a litigation process. The site became a convenient resource for the bar and intermediaries to stay up-to-date on family law and to access court forms and procedural advice. Search engine optimization is important but does not replace the human network. It is human encouragement that can empower those who are unsure and give them the confidence to use the online tools, just knowing there is someone to ask and turn to if advice is needed. Our family duty counsel, advice lawyers, telephone advice, and chat service all form part of a support network for site users, introducing them to the site and assisting with its use. The legal-aid offices, local agents, and community partners forming the LSS network collaborate across 69 communities and have staff trained to assist end users with the site.

Evaluate

Evaluation is an important component of our site development. User surveys provide regular feedback, as do participants in community consultations. Questions about the use of LSS sites are included in longitudinal studies concerning family law services and in client-satisfaction surveys, as well as when we survey our service providers, from the telephone advice lawyers on the Family LawLine to the private bar. This information, when compiled with occasional reviews, such as our Accessibility Initiative and Divorce Guides reviews, enable us to be proactive in implementing changes to better meet the needs of our users.

The emerging trends in online service delivery further advance the strategies employed by successful sites, sometimes in unexpected ways. Research is being consumed by service providers who want to provide online tools that empower end users to solve their legal problems. Here is what we observe in terms of emerging trends in the digital delivery of legal services.

Escalation of Global Information Sharing

For many years, legal aid providers and public legal education providers have shared practical information and best practices in service delivery across provincial boundaries, networking regularly at national conferences. Where funding permits, Canadians also look to the south to learn from the American experience, through conferences such as the American Equal Justice Conference¹⁷ and Technology Initiative Grants Conference.¹⁸ Groups such as the International Legal Aid Group¹⁹ bring a more global perspective on service delivery and contribute to the identification of best practices on the application of technology in legal aid and PLEI contexts.

Gamification

Gamification in the context of legal services generally refers to two things: firstly, the use of games in order to educate people, and secondly, the use of gaming design principles to motivate site users to complete tasks online.²⁰ Some games being introduced in the US include simulations, text-based walk-throughs, and quizzes, all designed to teach civics, legal procedures, and basic law-practice skills to citizens and law students. Specific examples include Margaret Hagan's LawDojo apps, Citizen U-content quizzes and

iCivics.²¹ In BC, the Justice Education Society's Changeville²² is an interactive game aimed at children whose parents are separating.

Guided Pathways

Guided pathways use an interactive question-and-answer approach to lead users to resources that can help solve their specific problems, providing bite-sized pieces of information along the way. Information is specific to the questions asked and answered, and does not overwhelm. An interesting convergence of thinking around this approach commenced in late 2013, which has led to a number of Canadian initiatives in 2014, including the LSS MyLawBC project.

In late November 2013, Roger Smith and Alan Paterson released a review of online legal information delivery which included sites from Canada, the USA, New Zealand, Australia, and Europe.²³ The guided-pathway approach was heralded as a particularly effective way of delivering the information a user wants and needs, in an engaging and dynamic manner, as opposed to traditional PLEI online, which tended to replicate printed fact sheets and was not taking advantage of the potential for interactivity offered by the web. The report particularly noted the Dutch Legal Aid site, *Rechtwijzer*, as a most effective and dynamic way to assist users.²⁴

Then, in December 2013, the Legal Services Corporation (USA) released its Report of The Summit on the Use of Technology to Expand Access to Justice.²⁵ One of its key recommendations was to pilot more effective delivery of online legal information through guided-pathways approaches.

The value of a user-focused approach which actively guides the user online is evident when one reads the research done in the UK. Catrina Denvir has been doing research into how bright young people find information online.²⁶ She studied high-school and law-school students who were presented with an everyday legal problem to resolve. Her results were disheartening—the young people often had difficulty recognizing relevant sites and appropriate jurisdictions, and often needed strong hints as to the correct sites to use.²⁷ There was a tendency to use whatever came up first on Google, without analysis or review. One can see how an online service that leads users, based on their answers to questions, to reliable and relevant tools and information would empower them to confidently and capably address their issue.

The guided-pathway approach addresses another issue that is commonly referenced in literature about online PLEI. Users describe feeling overwhelmed by the number of resources available on the internet.²⁸ Even if the resources are narrowed to reliable information relevant to the appropriate jurisdiction, users ask themselves: Which one of these is right for me? Is one better? Which is the most up to date? With online PLEI, anyone can put up information and modify it to meet the needs of a particular audience or for a particular purpose, or because they have their own stylistic perspective to share. While an abundance of online resources is a wonderful asset, like a fully stocked library, the feedback from many is that they do not want to browse the shelves endlessly or do deep research. They don't have the time and want to solve their problem and get on with their lives. They want information that they can clearly count on, and not get endlessly looped to other resources. Guided pathways have the potential to meet these needs and respond to these common concerns.

Much of this research inspired the recently launched LSS MyLawBC project.²⁹ LSS worked with the HiiL group, the experts behind the Rechtwijzer, to develop a site that features guided pathways at its heart. In BC, the focus is on family law, family violence, wills, estates and life planning, and foreclosure. The BC government developed guided pathways to support its new online Civil Resolution Tribunal, which is also now live.³⁰ Other Canadian jurisdictions are currently planning guided-pathway projects.³¹ This is a clear trend.

Emotional Design

One of the very interesting features of the Dutch Rechtwijzer site³² for separating families was how it addressed the emotional context in which people were coming to the site and asked reflective questions to assist the user to move to a place where the possibility of negotiating a settlement is seen as a positive outcome. Design principles which encourage a feeling of human connection online and create a sense of journey have the potential to closely align with the guided-pathway approach. Emotional design³³ has significant potential to empower users and encourage completion of tasks needed to solve legal problems.

Integration of PLEI and Services

The evolution of traditional PLEI to service provision began with do-it-yourself guides. The introduction of online, interactive

questions-and-answers-based guided pathways expanded service provision to diagnosis, triage, and referral. In the past, and typically today, options are presented to the user, who is then left alone without further guidance to make choices about next steps or which resources to utilize. Similarly, until very recently, there has been no effort to marry online PLEI with online dispute resolution (ODR) services, which have developed independently on a stand-alone basis.

Online tools to assist in negotiating agreements which enable parties to communicate with each other asynchronously and to engage the assistance of an online mediator have developed in recent years.³⁴ This is happening publicly and privately in BC, although both have remained relatively under the radar with respect to public awareness. In BC, the provincial government piloted such approaches in two of its agencies, the BC Property Assessment Appeals Board³⁵ and Consumer Protection BC.³⁶ The government has developed an enhanced version of these services in its Civil Resolution Tribunal project.³⁷ An ODR platform for small-claims court³⁸ was piloted in BC by the Justice Education Society, a PLEI provider. Privately developed online services seem relatively costly for potential customers and are not altogether user friendly, perhaps explaining why they have not caught on yet. Or the explanation may be that it takes more time for a cultural shift to happen, for the public to trust these services.

MyLawBC³⁹ includes an online negotiation platform for family matters to assist in the creation of a separation agreement. The FLWS do-your-own separation agreement has rapidly become the second-most popular self-help tool on the site, after do-your-own divorce. We plan to evaluate how people will choose to use these resources and how effective they are.

The Dutch have become global leaders in the integration of PLEI with online service delivery since they introduced the newest version of *Rechtwijzer*⁴⁰ in the fall of 2015. It links family PLEI through guided pathways to a full suite of ODR services. These consist of negotiation features, as well as the possibility of retaining online mediators or arbitrators to create a full separation agreement and obtaining follow up with a legal review of the separation agreement produced, including feedback for both parties. Services also cover an aftercare component so that users can follow up with each other should issues come up or circumstances change after the initial agreement is reached.

Conclusion

It is clear that we are in a time of rapid change in how and what services are delivered online. The sharing of information and research on a global basis is permitting emerging best practices to be adapted to meet local needs. Not-for-profit service providers and their funders welcome the research and are keen to have emerging best practices implemented, tested, and further refined. Current developments are exciting, as they are action oriented and have the goal of empowering people to solve their problems and get on with their lives in the way that they want, in a fair and timely manner.

Notes

- 1 The BC Legal Services Society is a non-profit organization in British Columbia Canada that provides legal information, advice and representation services to people with low incomes: BC Legal Services Society, About Us, online: <<http://www.lss.bc.ca/about/index.php>>.
- 2 For more information about BC Legal Services Society's online self-help information, visit www.lss.bc.ca.
- 3 For a timeline of cuts to BC legal aid, see Povnet, "A timeline of cuts to BC legal aid" (25 January 2010), online: <<http://www.povnet.org/node/3629>>.
- 4 For more information about the BC Law Foundation, visit <<http://www.lawfoundationbc.org>>.
- 5 For more information about the Notary Foundation of BC, visit: <<http://www.notaryfoundationofbc.ca/resources/showContent.rails?resourceId=608>>.
- 6 Kathryn E. Thomson, "Trusted Intermediaries, Technology & Legal Advocates in BC," Winkler Institute for Dispute Resolution, Justice Innovation Blog (27 January 2015), online: <<http://winklerinstitute.ca/trusted-intermediaries-technology-legal-advocates-b-c/>>.
- 7 For further discussion of the nature and dimensions of the digital divide in Canada, see Misty Harris, "Digital Divide Persists in Canada, both in Access and Internet fluency," *Financial Post*, March 21, 2013, online: <http://business.financialpost.com/2013/03/21/digital-divide-persists-in-canada-both-in-access-and-internet-fluency/?__lsa=d6a5-944d>; Michael Geist, "Canada's digital divide likely to widen," *The Toronto Star*, April 5, 2013, online: <http://www.thestar.com/business/tech_news/2013/04/05/canadas_digital_divide_likely_to_widen_geist.html>; Peter Nowak "Digital Divide: the High Costs of Arctic Broadband," *The Globe and Mail*, November 11, 2012, online: *Globe and Mail* <<http://www.theglobeandmail.com>>.

- 8 Karen Cohl and George Thomson, "Connecting Across Language and Distance: Linguistic and Rural Access to Legal Information and Services" (Toronto: Law Foundation of Ontario, 2008) at 62, online <<http://www.lawfoundation.on.ca/wp-content/uploads/The-Connecting-Report.pdf>>.
- 9 Ibid. at 39.
- 10 For more information on self-represented litigants, see Julie Macfarlane, "The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigations," Final Report (May 2013), online: <http://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/ConvocationDecisions/2014/Self-represented_project.pdf>.
- 11 For further discussion of unmet legal needs, see Rebecca Sandefur, "White Paper: What We Know and Need to Know About the Unmet Legal Needs of the Public," *SC L Rev* 67 (2016) at 443; Hazel Genn and Sarah Beinart, *Paths to Justice: What people Do and Think about Going to Law* (Oxford, UK: Hart Publishing, 1999).
- 12 For more information about legal information providers in BC, visit: <http://www.legalaids.bc.ca/legal_aid/legalInformation.php>.
- 13 For further discussion of best practices for online providers of legal information, see American Bar Association, "Best Practice Guidelines for Legal Information Website Providers" (10 February 2003), online: <http://www.americanbar.org/groups/law_practice/committees/elawyering-best-practices.html>; Victorian Legal Assistance Forum, "Best practice guidelines for the development and maintenance of online community legal information in Victoria" (December 2013), online: <http://www.vlaf.org.au/cb_pages/files/VLAF%20online%20guidelines%20-%20Final%20draft.pdf>.
- 14 BC Legal Services Society, *Public Legal Education and Information Resources Accessibility Initiative* (June 2012), online: <<http://www.lss.bc.ca/assets/aboutUs/reports/PLEI/pleiResourcesAIRReport.pdf>>.
- 15 Literacy BC, "Literacy in British Columbia," online: <<http://communityliteracy.ca/wp-content/uploads/2011/06/Literacy-in-British-Columbia.pdf>>.
- 16 Private Client Adviser, "New online court must take 'post-Amazon world' into consideration" (10 March 2016), online: <<http://www.privateclientadviser.co.uk/news/legal-practice/new-online-court-must-take-post-amazon-world-consideration>>.
- 17 The American Bar Association and National Legal Aid & Defender Association sponsor the Equal Justice Conference, which was held in Illinois in 2016: American Bar Association, General Information, online: <https://www.americanbar.org/groups/probono_public_service/ejc/general.html>.

- 18 For more information about the Technology Initiative Grants conference, visit: <<http://www.lsc.gov/meetings-and-events/tig-conference>>.
- 19 For more information about the International Legal Aid Group, visit: <<http://ilagnet.org>>.
- 20 Stephanie Kimbro, "Gamification vs Games for Legal Services" (18 May 2013), online: <<http://virtuallawpractice.org/2817/gamification-vs-games-why-the-difference-matters-for-legal-services/>>.
- 21 Ibid.
- 22 To access the game, visit: <www.changeville.ca>.
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- 24 Ibid. at 59.
- 25 Legal Services Corporation, *Report of the Summit on the Use of Technology to Expand Access to Justice*, online: Legal Services Corporation <www.lsc.gov/sites/default/files/LSC_Tech%20Summit%20Report_2013.pdf>.
- 26 Catrina Denvir, *What is the Net Worth?: Young People, Civil Justice and the Internet* (PhD Thesis, University College London, 2014) [unpublished], online: <<http://discovery.ucl.ac.uk/1437397/1/PhDThesis-CDenvir.pdf>>.
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- 28 PLE Learning Exchange Ontario, "How to help your clients," online: <<http://www.plelearningexchange.ca/toolbox/helping-your-clients-find-reliable-legal-information/>>.
- 29 <<http://www.mylawbc.com>>.
- 30 <<https://www.civilresolutionbc.ca>>.
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- 32 <<http://rechtwijzer.nl>>.
- 33 For further discussion of "emotional design," see: Don Norman, *Emotional Design: Why We Love (or Hate) Everyday Things* (New York: Perseus Books, 2004).
- 34 Colin Rule, "New Mediator Capabilities in Online Dispute Resolution" (December 2000), online: <<http://www.mediate.com/articles/rule.cfm>>.
- 35 <<http://www.assessmentappeal.bc.ca>>.
- 36 <<https://www.consumerprotectionbc.ca>>.
- 37 <<https://www.civilresolutionbc.ca>>.
- 38 <<http://www.smallclaimsbcc.ca>>.
- 39 <<http://www.mylawbc.com>>.
- 40 <<http://rechtwijzer.nl>>.

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