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Community Legal Education Ontario
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FAMILY LAW GUIDED PATHWAYS: A DIRECT-TO-PUBLIC AUTOMATED LEGAL TOOL
November 2019

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PREPARED FOR 2019 SPECIAL LECTURES PROGRAM OF THE LAW SOCIETY OF ONTARIO

FAMILY LAW GUIDED PATHWAYS: A DIRECT-TO-PUBLIC AUTOMATED LEGAL TOOL

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This paper was submitted by CLEO (Community Legal Education Ontario / Éducation juridique communautaire Ontario) to the 2019 Special Lectures Program of the Law Society of Ontario, November 21 and 22, 2019. Since 1974, CLEO has developed clear, accurate, and practical legal rights education and information to help people understand and exercise their legal rights. Our work focuses on providing information to people who face barriers to accessing the justice system, including income, disability, literacy, and language. As a community legal clinic and part of Ontario's legal aid system, we work in partnership with other legal clinics and community organizations across the province.

Ontario: November 2019

Direct-to-public automated legal tools show tremendous promise for delivering legal information and assistance to people through accessible channels. The promise is most obvious where the tools serve an unmet or underserved need, addressing a gap in access to justice.

CLEO is developing direct-to-public automated legal tools to help people complete and file family court forms. We recently launched a collection of those tools, in partnership with the Ministry of the Attorney General (“MAG”) and several other family law stakeholders, called the “Family Law Guided Pathways”. In this paper, we will discuss those interactive tools, focussing on four key aspects that we emphasized in their development:

- ease of use
- reflective of the diversity of users
- robust privacy and security features, and
- sustainable in the longer run

I. Background: the need for family law guided pathways

The state of the access to justice challenge in family law is well known to those of us who work in the justice sector – and to those who have experienced family law problems. Much research has been done to document it in Ontario. A 2013 report by The National Self-Represented Litigants Project, “Identifying and Meeting the Needs of Self-Represented Litigants”, found that self-represented litigants – people going to court without a lawyer – often struggle with identifying the forms they need and decoding their complicated language.¹

A more recent study published in 2018, conducted by the Winkler Institute and commissioned by MAG’s Family Justice Services Online initiative, looked at online and in-person service design engagement with family law users. Members of the public interviewed for the research described “pain points” in the family justice process, such as difficulty with completing and filing court forms and anxiety about not having a “map” to guide them through the process. Litigants expressed frustration about avoidable multiple visits to the courthouse and wait times associated with mistakes about forms.²

More particularly, users commented on the difficult language and confusing design of the family court forms. These deficiencies led to errors that caused completed forms to be rejected at the court. Without legal assistance, people turned to court staff for direction. Court staff in turn expressed frustration arising from uncertainty about the extent to which they can assist users to complete court forms.

Focusing on the demand for a better way to assist with family law court forms, CLEO identified guided pathways or document assembly software – a form of direct-to-public automated legal tools – as a promising approach.

¹ Macfarlane, Julie, *The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants* (May 2013), online: <https://lawsocietyontario.azureedge.net/media/iso/media/legacy/pdf/s/self-represented_project.pdf>.

² Aylwin, Nicole, Jean-Paul Bevilacqua, Martha Simmons, and Shelley Kierstead, *Understanding User Experience: Improving Ontario’s Family Justice System Through Technology* (November 2017), online: *The Winkler Institute for Dispute Resolution at Osgoode Hall Law School* <<https://winklerinstitute.ca/projects/learning-from-the-public-to-improve-online-family-justice-services/>>.

II. Four essentials of user-focussed interactive tools

From the outset, CLEO brought its careful, deliberative way of working to this project. We were determined to create tools that work for users – that were developed from their point of view – and that earn the trust of people who are turning to these types of tools for assistance.

Our guided pathways, then, embody four characteristics that we think are essential:

- ease of use
- reflective of the diversity of users
- robust privacy and security features, and
- sustainable in the longer run

Ease of use

CLEO is taking an intentional approach to developing guided pathways that are easy to use by the public, enabling users to give the information requested by the court in a coherent way. Guided pathways are essentially decision trees that use a person's answers to questions to generate a completed document or to direct them to information tailored to their needs.

Our pathways take people through a logical series of plainly stated questions, one-at-a-time. This one-question-at-a-time approach serves to break difficult concepts into smaller pieces. People only see a question if it applies to their situation.

People often require help understanding the implications of their answers, and we integrate easy-to-understand legal information into the questions. In each question, we present only legal information that is relevant to the person's situation.

Once a pathway is completed, the user's answers will automatically populate all of the necessary court forms needed for a particular matter. The forms can be downloaded and printed, or electronically transmitted by email.

We incorporate several features that reflect the reality of how users interact with the decision trees or pathways. For example, we know that users may sometimes have to step away when in the midst of working through a pathway, so we designed the system so that answers can be saved and returned to later. And, rather than requiring users to enter their personal and family information on every form, users need to enter that tombstone information only once and the system will use it to populate all of the forms needed by the user. Technology can make onerous tasks a little easier for people!

We also use logic rules and calculators to help users enter information accurately. For example, we use logic rules to check dates that are entered by users for internal consistency.

Finally, once a user has completed the pathway, they receive a next steps checklist that is tailored to their situation. Users also receive instructions about how to file their court forms.

Reflective of the diversity of users

Often, digital tools are seized on as an alternative to in-person services – sometimes explicitly, and sometimes by gradual growth as digital delivery slowly but surely begins to take over in-person or even phone assistance. Who hasn't tried to seek assistance from a government office only to be required to interface with some form of electronic helper – endlessly patient – rather than a helping hand from a real-live human?

CLEO takes seriously our mandate to serve people who face barriers to participating in the justice system – and those barriers include barriers to understanding Canada's official languages, as well as digital literacy barriers.

In our guided pathways work, CLEO gets at this goal in a couple of ways.

First, the software we use, A2J Author, is designed for use by people with limited digital literacy. The user “friendly” interface presented in A2J Author was developed as a result of usability testing.³

Second, we support the multiple entry points that people turn to for help in their communities, to ensure that they know about the guided pathways and will refer potential users to them. People who experience low incomes and other disadvantages, including barriers relating to literacy and digital access, often turn to not-for-profit organizations in their local communities that they trust.

Student legal aid clinics, family court support worker programs, pro bono programs, and many other not-for-profit organizations are using these pathways in their work, and CLEO offers training to ensure that they are well equipped to do so – thus expanding the reach of the pathways to people who may otherwise be left behind.

Robust privacy and security features

Direct-to-public automated legal tools can be distinguished from other online applications on the basis that, along with the promise of expanding access to justice, they can create new risks for the consumers who use them. People may be depending upon these tools, and sharing sensitive information, in times of crisis or distress when they may be especially vulnerable. There is a moral, if not legal, imperative to protect the public who use these legal tools.

Direct-to-public automated legal tools must, of course, comply with Ontario's rules about the permissible practice of law (Law Society of Ontario's *Rules of Professional Conduct*)⁴ and Canadian privacy law, *Personal Information Protection and Electronic Documents Act* (PIPEDA).⁵ However, it is unclear whether regulation of these tools has kept pace with the rapid development of the technology.

³ Staudt, Ronald W., John Mayer, Eve Ricourte, and Rachel R. Medina, “Not Just a Pretty Interface: A2J Author is Changing How We Achieve Justice Through Technology” ABA Equal Justice Conference (May 14, 2009) at 22, online: <<https://www.a2jauthor.org/sites/default/files/EJC2009-PrettyInterface-A2JAuthor.pdf#overlay-context=content/presentationss>>.

⁴ Law Society of Ontario, *Rules of Professional Conduct*, 2001, online: <<https://lso.ca/about-lso/legislation-rules/rules-of-professional-conduct>>.

⁵ *Personal Information Protection and Electronic Documents Act*, S.C. 2000, 5 online: <<https://laws-lois.justice.gc.ca/eng/acts/P-8.6/index.html>>.

A summary scan of North American jurisdictions suggests that little clarity and no consensus has emerged on legal software issues such as when online legal services create a solicitor-client relationship.⁶ And privacy law allows considerable scope for the owners of automated legal tools to commercialize data and leverage third-party applications, with consumer consent, in an era where consent is provided by the public, by clicking “accept” on terms of use, as a matter of course.⁷

Privacy by design

Our work at CLEO is premised on the view that privacy by design is a best practice for direct-to-public legal tools. As described by University of Ottawa Professor Amy Salczyn, this is an approach that “emphasizes and prioritizes privacy principles throughout the design stage” of the tool.⁸ It involves thinking about limiting the scope and retention of user data to what is really needed for the purported purpose of the application.⁹ In practice, prioritizing privacy principles means many things.

For example, CLEO ensures that the personal data that we collect is stored on a hosting platform located in Canada. We think it’s important to ensure that we do not expose data that we collect to disclosure in foreign jurisdictions, like the United States pursuant to the *Patriot Act*,¹⁰ or to commercial interests, permissible under the terms of use, wholly unconnected to the purported purpose of the tool to the public.

Verified security

CLEO is collecting highly sensitive personal information from people who are completing family court forms, and we have worked hard to provide a level of security that is appropriate to this level of sensitivity.¹¹ It is a recommended practice that, for direct-to-public legal tools, especially where sensitive data is being collected, the security of the application should be independently verified, ideally in in Threat Risk Assessment (“TRA”). In line with this recommendation, CLEO conducted a third-party TRA to examine the risks associated with the use of our guided pathways and its associated infrastructure and systems, which increased our awareness of the risks associated with the system and enabled us to take steps to mitigate them.

Sustainability in the longer run

CLEO undertook this project – building a series of guided pathways to help people in Ontario to complete their family court forms – with a plan for sustaining the work in the longer-term. Technology initiatives that come and go are always interesting to observe and learn from, but initiatives that are set

⁶ “October 2018 LHI Community Call: The Regulation of Document Assembly Providers” (October 30, 2018), online: *Pro Bono Net* < <https://www.youtube.com/watch?v=eZmLnBLX4Eg> >.

⁷ Berreby, David, “Click to agree with what? No one reads terms of services, studies confirm” (March 3, 2017), online: *The Guardian* < <https://www.theguardian.com/technology/2017/mar/03/terms-of-service-online-contracts-fine-print> >.

⁸ Salczyn, Amy, Teresa Scassa, Jena McGill, and Suzanne Bouclin, *Improving Privacy Practices for Legal Apps: A Best Practices Guide* (March 2019) at 7, online: <https://www.priv.gc.ca/en/opc-actions-and-decisions/research/funding-for-privacy-research-and-knowledge-translation/completed-contributions-program-projects/2018-2019/p_201819_10/>.

⁹ *Ibid.*

¹⁰ *The USA PATRIOT Act: Preserving Life and Liberty (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism)* 2001, online: <<https://www.justice.gov/archive/ll/highlights.htm>>.

¹¹ *Personal Information Protection and Electronic Documents Act*, S.C. 2000, 5 online: < <https://laws-lois.justice.gc.ca/eng/acts/P-8.6/index.html>>.

up to be sustainable – while growing and adapting over time – are a much better investment for the public, and for limited non-profit resources. What does this mean in practice?

Keeping up with changes in the law

First, CLEO has a structure in place for revising the content in the guided pathways as the law changes. Sounds straightforward – but sometimes it isn't.

CLEO leverages the expertise that exists in our six family law content committees to support the ongoing updating of the family law content across CLEO's family law collection, including the Steps to Justice website, Steps in a Family Law Case, and a variety of print titles. These committees comprise family law practitioners, court staff, staff from the Ministry and other government agencies, representatives from family law associations and organizations, as well as community agencies. The experienced family law practitioners review content to ensure legal and practical accuracy. On an ongoing basis, the committee reviews the material for continued accuracy and currency.

Cost effective

As we mentioned above, CLEO is very much aware of the need to ensure that the technology and content development and maintenance systems make careful use of scarce public and other non-profit funding. We seek to minimize the resources spent on technology in favour of content for the public.

For instance, the family law guided pathways project uses A2J Author software to create the pathways. This software is available for free for non-commercial activity by non-profits like CLEO; it is widely used by the American justice sector and supported by a community of programmers. A2J Author's extensive use¹² and institutional support¹³ provide reasonable assurance that the software can be counted on to exist and evolve over time¹⁴. And CLEO reuses a data hosting system for community legal clinics, administered and owned by CLEO, hosted in a data center facility operated by Legal Aid Ontario.

III. Looking forward to ongoing improvement

The guided pathways now available to the public are just the initial batch of 59 pathways that CLEO and TAG (The Action Group on Access to Justice) are producing in collaboration with MAG. Of the 59 guided pathways, 18 are what we call "transactional" guided pathways. Currently, there are eight transactional interviews available to the public. These eight existing transactional pathways can produce a total of 19 different forms and eight tip sheets.

We also currently have six shorter pathways called "form wizards" that can assist users with completing a single form. We have plans to develop 30 more of these shorter interviews.

Finally, we also have plans to develop four guided pathways to tailored legal information. These tools will help users to identify their needs and find information that applies to their situation.

¹² A2J Author < <http://www.a2jauthor.org/> >.

¹³ Centre for Access to Justice and Technology, "A2J Author" online: *Chicago-Kent College of Law, Illinois Institute of Technology*, <<https://www.kentlaw.iit.edu/institutes-centers/center-for-access-to-justice-and-technology/a2j-author>>.

¹⁴ Community Legal Clinic – Simcoe, Haliburton, Kawartha Lakes, *Community Legal Clinics and A2J Guided Interviews* (2016), online: <<https://cleoconnect.ca/resource/research/community-legal-clinics-a2j-guided-interviews-october-2016/>>.

Most of the pathways that are available now exist in both English and French.

The goal of CLEO's guided pathways is to address the access to justice gap for family law court forms in a relatively small but significant way. How are we doing at meeting this goal, and how do we know? We tackle this ever-perplexing question in a number of ways.

At its most basic, we want to find out if people who need assistance with family law court forms find the guided pathways useful. Early feedback has been positive: following a 'soft launch', the family law guided pathways are averaging about 400 to 500 user sessions per month. Over 4,000 users have created accounts or completed a pathway session since the tools were launched last year.

What we do know about users' experience to date? The pathways are new tools, but we already know that they prevent many common errors reported by the courts as the cause of rejected applications for joint divorce; our pathways do not accept those errors.

And, more anecdotally, private bar lawyers providing unbundled services have shared with us positive client experiences with the tools. Frontline service providers at courthouses report that the guided pathways are now accessed regularly by visitors. We've also received encouraging feedback from judges in family courts. Finally, feedback from service providers working with vulnerable populations – for example, family court support workers serving victims of intimate partner violence – has been very encouraging.

Evaluating the ability of users to use the tools effectively

We want to dig deeper, though, to investigate whether our guided pathway tools are indeed making it easier for users to complete the family court forms accurately. To this end, we are working with University of Ottawa Faculty of Law Professor Amy Salyzyn and Professor Jacquelyn Burkell of Western University, with funding from the Law Foundation of Ontario. Using a "functional literacy", user-based approach we are assessing how people are using the family law guided pathways and identifying obstacles they face, with a view towards continual improvement.

The process of evaluation includes task analysis approach, based on the concepts of functional literacy, to quantitatively assess task complexity using a standardized analytic scheme. Previous research¹⁵ by Professors Salyzyn and Burkell has provided us with a rating system¹⁶ and shared vocabulary for evaluating and detailing our work. We are now organizing two rounds of observational user testing, developing a new guided pathway user survey, and examining the quality of outputs generated by the family law guided pathways. But our initial findings corroborate the promise of the technology to alleviate court form complexity.

¹⁵ Salyzyn, Amy and Isaj, Lori and Piva, Brandon and Burkell, Jacquelyn, "Literacy Requirements of Court Documents: An Underexplored Barrier to Access to Justice" (2016). Windsor Yearbook of Access to Justice, Vol. 33, No. 2, 2016; Ottawa Faculty of Law Working Paper No. 2017-13. Available at SSRN: <https://ssrn.com/abstract=2945441>

¹⁶ Evetts, Julian, *Literacy Task Assessment Guide: A Guide to Analysis with Examples and Exercises* (Ottawa: National Literacy Secretariat, 2005).

And digging even deeper

A deeper and continuing evaluation of the impact of guided pathways is the subject of another research study that we have undertaken, in partnership with McGill Professor Fabien Gelinat and researcher Alexandra Pasca. This project is through the CyberJustice Laboratory at McGill, with funding from the Law Foundation of Ontario.

We are using a framework proposed by Laura Quinn and Joyce Raby, researchers at the Florida Justice Technology Centre, as the basis for developing a model for our family law guided pathways.¹⁷ The Quinn and Raby framework considers a range of metrics, from market penetration to enabled actions and outcomes to measure the impact of online tools.

This model brings us to the perennial challenging question faced by those who ponder the imponderable: What does a good outcome look like for someone experiencing a legal problem, and how do we go about measuring the quality of outcomes?

This is a question that many are exploring, including CLEO – and it’s a question that has implications for just about every aspect of our sector’s access to justice endeavours. Without having an answer, we have some confidence in suggesting that our guided pathways, in their user-focussed approach, represent at least a step in the right direction.

¹⁷ Quinn, Laura and Joyce Raby, *Measuring Online Legal Resources: A Framework Inspired by the Drake Equation* (February 2018), online: *Florida Justice Technology Centre* < <https://floridajusticetechnologycenter.org/wp-content/uploads/2018/02/Drake-Equation-for-Online-Legal-v7.pdf> >.