

**The Child-centred Family  
Justice Strategy: Baseline  
Information from Family  
Law Practitioners**

**Family, Children and Youth Section  
Research Report  
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# **The Child-centred Family Justice Strategy: Baseline Information from Family Law Practitioners**

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*The views expressed in this report are those of the authors and do not necessarily represent the views of the Department of Justice Canada or the Canadian Research Institute for Law and the Family.*

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## **EXECUTIVE SUMMARY**

### **Purpose of the Project**

In December 2002, the Department of Justice Canada announced its plan to proceed with the Child-centred Family Justice Strategy (CCFJS). The CCFJS is intended to encourage an approach in which family law, the court system, and the legal and social services that implement the law, meet the needs of families undergoing relationship breakdown in a way that promotes the interests of children. In order to meet these needs, the CCFJS will provide new funding to support family justice services; increase the number of judges appointed to Unified Family Courts; and, reform legislation dealing with custody and access.

The Canadian Research Institute for Law and the Family (CRILF) conducted this research project on the current state of the practice of family law in Canada with funding from the Department of Justice Canada. The purpose of the project was twofold: (1) to obtain current baseline information on the characteristics of cases handled by family law lawyers in Canada; and (2) to obtain feedback from both lawyers and judges concerning family law issues based on their knowledge and experience.

### **Methodology**

Data collection for this project was held in conjunction with the National Family Law Program of the Federation of Law Societies of Canada in La Malbaie, Quebec, July 12-15, 2004. Data collection consisted of two components: (1) a survey completed by conference participants; and (2) workshops conducted with smaller groups of conference participants on specific topics. A project advisory committee was established at the beginning of the project to identify issues to be addressed in the survey and workshops, review the draft survey, and decide on the format and content of the workshops in La Malbaie.

### **Highlights of Survey and Workshop Findings**

#### ***Demographics of Survey Respondents***

- Of the 117 surveys returned, 92 percent were completed by lawyers, six percent were completed by judges, and two percent were completed by other professionals.
- The lawyers involved in the survey had been practicing family law an average of 17 years, and 81 percent of their practice involved family law cases.
- A substantial proportion of respondents had attended education and training programs in the following areas: child support guidelines, spousal support, custody/access, and property division.

### *Case Characteristics*

- Survey respondents handled an average of 93 family law cases in the past year; an average of 74 percent of those involved children.
- Survey respondents reported that cases were resolved most frequently in the following manners: settled by negotiation before trial (48 percent) and settlement conference (24 percent), with only a minority (14 percent) being decided by a judge.
- Issues that survey respondents identified as most likely to require a trial and judicial decision to be resolved in divorce cases were: spousal support (74 percent); custody (54 percent); and property division (44 percent).
- Issues that survey respondents identified as most likely to require a trial and judicial decision to be resolved in variation cases were parental relocation (64 percent) and spousal support (60 percent).

### *Services*

- Survey respondents said they keep informed about family justice services through the following mechanisms: colleagues; provincial/territorial continuing legal education courses; local professional seminars; professional associations and meetings; national or international conferences; and professional publications.
- Lawyers who responded to the survey reported that their clients are either somewhat informed or not at all informed about family justice services/issues at the outset of their case. Clients are most likely to be informed about child support issues, marriage or relationship counseling, and individual counselling. Clients are least likely to be informed about collaborative family law, child assessment services, parenting plans, and supervised exchange.
- Survey respondents said that their cases are somewhat more likely (51 percent) or much more likely (19 percent) to be settled out of court because of the family justice services that are available.
- Survey respondents reported that the following services would be helpful to their clients, but are not available in their community: supervised access/affordable supervised access; mediation/affordable mediation; parent information/education services or programs; and assessments/assessors/assessment centres.
- Over half of the survey respondents (57 percent) said there is a Unified Family Court in their province/territory. In general, about half of the respondents agreed or strongly agreed that Unified Family Courts have positive consequences, while about one quarter disagreed or strongly disagreed.
- Over half of the survey respondents (59 percent) who do not have Unified Family Courts in their jurisdiction said they would like to see them established.

### ***Best Interest Criteria***

- A somewhat surprising 44 percent of survey respondents said that even when parents are aware of the negative effects of separation/divorce on their children, this awareness does not affect their behaviour. The most common reasons given for this were: parents are unable to isolate their children's interests from their own; the emotional and/or financial repercussions of the separation interfere, and parents can't get past their anger; even when parents are aware, they have difficulties changing their behaviour; parents often use their new awareness against the other parent; and the ability to change depends on their education level, relationship between the parties, and their willingness to change.
- Over one half of the lawyers responding to the survey (56 percent) thought that parenting plans are a good mechanism for ensuring that the best interests of the child are met in all cases, and over one quarter (29 percent) thought they were a good mechanism in high conflict cases.
- Survey respondents said that parenting plans were used in just under one third of their cases (31 percent) involving children. One third of respondents (33 percent) said they have a form they use as a guide for parenting plans, and 84 percent who said they did not have a form said they would find a form useful.
- The vast majority of lawyers responding to the survey reported that they found parenting plans were somewhat or very helpful to their clients. Respondents said parenting plans can diminish day-to-day conflict between parents, help parents to focus on the child, help to identify aspects of parenting and provide guidelines for parents, provide predictability when dividing parental tasks, give parents ownership of their plan and allow them to tailor the plan to their individual needs.

### ***Child Representation***

- Survey respondents thought that the best mechanisms to enable children to voice their views were assessment reports (74 percent) and legal representation for the child (65 percent).
- Survey respondents thought the following factors were important when deciding what weight should be given to the child's views: age of child; indication of parental coaching/manipulation; ability of child to understand the situation; child's reason for views; ability of child to communicate; and the child's emotional state.

### ***Custody and Access***

- Almost three quarters of survey respondents said that they often or almost always use terminology other than "custody" and "access" in their agreements. However, almost two thirds reported that they rarely or occasionally use alternate terminology in their orders.
- Workshop participants said they use the following terms instead of "custody": "shared parenting," "parenting," "co-parenting," "primary parenting," "primary parent," and "parallel parenting."

- Workshop participants said they used the terms “parenting time” and “parenting care and control” instead of “access.”
- Almost all of the workshop participants were aware of the provisions that were in the recently proposed amendments to the *Divorce Act* (formerly Bill C-22, which died on the order paper in November 2003) regarding parenting arrangements. Approximately 60 percent of the group said that the proposed amendments had an impact on their practice with increased use of parenting plans or new terminology even though the bill was not enacted.
- Three quarters of survey respondents thought that legislative changes to the *Divorce Act* to replace the terms “custody” and “access” with “parenting order” would promote a less adversarial process.
- Lawyers who responded to the survey reported that very few of their cases involved supervised access (eight percent) or supervised exchange (six percent). Supervised access was most likely to be recommended in cases of child abuse allegations, substance abuse, and mental health concerns. Supervised exchange was most likely to be recommended in cases of high conflict and spousal violence.

### ***Federal Child Support Guidelines***

- Survey respondents overwhelmingly agreed that the Guidelines are meeting their objectives. Almost all respondents agreed or strongly agreed that the Federal Child Support Guidelines have resulted in a better system of determining child support than the pre-1997 system. Similarly, the vast majority of respondents agreed or strongly agreed that cases are settled more quickly since the implementation of the Guidelines; that most cases are resolved simply by relying on the tables to establish amounts of support; and, in cases involving litigation, that the issues to be resolved are more defined and focussed than prior to implementation of the Guidelines.
- Over one half of survey respondents said that income disclosure is often or almost always a problem. The most frequent reasons for this were self-employed income, unwillingness to disclose or provide supporting documentation, problems with tax returns, and undisclosed income/cash payments.
- Over one third of survey respondents said that second families are an issue often, and one half said they are an issue occasionally. The most common reasons were that: second families affect the standard of living because there are too many demands on a limited income; they create access problems; and, child support payors with second families often refuse to acknowledge first family obligations.
- Survey respondents identified the most problematic areas of the Guidelines as: section 9—shared custody and the 40 percent rule; section 7—special or extraordinary expenses; children over the age of majority/post-secondary education; and, second families.

### *Spousal Support*

- Survey respondents reported that spousal support was an issue in one half of their cases.
- Three quarters of survey respondents said that there is inconsistency in how spousal support applications are handled.
- Over three quarters of survey respondents said it would be useful to try to establish non-binding spousal support guidelines.

### *Family Violence*

- Three quarters of the workshop participants said that they would like to see legislation that specifically raises domestic violence as a factor in custody and access cases.
- Over three quarters of lawyers who responded to the survey indicated that they always make enquires to attempt to identify cases of family violence. However, almost all respondents said that they do not use a screening tool to identify cases of family violence.
- Approximately one half of the workshop participants said that false or exaggerated allegations of spousal abuse are a significant problem.
- In cases involving spousal violence, over one third of the lawyers who responded to the survey indicated that the court rarely addressed the issue. When the court did address the issue, the most likely response was to deny custody to the abusive parent.
- In cases involving child abuse, one half of the lawyers who responded to the survey indicated that the court rarely addressed the issue. When the court did address the issue, the most likely responses were to deny custody to the abusive parent, and to order access supervision.
- Approximately one fifth of the workshop participants said that judges needed significantly more education on the issue of family violence, and one half thought that judges needed to be more aware of the social science literature, in particular about the effects of spousal abuse on children.
- Over one half of survey respondents said that training sessions on spousal violence issues are not available to family justice professionals in their jurisdiction.
- Almost two thirds of survey respondents said that training sessions on child abuse issues are not available to family justice professionals in their jurisdiction.
- About three quarters of the workshop participants said that they needed more training on family violence issues.

### **Conclusions**

Overall, data from the survey and the workshops indicate that there are many positive aspects of the current family law system in Canada. One of the most positive components identified by

project participants is the Federal Child Support Guidelines. It is clear from the responses received that the Guidelines are meeting their stated objectives and that they have resulted in a much fairer determination of child support than the former regime. Over 90% of survey respondents agreed or strongly agreed that the Federal Child Support Guidelines have resulted in a better system of determining child support than the pre-1997 system.

Participants indicated strong support for case resolution mechanisms other than the traditional judicial resolution of cases. In fact, participants indicated that only about 14% of their cases are resolved by a judge after a hearing or trial. Mechanisms that respondents indicated as most effective were negotiation between lawyers before trial and settlement conferences.

The vast majority of the lawyers who responded to the survey reported that they found parenting plans were helpful to their clients. One third of the lawyers said they have a form that they use as a guide for parenting plans. Of the respondents who do not have a form, 84% said they would find a form useful.

Participants were also very much in favour of changes in terminology as outlined in the proposed (but not passed) legislative amendments to the *Divorce Act*. Almost all of the workshop participants indicated that they were aware of the provisions in the recently proposed amendments, and about 60% of participants said that these provisions had an impact on their practice. Three quarters of survey respondents thought that legislative changes to replace the terms “custody” and “access” with “parenting order” would promote a less adversarial process.

While project participants identified many positive aspects to the current family law system in Canada, they also highlighted some areas needing improvement. As mentioned above, participants were very supportive of out-of-court mechanisms for settling family law disputes. However, participants also reported that affordable support services were lacking, most notably supervised access, mediation, assessments, and parent education. Survey respondents noted that their clients are generally not well informed about family justice services and issues at the start of their case, which suggests the need for enhanced public legal education initiatives.

Survey respondents identified spousal support as a problematic area in their practice, and three quarters of them indicated that there is inconsistency in how spousal support applications are handled. Over three quarters of the respondents said that it would be useful to try to establish non-binding spousal support guidelines, an initiative that is currently being pursued by the Department of Justice Canada. Although no questions were asked about family law legal aid, a number of respondents volunteered that this is a major concern.

Another problematic area identified by project participants was family violence. Three quarters of workshop participants said that they would like to see legislation that specifically raises domestic violence as a factor in custody and access cases. Participants indicated that in a significant proportion of their cases involving spousal violence or child abuse, the court rarely addressed the issue. One half of the workshop participants thought that judges needed to be more aware of the social science literature on family violence. Three quarters of the participants also said that they themselves needed more training on family violence issues. Over one half of survey respondents said that training sessions on spousal violence issues are not available in their

jurisdiction, and two thirds said that appropriate training sessions on child abuse issues are not available for them in their jurisdiction.

Survey respondents' opinions on Unified Family Courts were somewhat mixed. Just over half of the respondents agreed that Unified Family Courts have positive consequences, while about one quarter disagreed. Over half of the survey respondents who do not have Unified Family Courts in their jurisdiction said they would like to see them established. Survey and workshop participants who noted problems with Unified Family Courts stated that judges sitting in these courts needed family law experience for the system to work efficiently and effectively, raising concerns about the rotation into these courts of judges without appropriate expertise.

Even though project participants were very positive about the Federal Child Support Guidelines, they did identify a few problematic areas. One half of survey respondents said the income disclosure is often or almost always a problem. Other problematic areas include shared custody, special or extraordinary expenses, children over the age of majority, and second families.

In conclusion, this project has provided a baseline of information on the characteristics of cases handled by family law lawyers in Canada, as well as legal professionals' opinions on the current family law system. It has identified aspects of the family law system that are working well, and has highlighted areas where improvement is desired. This information will be useful to the Department of Justice Canada as it further develops and implements its Child-centred Family Law Strategy, and interesting for policy makers and others who want to better understand the functioning of Canada's family law justice system.





## ACKNOWLEDGEMENTS

This project could not have been conducted without the assistance and support of many individuals and organizations. First, we would like to acknowledge the financial support of the Department of Justice Canada and the guidance of Ms. Lise Lafrenière-Henrie, Senior Counsel/Coordinator, and her colleagues at the Department of Justice Canada. The Federation of Law Societies of Canada supported the project by arranging for the consultation to take place in conjunction with the National Family Law Program in La Malbaie, Quebec.

We appreciate the guidance provided by the project advisory committee, namely: Ms. Lise Lafrenière-Henrie (representing the Department of Justice Canada); Ms. Marie Gordon, Cocharde Gordon (representing the Canadian Research Institute for Law and the Family); and The Honourable R. James Williams, Supreme Court of Nova Scotia, Family Division (representing the Federation of Law Societies of Canada).

We thank the following people who facilitated the workshops: Nicholas Bala, Faculty of Law, Queen's University; Julia Cornish, Sealy Cornish; Marie Gordon, Cocharde Gordon; and Ron Profit, Patterson Palmer Law.

We would also like to thank the conference participants who completed the lengthy survey and attended the workshops. Their contributions were invaluable.

Finally, we thank Heather Walker for her support in organizing rooms and lunches for the workshops, and collecting completed surveys and draw prize entry forms as they were deposited throughout the conference, and Linda Haggett, for data input and word processing.

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## **1.0 INTRODUCTION**

### **1.1 PURPOSE OF THE PROJECT**

In December 2002, the Department of Justice Canada announced its plan to proceed with the Child-centred Family Justice Strategy (CCFJS). The CCFJS is intended to encourage an approach in which family law, the court system, and the legal and social services that implement the law meet the needs of families undergoing relationship breakdown in a way that promotes the interests of children. In order to meet these needs, the CCFJS will include new funding to support family justice services, increase the number of judges appointed to Unified Family Courts, and reform legislation dealing with custody and access. As stated by the Minister of Justice, the objectives of the CCFJS are to:

- minimize the potentially negative impact of separation and divorce on children;
- provide parents with the tools they need to reach parenting agreements that are in the child's best interests; and
- ensure that the legal process is less adversarial; only the most difficult cases will go to court.

The performance of the CCFJS is being monitored by the Department of Justice Canada using the Results-based Management and Accountability Framework. In order to accomplish this, a series of initiatives is being undertaken to assess the different components of the Strategy. For some issues, baseline data are being collected so that future progress can be measured. This project is one such initiative.

The Canadian Research Institute for Law and the Family (CRILF) conducted this research project on the current state of the practice of family law in Canada with funding from the Department of Justice Canada. The purpose of the project was twofold: (1) to obtain current baseline information on the characteristics of cases handled by family law lawyers in Canada; and (2) to obtain feedback from both lawyers and judges concerning family law issues based on their knowledge and experience.

### **1.2 METHODOLOGY**

Data collection for this project was held in conjunction with the National Family Law Program of the Federation of Law Societies of Canada in La Malbaie, Quebec, July 12-15, 2004. Data collection consisted of two components: (1) a survey completed by conference participants; and (2) workshops conducted with smaller groups of conference participants on specific topics. A project advisory committee was established at the beginning of the project to identify issues to be addressed in the survey and workshops, review the draft survey, and decide on the format and content of the workshops in La Malbaie (please see Appendix A for a list of the project advisory committee members).

### **1.2.1 Survey**

The survey was distributed to participants at the conference in La Malbaie with the conference materials given during registration (please see Appendix B for a copy of the survey). The draft survey was reviewed by members of the Department of Justice Canada and the project advisory committee prior to being finalized. The survey was translated into French by the Department of Justice Canada, and was available to conference participants in either English or French. Respondents were asked to return completed surveys to the Registration Desk anytime during the conference. As an incentive to complete the survey and increase the response rate, respondents were also given an entry form for a draw. The draw prizes were two waivers of the registration fees for the year 2006 National Family Law Program. There were also ten smaller prizes (i.e., five \$50 gift certificates to Tim Hortons and five \$50 gift certificates to Chapters). The draw was held during the final conference dinner on Wednesday, July 14<sup>th</sup>.

A total of 343 surveys were distributed to conference participants. Completed surveys were returned by 117 participants, resulting in a response rate of 34 percent. One survey completed in French was received, and the rest were in English. Qualitative data were coded and both quantitative and qualitative data were entered into an SPSS data analysis program.

### **1.2.2 Workshops**

The workshops were intended to gain more in-depth information from a smaller group of lawyers and judges concerning specific family law issues. Workshops included the following topics: (1) parenting arrangements; and (2) family violence. Workshops were held on Monday, July 12<sup>th</sup> and Tuesday, July 13<sup>th</sup> from 12:00-1:30 pm. Each workshop had two facilitators and two recorders. Facilitators for the workshop on parenting arrangements were Julia Cornish (private practitioner in Halifax) and Ron Profit (private practitioner in Charlottetown); the workshop on family violence was facilitated by Marie Gordon (private practitioner in Edmonton) and Nick Bala (law professor, Queen's University). CRILF staff members Joanne Paetsch and Lorne Bertrand were recorders for both workshops. The workshops began with a brief introduction of the issue by the facilitators, and the balance of the workshop was spent discussing the issue and participants' professional experiences. A list of questions was prepared by CRILF to assist the facilitators in guiding the discussion. Approximately 55 participants attended each workshop.

## **1.3 LIMITATIONS**

Certain limitations to the data presented in this report may affect the ability to generalize the findings to the legal community as a whole. Specifically, it should be kept in mind that participants in the project do not represent a random sample of individuals in the Canadian legal community. Attendees at the Federation of Law Societies of Canada's National Family Law Program likely consist of lawyers and judges who are among the most engaged in and knowledgeable of family law. Therefore, the responses obtained cannot be generalized to all Canadian legal professionals.

In addition, the sample is not geographically representative of lawyers and judges across Canada. For example, there was a higher proportion of respondents from Ontario, likely due to the location of the conference in central Canada.

## 2.0 SURVEY ON THE PRACTICE OF FAMILY LAW IN CANADA

### 2.1 DEMOGRAPHICS OF SURVEY RESPONDENTS

A total of 117 surveys were completed and returned to CRILF. Of these, 92 percent (n=108) were completed by lawyers (80 percent private practice, 10 percent government/agency, and 2 percent legal aid clinic), 6 percent (n=7) were completed by judges, and 2 percent (n=2) were completed by others (i.e., law professor, mediator). The lawyers were asked how long they have been practicing family law, and the responses ranged from 1 to 36 years, with an average of 17 years. The vast majority of the lawyer respondents indicated, as well, that it is family law that they predominantly practice. When asked what proportion of their practice involves family law cases, the average response was 81 percent, with a range of 10 percent to 100 percent.

The largest proportion of respondents was from Ontario (32 percent), Alberta (18 percent), and Nova Scotia (12 percent) (see Figure 2.1). Over half of the respondents (excluding judges) (54 percent) have a client base that is mostly large urban (>100,000 population), almost one third (29 percent) have a client base that is mostly small urban (10,000 – 100,000 population), and five percent have a client base that is mostly rural (<10,000 population). Just over one fifth (12 percent) of the respondents reported a fairly equal mix of urban and rural clients.

One third (33 percent) of the lawyers said they are registered with a lawyer referral service. These lawyers reported that the proportion of their cases that come from the service range from 0 to 15 percent, with an average response of five percent. Lawyers were also asked if they conduct mediation sessions, and almost one third (30 percent) said they did.

All respondents were asked about any training that they have taken on family law issues in the past five years. The group was very supportive of continuing education, and most had participated in several programs. As indicated in Table 2.1, the most common subjects of the programs attended were: child support guidelines (80 percent); spousal support (72 percent); custody/access (71 percent); and property division (68 percent).

**Table 2.1 Respondents' Continuing Education or Training on Family Law Issues in the Past Five Years**

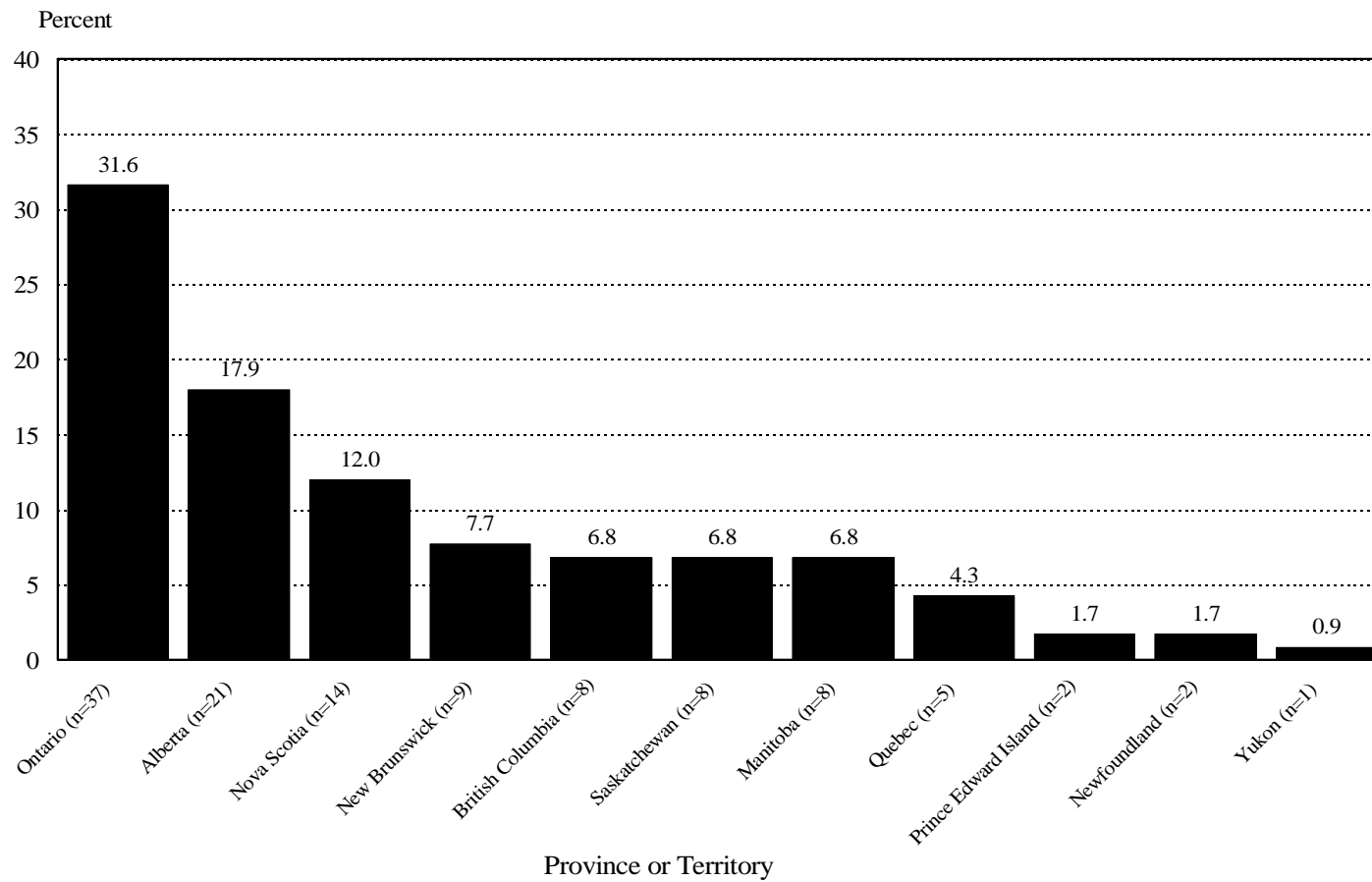
<b>Family Law Issue</b>	<b>n</b>	<b>%</b>
Dispute resolution (e.g., mediation)	58	49.6
Family violence	38	32.5
Custody/access	83	70.9
Spousal support	84	71.8
Collaborative family law	67	57.3
Child support guidelines	93	79.5
Property division	79	67.5
Other*	25	21.4

Source of data: Survey on the Practice of Family Law in Canada.

Total N=117

\* Other includes a variety of family law issues such as: pensions, child protection, interest-based negotiation, child representation and interjurisdictional support orders.

**Figure 2.1: Percentage of Respondents from Each Province or Territory**



Source of data: Survey on the Practice of Family Law in Canada.  
Total N = 117

## 2.2 CASE CHARACTERISTICS

One of the purposes of this project was to obtain current baseline information on the characteristics of cases handled by family law lawyers in Canada. Survey respondents (excluding judges) handled an average of 93 family law cases in the past year, ranging from 10 to 400 (see Table 2.2). When asked what proportion of these cases involved children, responses ranged from 9 percent to 100 percent, with an average of 74 percent. Over one quarter (28 percent) of respondents' family law cases with children involved were variations of previous orders/agreements.

**Table 2.2 Characteristics of Respondents' Family Law Cases in the Past Year**

<b>Characteristic</b>	<b>Mean</b>	<b>Median</b>	<b>Range</b>	<b>n</b>
Number of family law cases in past year	92.6	75.0	10 – 400	97
Proportion of family law cases involving children	74.1	80.0	9 – 100	108
Proportion of family law cases funded by legal aid	25.3	10.0	0 – 100	92
Proportion of family law cases with children involved that are variations of previous orders/agreements	28.1	25.0	0 – 100	106

Source of data: Survey on the Practice of Family Law in Canada.  
Total N=110 (excludes judges)

Respondents were asked in what proportion, of the family law cases that they have handled in the past year, was either party funded by legal aid. While the average was 25 percent, there was a wide range of responses. Over one third (37 percent) of the 92 respondents said that none of their family law cases involved legal aid funding; 16 percent said that at least one party was funded by legal aid in 10 percent of their family law cases, and 11 percent of respondents reported that they dealt exclusively with legal aid clients.

Over three quarters of respondents (78 percent) classified the majority of their clients as comprising approximately equal proportions of custodial and non-custodial parents. Much smaller proportions reported that their clients were primarily custodial (or primary care) parents (17 percent) or primarily non-custodial parents (6 percent) (n=107).

Respondents were asked in what proportion, of their cases in the past year, was the final resolution accomplished in different ways. As indicated in Table 2.3, the most common response was settled by negotiation before trial; respondents reported an average of 48 percent of their cases were resolved in this manner. One quarter of respondents' cases (an average of 24 percent) were resolved by settlement conference. Smaller proportions were decided by a judge after a hearing or trial (14 percent), settled by parents (13 percent), settled by mediation (11 percent), or resolved by collaborative family law (9 percent). Respondents were also asked in what percent of their family law cases is there an interim order that is, in effect, the final judicial disposition (because the case is thereafter resolved without a trial). Responses varied widely (from 0 percent to 100 percent), with an average response of 56 percent (n=104).

**Table 2.3 Proportion of Respondents' Cases in the Past Year Resolved by Various Methods**

<b>Resolution Method</b>	<b>Mean</b>	<b>Median</b>	<b>Range</b>	<b>n</b>
Settled by parents	13.4	10.0	0 – 75	83
Settled by mediation	10.9	10.0	0 – 60	69
Settled by negotiation before trial	48.4	45.0	1 – 95	99
Settled by settlement conference	24.3	20.0	0 – 95	81
Resolved by collaborative family law	8.5	5.0	0 – 80	54
Decided by a judge after a hearing or trial	14.1	10.0	0 – 100	96

Source of data: Survey on the Practice of Family Law in Canada.  
Total N=110 (excludes judges)

Table 2.4 presents the respondents' views—based on their experience—on which issues are most likely to require a trial and judicial decision in order to be resolved (in both divorce and variation cases). Respondents were given a variety of issues, and were asked to select all that apply. In divorce cases, three quarters of respondents (74 percent) said spousal support, over one half (54 percent) said custody, and almost one half (44 percent) said property division. Child support was mentioned by only 12 percent of respondents as being an issue most likely to require a trial and judicial decision to be resolved in a divorce case. In variation cases, the issue most likely to require a judicial decision was parental relocation (mobility) (64 percent), followed closely by spousal support (60 percent). The issues least likely to require a judicial decision in variation cases in respondents' experience were child support and undue hardship (each mentioned by 19 percent of respondents).

**Table 2.4 Respondents' Reports as to Which Issues in Divorce and Variation Cases are Most Likely to Require a Trial and Judicial Decision to be Resolved**

<b>Issue</b>	<b>In a Divorce Case</b>		<b>In a Variation Case</b>	
	<b>n</b>	<b>%</b>	<b>n</b>	<b>%</b>
Child Support	14	12.0	22	18.8
Custody	63	53.8	33	28.2
Access	40	34.2	36	30.8
Spousal support	87	74.4	70	59.8
Property division	52	44.4	--	--
Child support arrears	28	23.9	41	35.0
Spousal support arrears	22	18.8	33	28.2
Undue hardship	--	--	22	18.8
Parental relocation (mobility)	--	--	75	64.1

Source of data: Survey on the Practice of Family Law in Canada.  
Total N=117

## **2.3 SERVICES**

The survey asked respondents how they keep informed about family justice services (i.e., services available to clients to assist them in family law matters, such as counselling, education, mediation, etc.). The most common source of information, reported by 79 percent of respondents, was colleagues. Other helpful sources of information were: provincial/territorial



continuing legal education courses (62 percent); local professional seminars (61 percent); professional associations and meetings (55 percent); national or international conferences (51 percent); and, professional publications (reporting services, journals, etc) (50 percent). Sources of information that were mentioned by fewer respondents included newsletters (33 percent) and the Internet (21 percent). When asked which of these sources is most helpful to them in keeping informed about family justice services, 31 percent of the 91 respondents said colleagues, 23 percent said local professional seminars, 20 percent said provincial/territorial continuing legal education courses, and 20 percent said professional associations and meetings.

Respondents (excluding judges) were asked, in general, how well informed their clients are about a number of family justice services/issues at the outset of their case. The results are presented in Table 2.5. Overall, lawyers reported that their clients are either somewhat informed or not at all informed about family justice services/issues at the outset of their case. Clients are most likely to be informed about child support issues; 85 percent of respondents reported that their clients are either very well informed or somewhat informed about this issue. Clients are also very well or somewhat informed about marriage or relationship counselling (80 percent) and individual counselling (79 percent). Over one half of the respondents also reported that their clients were very well or somewhat informed about the following services/issues: maintenance enforcement programs (66 percent); Legal Aid services/duty counsel (64 percent); domestic violence services (58 percent); spousal support issues (56 percent); and mediation services (50 percent).

According to the survey respondents, clients are least likely to be informed about collaborative family law; 70 percent of respondents reported that their clients are not at all informed about this approach to resolution of family law cases. Other services/issues about which respondents report clients are not at all informed include: child assessment services (66 percent); parenting plans (63 percent); supervised exchange (62 percent); Family Law Information Centres (58 percent); parenting education programs (56 percent); and supervised access (50 percent). Services/issues that respondents think their clients are misinformed about include: spousal support issues (16 percent); supervised access (14 percent); the psychological effects of divorce on children (13 percent); supervised exchange (11 percent); and parenting plans (10 percent).

Survey respondents (excluding judges) were then asked where their clients get their information about family justice services/issues. Almost all respondents (94 percent; n=103) said their clients get their information from friends and family members. Over half (58 percent; n=64) said the Internet was a resource, and half (50 percent; n=55) said their clients get information from media stories or advertising (e.g., television, radio, newspaper). Resources that were less commonly used were: court services (34 percent; n=37); another lawyer (32 percent; n=35); parenting education programs (20 percent; n=22); public legal education and information associations (19 percent; n=21); and books (16 percent; n=17).

**Table 2.5 Respondents' Perceptions of How Well Informed Their Clients are at the Outset of Their Case**

Service/Issue	Very Well Informed		Somewhat Informed		Not at All Informed		They are Misinformed		N/A		Missing	
	n	%	n	%	n	%	n	%	n	%	n	%
Marriage or relationship counselling	12	10.9	76	69.1	14	12.7	4	3.6	0	0.0	4	3.6
Individual counselling	13	11.8	74	67.3	15	13.6	3	2.7	0	0.0	5	4.5
Mediation services	7	6.4	48	43.6	42	38.2	8	7.3	1	0.9	4	3.6
Child assessment services	3	2.7	19	17.3	72	65.5	9	8.2	2	1.8	5	4.5
Collaborative family law	1	0.9	20	18.2	77	70.0	5	4.5	1	0.9	6	5.5
Parenting education programs	4	3.6	33	30.0	62	56.4	4	3.6	3	2.7	4	3.6
Parenting plans (written document jointly developed by parents)	3	2.7	20	18.2	69	62.7	11	10.0	2	1.8	5	4.5
Psychological effects of divorce on children	3	2.7	40	36.4	48	43.6	14	12.7	0	0.0	5	4.5
Domestic violence services	5	4.5	59	53.6	31	28.2	6	5.5	4	3.6	5	4.5
Supervised access	3	2.7	31	28.2	55	50.0	15	13.6	1	0.9	5	4.5
Supervised exchange	3	2.7	20	18.2	68	61.8	12	10.9	1	0.9	6	5.5
Child support issues	12	10.9	81	73.6	8	7.3	5	4.5	0	0.0	4	3.6
Family Law Information Centres	1	0.9	22	20.0	64	58.2	2	1.8	16	14.5	5	4.5
Maintenance enforcement programs	10	9.1	62	56.4	25	22.7	8	7.3	1	0.9	4	3.6
Financial assistance services	5	4.5	45	40.9	40	36.4	4	3.6	9	8.2	7	6.4
Legal Aid services/ duty counsel	9	8.2	61	55.5	23	20.9	4	3.6	7	6.4	6	5.5
Spousal support issues	6	5.5	55	50.0	28	25.5	17	15.5	0	0.0	4	3.6
Variation or recalculation services	3	2.7	34	30.9	54	49.1	4	3.6	10	9.1	5	4.5

Source of data: Survey on the Practice of Family Law in Canada.  
Total N=110 (excludes judges)

Recognizing that the lawyers themselves are valuable sources of information for their clients, survey respondents were asked how often they inform clients about, or refer clients to, various family justice services. Table 2.6 indicates that over half of the respondents will often or almost always inform their clients about, or refer their clients to, the following services: maintenance enforcement programs (78 percent); individual counselling (65 percent); parenting education programs (59 percent); mediation services (56 percent); parenting plans (56 percent); and marriage or relationship counselling (51 percent). The services that respondents report they are most likely to rarely inform their clients about are: supervised exchange (41 percent); variation or recalculation services (40 percent); collaborative family law (37 percent); and financial assistance services (37 percent).

**Table 2.6 Respondents' Reports of How Often They Inform Clients About or Refer Clients to Various Family Justice Services**

Family Justice Service	Rarely		Occasionally		Often		Almost Always		Missing	
	n	%	n	%	n	%	n	%	n	%
Marriage or relationship counselling	11	10.0	39	35.5	23	20.9	33	30.0	4	3.6
Individual counselling	6	5.5	29	26.4	46	41.8	26	23.6	3	2.7
Mediation services	10	9.1	34	30.9	32	29.1	30	27.3	4	3.6
Child assessment services	17	15.5	50	45.5	29	26.4	9	8.2	5	4.5
Collaborative family law	41	37.3	18	16.4	13	11.8	32	29.1	6	5.5
Parenting plans	14	12.7	26	23.6	31	28.2	30	27.3	9	8.2
Parenting education programs	12	10.9	28	25.5	23	20.9	42	38.2	5	4.5
Domestic violence services	25	22.7	53	48.2	21	19.1	7	6.4	4	3.6
Supervised access	33	30.0	54	49.1	10	9.1	9	8.2	4	3.6
Supervised exchange	45	40.9	44	40.0	8	7.3	8	7.3	5	4.5
Maintenance enforcement programs	6	5.5	15	13.6	36	32.7	50	45.5	3	2.7
Financial assistance services	41	37.3	35	31.8	16	14.5	11	10.0	7	6.4
Legal Aid services/duty counsel	29	26.4	36	32.7	19	17.3	21	19.1	5	4.5
Variation or recalculation services	44	40.0	30	27.3	14	12.7	11	10.0	11	10.0

Source of data: Survey on the Practice of Family Law in Canada.  
Total N=110 (excludes judges)

Over two thirds of the survey respondents (67 percent; n=70) reported that their clients are somewhat willing to use family justice services. Almost one quarter (23 percent; n=24) said their clients are very willing, and one tenth (11 percent; n=11) said their clients are not willing at all to use family justice services. For clients who are not willing to access family justice services, respondents were asked what they thought was the biggest obstacle. The most common response was time delay (39 percent; n=43), followed by lack of trust in the service (37 percent; n=41), cost (29 percent; n=32), and location of service (16 percent; n=18). Nineteen respondents reported other reasons, the most common being lack of availability of the service in the community (n=6).

Respondents were asked to what extent they think their cases are more likely to be settled out of court because of the family justice services that are available. One half said somewhat more likely (51 percent; n=52), and 18 percent (n=19) said much more likely. Less than one third of the respondents (31 percent; n=32) did not think cases are more likely to be settled out of court because of family justice services.

The survey asked respondents if there are services not available in their community that they think would be helpful to them or their clients, and 61 respondents made 106 suggestions. The services that were suggested the most were: supervised access/affordable supervised access (21 percent of the respondents); mediation/affordable mediation (21 percent); parent information/education services or programs (20 percent); assessments/assessors/assessment centres (20 percent); affordable counselling services (8 percent) and collaborative family law (8 percent).

Respondents were also asked if family justice services were available to their clients in their official language of choice. Almost three quarters (73 percent; n=65) said yes, and over one quarter (27 percent; n=24) said no.

All survey respondents were asked if there is a Unified Family Court in their province/territory. Over half of the respondents (57 percent; n=66) said yes and 43 percent (n=49) said no. Respondents were then asked to what extent they agreed that Unified Family Courts accomplish specific objectives. Table 2.7 shows that, in general, about half of the respondents agreed or strongly agreed that Unified Family Courts have positive consequences, while about one quarter disagreed or strongly disagreed. In terms of simplifying procedures, 57 percent of respondents agreed or strongly agreed that Unified Family Courts accomplish this objective, while 23 percent disagreed or strongly disagreed. Likewise, over half of the respondents agreed or strongly agreed that Unified Family Courts provide easy access to various family justice services (55 percent) and produce outcomes tailored to individual needs (53 percent). Just under half of the respondents agreed or strongly agreed that Unified Family Courts provide timely resolution to family law matters (45 percent), while over one third (35 percent) disagreed or strongly disagreed that Unified Family Courts meet this objective. The high number of missing responses most likely reflects individuals for whom this question did not apply.

**Table 2.7 Extent to Which Respondents Agree that Unified Family Courts Accomplish Specific Objectives**

Objective	Strongly Agree		Agree		Disagree		Strongly Disagree		Missing	
	n	%	n	%	n	%	n	%	n	%
Simplify procedures	27	23.1	40	34.2	20	17.1	7	6.0	23	19.7
Provide easy access to various family justice services	24	20.5	40	34.2	19	16.2	8	6.8	26	22.2
Provide timely resolution to family law matters	20	17.1	33	28.2	28	23.9	13	11.1	23	19.7
Produce outcomes tailored to individual needs	18	15.4	44	37.6	24	20.5	8	6.8	23	19.7

Source of data: Survey on the Practice of Family Law in Canada.  
Total N=117

Respondents who do not have Unified Family Courts in their province/territory were asked if they would like to see them implemented. Of the 56 respondents who answered this question, 59 percent said yes, and 41 percent said no. Respondents were asked to explain their answers, and 45 reasons were given. For individuals who would like to see Unified Family Courts implemented, the most common explanation was that there was a Unified Family Court in their province/territory, but it was not province-wide (n=7). Other explanations in support of Unified Family Courts were that two courts were seen as redundant and one-stop shopping made more sense (n=5); Unified Family Courts would rationalize procedures and services (n=2); and, judges with an interest or extensive background in family law were needed (n=2). For individuals who did not want to see Unified Family Courts implemented in their jurisdiction, the most common reasons given were: Unified Family Courts were of no benefit without the services to back them up (n=3); the current system works well (n=2); two-tiered courts (for represented and unrepresented parties) are needed (n=2); waiting times have increased since Unified Family Courts were implemented (n=2); and Unified Family Courts are not working properly because

non-family court judges who lack family law experience are rotated in (n=2). As one respondent said:

The UFC system in our area...does not function properly because non-family court judges, who lack the desire and expertise are routinely rotated into UFC and hear motions. The result is that non-UFC judges are deciding cases on motions which directly impact on the litigants and the law often to the detriment of both. The non-UFC judges lack the family law knowledge and background in social science issues. They intentionally defer cases rather than deal with them even where child protection issues are prevalent. The current UFC process does not always provide timely resolution to urgent cases because of the Family Law Rules in Ontario and court backlogs.

## 2.4 BEST INTEREST CRITERIA

Currently, subsection 16(8) of the *Divorce Act* provides that in making a custody order, the court shall take into consideration only the best interests of the child of the marriage as determined by reference to the condition, means, needs, and other circumstances of the child. All survey respondents were asked whether, in their experience, most parenting arrangements that are made through specific processes are consistent with the best interests of the child. The results are presented in Table 2.8. According to the respondents, the processes most likely to be consistent with the best interests of the child are arrangements made as a result of mediation (84 percent), and arrangements negotiated by lawyers (on their own or after judicial conference) (80 percent). The process respondents thought was least likely to be consistent with the best interests of the child was an arrangement made by a judge after a trial or hearing (51 percent).

**Table 2.8 Respondents' Perceptions of Whether Parenting Arrangements Made Through Specific Processes are Consistent with the Best Interests of the Child**

Process	Yes		No		Missing	
	n	%	n	%	n	%
Arrangements made by parents themselves	86	73.5	19	16.2	12	10.3
Arrangements made as a result of mediation	98	83.8	7	6.0	12	10.3
Arrangements negotiated by lawyers (on their own or after judicial conference)	93	79.5	14	12.0	10	8.5
Arrangements that are a result of collaborative family law	77	65.8	3	2.6	37	31.6
Arrangements made by a judge after a trial or hearing	60	51.3	45	38.5	12	10.3

Source of data: Survey on the Practice of Family Law in Canada.  
Total N=117

Respondents were asked if the provincial/territorial legislation in their jurisdiction included specific criteria for determining the best interests of the child. Of the 113 individuals who responded to this question, 63 percent said yes and 37 percent said no. Respondents who answered yes were also asked if they use those criteria in cases under the *Divorce Act*, and the vast majority (94 percent) of the 70 respondents said they did.

All survey respondents were asked, in their experience, in situations where parents are aware of the negative effects of separation/divorce on their children, does this awareness affect their

behaviour. While the majority of the 109 respondents said it did (56 percent), a surprising 44 percent of the respondents said no. When asked, 'why not', respondents offered 53 reasons. The most common responses were: parents are unable to isolate their children's interests from their own (n=15); the emotional and/or financial repercussions of the separation interfere, and parents can't get past their anger (n=13); even when parents are aware, they have difficulties changing their behaviour (n=9); parents often use their new awareness against the other parent (n=8); and the ability to change depends on their education level, relationship between the parties, and their willingness to change (n=5). As one respondent put it, "*They are human—some of them can't get by the hurt, anger, pain to deal with their children's hurt, anger, pain, sense of loss and fear.*"

Respondents were asked if, in their opinion, parenting plans (i.e., a detailed written plan jointly developed by parents to address their child's care and needs) are a good mechanism for ensuring that the best interests of the child are met. Over one half (56 percent; n=59) of the respondents said yes, in all cases, and over one quarter (29 percent; n=30) said yes, in high conflict cases. Sixteen respondents (15 percent) did not think parenting plans are a good mechanism for ensuring that the best interests of the child are met. One respondent said:

Parenting plans are most helpful in high conflict cases as a method to try to end the conflict. They do not necessarily...ensure that the best interests of the child are met. The best interests of a child are met when his or her parents co-operate. Parenting plans help to spell out details that "good" separating parents do not need to document. I would be very wary of opening up the use of parenting plans in every case which could lead to increased litigation by litigants and lawyers as a strategy rather than as an issue of real concern.

All survey respondents were asked in what proportion of their cases, in which children are involved, are parenting plans used; the responses varied widely (n=103). The mean response was 31 percent, and the median was 20 percent. When asked if they have a form that they use as a guide for parenting plans, one third (33 percent) of the 106 individuals who responded said they did. Respondents who reported that they didn't have a form were asked if they thought a guide would be useful, and 84 percent of the 74 respondents said it would.

The use of parenting plans was further explored when the survey asked respondents (excluding judges) how helpful parenting plans were to their clients. In general, respondents found parenting plans helpful: 47 percent (n=47) said they were somewhat helpful; 45 percent (n=45) said they were very helpful; and 9 percent (n=9) said parenting plans were not very helpful. When asked to explain their answers, 52 respondents made 65 comments. Respondents who thought parenting plans were helpful commented on the following: parenting plans can diminish day-to-day conflict between parents (15 percent of respondents); parenting plans help parents to focus on the child (15 percent); parenting plans help to identify aspects of parenting and provide guidelines for parents (14 percent); parenting plans provide predictability when dividing parental tasks (12 percent); and parenting plans give parents ownership of their plan and allow them to tailor the plan to their individual needs (10 percent). One respondent said:

Parents often are not aware of how flexible and age appropriate parenting plans are. In addition it is a low cost, circumstance-oriented approach that actually works for the

parents by decreasing cost and encouraging child-focussed compromise, and for the children because they tend to see the parents co-operating (“getting along”) in matters related to their well being and the sense of loss is thereby decreased.

Respondents who thought parenting plans were not very helpful made the following comments: parenting plans remove flexibility and have too many rules (eight percent of respondents); parenting plans are still very new and are unfamiliar to clients (six percent); parties may not be on a level playing ground for negotiating parenting plans (four percent); parents who get along well can manage well without a detailed plan (four percent); and parenting plans depend on the good will of the parents and won’t work if the parents don’t want to make it work (four percent).

## **2.5 CHILD REPRESENTATION**

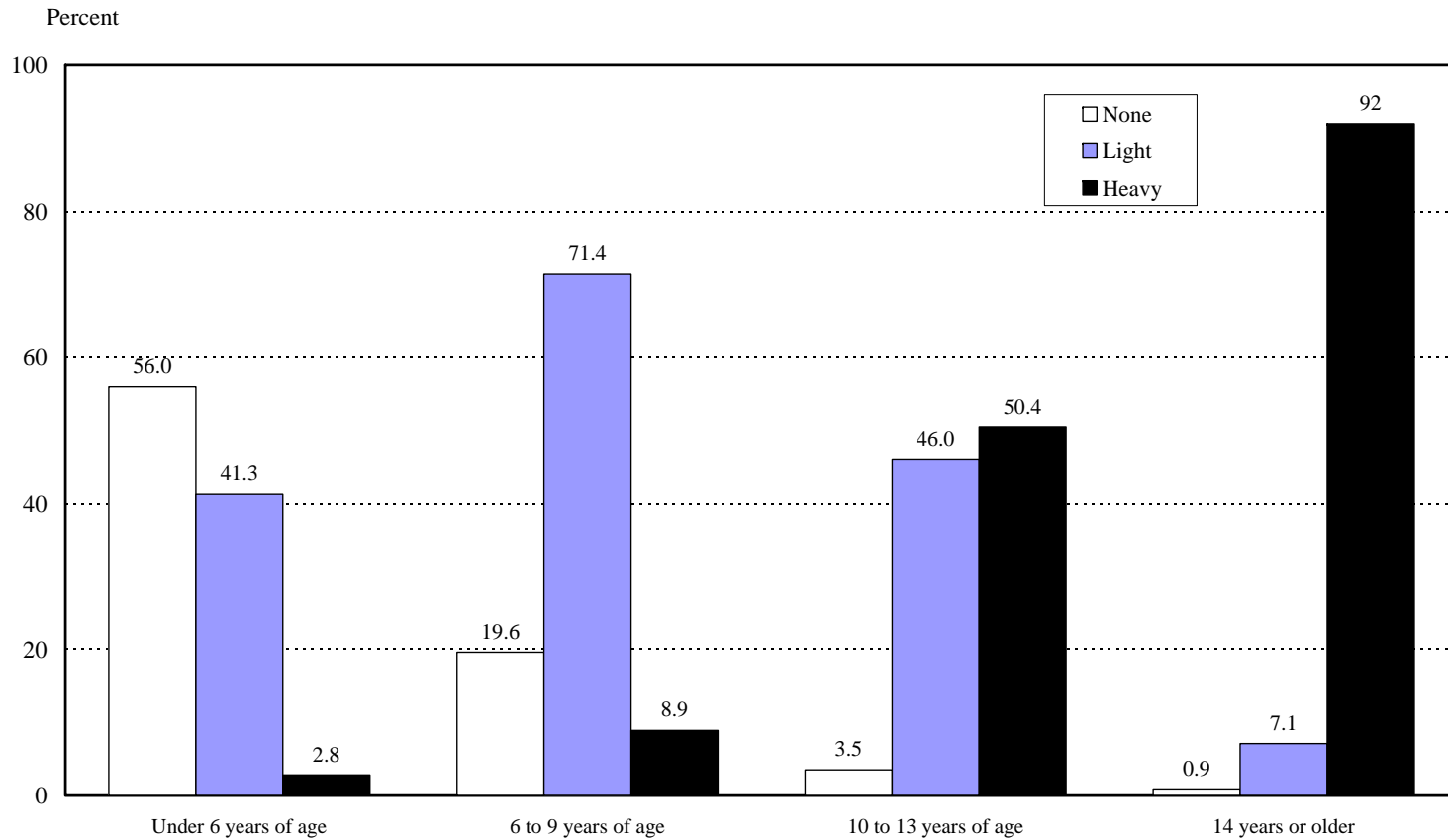
The *United Nations Convention on the Rights of the Child* provides for the right of the child to participate in decisions that affect his or her life. Respondents were asked what they think are the best mechanisms to enable children to voice their views. The two mechanisms that were chosen by most respondents were assessment report (74 percent; n=87), followed by legal representation for the child (65 percent; n=76). About one third of respondents (34 percent; n=40) chose non-legal representation for the child, and about one fifth (21 percent; n=24) chose judicial interview. Very few respondents chose the alternatives of testimony of the child (three percent; n=4) or legislative provision that parents should consult their children respectfully when making parenting arrangements upon separation (three percent; n=3). One respondent noted:

It is very difficult to obtain views, as children may feel many different emotions, including protecting each parent. To seek a child’s opinion may be very divisive and also provides a child with too much power and room to manipulate. The wishes of children are but one factor which must be sensitively obtained in an unobtrusive fashion and reviewed in keeping with the evidence.

When respondents were asked which factors are most important when deciding what weight should be given to the child’s views, they were very supportive of all the factors listed. Specifically, respondents thought the following factors were important: age of child (89 percent; n=104); indication of parental coaching/manipulation (85 percent; n=99); ability of child to understand the situation (77 percent; n=90); child’s reason for views (74 percent; n=87); ability of child to communicate (74 percent; n=86); and the child’s emotional state (65 percent; n=76).

Respondents were asked how much weight should be given to the preferences of a child regarding custody decisions at specified ages. Predictably, the older the child, the more weight respondents thought should be given to their preferences (see Figure 2.2).

**Figure 2.2: Respondents' Views on How Much Weight Should be Given to the Preference of Children at Specified Age Ranges**



Source of data: Survey on the Practice of Family Law in Canada.

Total N = 117; Under 6 years of age - n=109, 6 to 9 years of age - n=112, 10-13 years of age - n=113, 14 years or older - n=113.



While 56 percent thought no weight should be given to children under the age of 6 years, 71 percent thought the preferences of 6- to 9-year-old children should be weighed lightly, and 92 percent thought the preferences of children 14 years or over should be weighed heavily. For the age group of 10 to 13 years, 46 percent of the respondents thought their preferences should be weighed lightly, and 50 percent thought they should be weighed heavily. One respondent cautioned that *“this depends less on age and more on maturity/sophistication and indication of parental manipulation.”*

## **2.6 CUSTODY AND ACCESS**

The issue of terminology for post-separation parenting arrangements has generated a lot of interest in recent years. Respondents were asked how often they use terminology other than “custody” and “access” in their agreements. The majority of respondents said that they do use other terminology with 50 percent (n=55) stating that they often use other terminology, and 21 percent (n=23) stating that they almost always use other terminology. Only 10 percent (n=11) stated that they rarely use other terminology in their agreements, and 19 percent (n=21) said they occasionally use other terminology.

When asked how often they use alternate terminology in their orders, however, the pattern was somewhat different. The majority of respondents stated that they rarely (26 percent; n=29) or occasionally (38 percent; n=42) use alternate terminology in their orders. About one quarter of respondents (27 percent; n=30) said that they often use alternate terminology, and only eight percent (n=9) said that they almost always use alternate terminology in their orders.

The survey asked respondents to what extent legislative amendments to the *Divorce Act* replacing the terms “custody” and “access” with “parenting order,” (which includes decision-making responsibilities and parenting time), would promote a less adversarial process. Three quarters of respondents thought that legislative changes would have an effect, with 50 percent (n=58) indicating it would have somewhat of an effect, and 26 percent (n=30) indicating that it would affect the process to a great extent. One quarter (24 percent; n=27) stated that they thought changing the terminology would have no effect on the adversarial process.

Respondents were asked, based on their experience, how often parents are sharing decision making in specific areas. As indicated in Table 2.9, the majority of respondents said that parents shared decision making often or almost always in the areas of health (61 percent) and education (58 percent). The majority of respondents indicated that parents shared decision making occasionally or often in the areas of religion (63 percent) or culture (62 percent). Out of 23 respondents who indicated an “other” area, 15 (65 percent) said that parents were sharing decision making regarding extracurricular activities/recreation.

**Table 2.9 Respondents’ Perceptions of How Often Parents Share Decision Making in Specific Areas**

Decision-making Area	Rarely		Occasionally		Often		Almost Always		Missing	
	n	%	n	%	n	%	n	%	n	%
Health	9	7.7	32	27.4	50	42.7	21	17.9	5	4.3
Education	7	6.0	37	31.6	52	44.4	16	13.7	5	4.3
Religion	22	18.8	37	31.6	37	31.6	12	10.3	9	7.7
Culture	21	17.9	36	30.8	37	31.6	10	8.5	13	11.1

Source of data: Survey on the Practice of Family Law in Canada.  
Total N=117

Parents may not comply with their custody/access orders for a variety of reasons. Respondents were asked, in their experience, when parents do not comply, what are the circumstances of the case and how frequently do they occur (see Table 2.10). The most frequent circumstance was that the access parent was late returning the child, which 41 percent of the respondents (n=48) said occurred often or occasionally (39 percent; n=45). The circumstance that occurred least frequently was family violence, which half of the respondents (49 percent; n=57) said occurred rarely, and 35 percent (n=41) said occurred occasionally.

**Table 2.10 Respondents’ Perceptions of What the Circumstances are When Parents do not Comply with their Custody/Access Orders and How Frequently it Occurs**

Circumstance	Rarely		Occasionally		Often		Almost Always		Missing	
	n	%	n	%	n	%	n	%	n	%
Access parent does not exercise access	17	14.5	58	49.6	38	32.5	0	0.0	4	3.4
Access parent is late returning child	16	13.7	45	38.5	48	41.0	3	2.6	5	4.3
Custodial parent refuses access for no valid cause	15	12.8	60	51.3	34	29.1	2	1.7	6	5.1
Custodial parent refuses access for cause (e.g., access parent intoxicated)	25	21.4	72	61.5	14	12.0	1	0.9	5	4.3
Child refuses visit with access parent	23	19.7	68	58.1	22	18.8	0	0.0	4	3.4
Frequent changes in schedule	27	23.1	53	45.3	30	25.6	2	1.7	5	4.3
Family violence concerns	57	48.7	41	35.0	12	10.3	3	2.6	4	3.4

Source of data: Survey on the Practice of Family Law in Canada.  
Total N=117

Lawyers were asked what proportion of their cases (in which children are involved) included supervised access or exchange. Both supervised access and supervised exchange were relatively rare. Respondents reported that an average of only eight percent of their cases included supervised access (range of 0 percent to 60 percent), and an average of six percent of their cases included supervised exchange (range of 0 percent to 40 percent). Lawyers were then asked under what circumstances they would recommend supervised access or exchange to their clients. The results are presented in Table 2.11. Respondents were most likely to recommend supervised access in cases of: allegations of child abuse (85 percent); substance abuse (80 percent); and mental health concerns (80 percent). Respondents were most likely to recommend supervised exchange in cases of: high conflict (77 percent) and spousal violence (69 percent). Ten

respondents stated an “other” circumstance in which they would recommend supervised access to their client. Of the 13 responses provided, the most common reason for recommending supervised access was for cases in which there had been a period of no contact between the parent and the child; this was to allow for reestablishment of the relationship. Only two percent of the respondents said that supervised access is not available in their jurisdiction, and only seven percent reported that supervised exchange was not available. One respondent commented that, “*judges rarely order supervised access or exchange so it is difficult to recommend it.*”

**Table 2.11 Proportion of Respondents Recommending Supervised Access or Exchange Under Various Circumstances**

Circumstance	Supervised Access		Supervised Exchange	
	n	%	n	%
In high conflict situations	29	26.4	85	77.3
In situations of spousal violence	43	39.1	76	69.1
In situations where there are allegations of child abuse	94	85.5	34	30.9
In situations where there is substance abuse	88	80.0	37	33.6
In situations where there are mental health concerns	88	80.0	42	38.2
Not available in my jurisdiction	2	1.8	8	7.3
Other	10	9.1	4	3.6

Source of data: Survey on the Practice of Family Law in Canada.  
Total N=110 (excludes judges)

The survey asked lawyers in what proportion of their cases with children involved, was parental relocation (mobility) an issue. While the range was widespread (0 percent to 65 percent), the average was relatively low (12 percent). In cases where parental relocation was an issue, lawyers were asked what reasons were given for the move, and how frequently they occurred. As indicated in Table 2.12, the most common reason was to be with a new partner, which 57 percent of the lawyers reported occurred often. Other reasons that lawyers reported occurred often were to be closer to family/friends (51 percent) and employment opportunity (49 percent).

**Table 2.12 Respondents’ Perceptions of How Often Specific Reasons are Given in Cases Where Parental Relocation is an Issue**

Reason	Rarely		Occasionally		Often		Almost Always		Missing	
	n	%	n	%	n	%	n	%	n	%
Employment opportunity	7	6.0	23	19.7	57	48.7	21	17.9	9	7.7
Educational opportunity	25	21.4	43	36.8	23	19.7	1	0.9	25	21.4
To be closer to family/friends	2	1.7	28	23.9	60	51.3	13	11.1	14	12.0
To be with new partner	7	6.0	20	17.1	67	57.3	13	11.1	10	8.5
No particular reason	38	32.5	19	16.2	7	6.0	0	0.0	53	45.0

Source of data: Survey on the Practice of Family Law in Canada.  
Total N=117

Lawyers were then asked what the circumstances were in cases of parental relocation, and how frequently they occurred (see Table 2.13). The most common circumstances were when the custodial parent wished to move within the province/territory (36 percent said this occurred

often, and 44 percent said it occurred occasionally), and when the custodial parent wished to move to a different province/territory (36 percent said this occurred often, and 38 percent said it occurred occasionally). Parental relocation was rarely an issue when the custodial parent wished to move within the city (56 percent) or outside the country (61 percent). Not surprisingly, parental relocation was rarely an issue when the access parent wished to move.

**Table 2.13 Respondents’ Perceptions of What the Circumstances are in Cases Where Parental Relocation is an Issue and How Frequently it Occurs**

Circumstance	Rarely		Occasionally		Often		Almost Always		Missing	
	n	%	n	%	n	%	n	%	n	%
Custodial parent wishes to move within the city	65	55.6	21	17.9	17	14.5	2	1.7	12	10.3
Custodial parent wishes to move within the province/territory	8	6.8	52	44.4	42	35.9	7	6.0	8	6.8
Custodial parent wishes to move to a different province/territory	7	6.0	44	37.6	42	35.9	16	13.7	8	6.8
Custodial parent wishes to move outside the country	71	60.7	24	20.5	6	5.1	7	6.0	9	7.7
Access parent wishes to move within the city	79	67.5	12	10.3	10	8.5	0	0.0	16	13.7
Access parent wishes to move within the province/territory	54	46.2	32	27.4	16	13.7	0	0.0	15	12.8
Access parent wishes to move to a different province/territory	56	47.9	34	29.1	10	8.5	1	0.9	16	13.7
Access parent wishes to move outside the country	84	71.8	14	12.0	1	0.9	1	0.9	17	14.5

Source of data: Survey on the Practice of Family Law in Canada.  
Total N=117

## 2.7 FEDERAL CHILD SUPPORT GUIDELINES

All respondents were asked the extent to which they thought the Federal Child Support Guidelines were meeting their stated objectives. Respondents overwhelmingly agreed that the Guidelines are meeting their objectives (see Table 2.14). Almost all respondents (92 percent) agreed or strongly agreed that the Child Support Guidelines have resulted in a better system of determining child support than the pre-1997 system. Similarly, 88 percent of respondents agreed or strongly agreed that cases are settled more quickly since the implementation of the Guidelines. A total of 86 percent agreed or strongly agreed that since implementation of the Guidelines, most cases are resolved simply by relying on the tables to establish amounts of support. Finally, 86 percent agreed or strongly agreed that in cases involving litigation, the issues to be resolved are more defined and focussed than prior to implementation of the Guidelines.

**Table 2.14 Respondents' Opinions Regarding Objectives of the Federal Child Support Guidelines**

Objective	Strongly Agree		Agree		Disagree		Strongly Disagree		Missing	
	n	%	n	%	n	%	n	%	n	%
Overall, the Child Support Guidelines have resulted in a better system of determining child support than the pre-1997 system.	46	39.3	62	53.0	6	5.1	2	1.7	1	0.9
Cases are settled more quickly since the implementation of the Guidelines.	42	35.9	61	52.1	10	8.5	2	1.7	2	1.7
Since implementation of the Guidelines, most cases are resolved simply by relying on the Tables to establish amounts of support.	42	35.9	58	49.6	11	9.4	5	4.3	1	0.9
In cases involving litigation, the issues to be resolved are more defined and focussed than prior to implementation of the Guidelines.	34	29.1	66	56.4	12	10.3	2	1.7	3	2.4

Source of data: Survey on the Practice of Family Law in Canada.  
Total N=117

Respondents were asked what proportion of their cases involves undue hardship applications. Undue hardship applications were rare, with respondents reporting that they occurred in only 6 percent of their cases (range of 0 percent to 35 percent).

When asked how often income disclosure is a problem in their experience, the majority of respondents said that it was either often (49 percent; n=57), or almost always (seven percent; n=8), a problem. Just over a third of respondents (37 percent; n=43) said that income disclosure is occasionally a problem, and few respondents (seven percent; n=8) said that it is rarely a problem. When asked to explain what the problem with income disclosure is, 79 respondents made 130 comments. The most frequent comments were: self-employed income continues to be problematic (46 percent of respondents); unwillingness to disclose or provide supporting documentation (32 percent); problems with tax returns (14 percent); and undisclosed income/cash payments (11 percent).

Respondents were asked how often second families are an issue in their experience. The majority indicated that second families are an issue occasionally (50 percent; n=58), and over one third of respondents (36 percent; n=42) said that second families are an issue often. A relatively small proportion of respondents indicated that second families are an issue rarely (11 percent; n=13) or almost always (3 percent; n=3). When asked to explain what the issue is, 61 respondents made 83 comments. The most common comments were: affects standard of living because there are too many demands on a limited income (39 percent of respondents); creates access problems (21 percent); and child support payors with second families often refuse to acknowledge first family obligations (16 percent).

All respondents were asked if there are any other areas of the Federal Child Support Guidelines that they have found to be problematic. A total of 168 comments were made by 91 respondents. Respondents identified the most problematic areas of the Guidelines as: section 9—shared custody and the 40 percent rule (45 percent of respondents); section 7—special or extraordinary expenses (42 percent); children over the age of majority/post-secondary education (14 percent); and second families (11 percent). Comments that capture these problems are:

The 40 percent rule is a big problem. Often people are trying hard to get to the 40 percent rule in order to seek a reduction in support. There is also an issue in that the actual costs of raising the children, once the 40 percent time is reached, are not considered. The appropriate reduction in support (if any) once the 40 percent threshold is reached is problematic. A set off is common but not always fair.

Section 7 expenses—case law and judges are very inconsistent in their application, which leads to greater litigation—primarily in the areas of post-secondary school expenses and extraordinary extracurricular expenses. Health costs appear to be a lesser issue (clients usually identify these needs with the child). May have to define financial limits within ranges of income, so contribution limits can be better defined. For example, at what point are special expenses in relation to the parties' income unreasonable.

Over 18—post-secondary education costs—why do children from separated parents have the right to a paid education by parents who are often financially burdened by effects of separation and support obligations? This needs to be brought back to reality! Children from non-separated parents certainly don't have these privileges. This needs to be clarified and soon.

Payors with multiple recipients—should be a different table for payors, with obligations to children in different homes; it is not an appropriate use of payors' resources to pay unreduced full table amount for one child, to two recipients, as the child then has inappropriately reduced resources when with the payor.

## **2.8 SPOUSAL SUPPORT**

All respondents were asked in what percent of their cases is spousal support an issue. The average was 48 percent, ranging from two percent to 100 percent. Respondents were asked if there is consistency in how spousal support applications are handled, and three quarters (78 percent; n=88) said no, and 22 percent (n=25) said yes. Respondents were then asked, in cases where spousal support is an issue, what the circumstances are and how frequently they occur. The results are presented in Table 2.15. The circumstances that respondents reported occurring often were: claimant spouse is a stay-at-home parent (56 percent); claimant spouse was a stay-at-home parent to children now grown and is not in the labour force (56 percent); and, payor's income is considerably higher than claimant spouse's income (57 percent). The circumstance that respondents reported occurred rarely (44 percent), or occasionally (44 percent), was the couple had no children and claimant spouse is not in labour force.

**Table 2.15 Respondents’ Perceptions of What the Circumstances are in Cases Where Spousal Support is an Issue and How Frequently it Occurs**

Circumstance	Rarely		Occasionally		Often		Almost Always		Missing	
	n	%	n	%	n	%	n	%	n	%
Claimant spouse is a stay-at-home parent	0	0.0	34	29.1	66	56.4	12	10.3	5	4.3
Claimant spouse was a stay-at-home parent to children now grown and is not in labour force	5	4.3	34	29.1	65	55.6	8	6.8	5	4.3
Couple had no children and claimant spouse is not in labour force	51	43.6	51	43.6	8	6.8	2	1.7	5	4.3
Respondent’s income is considerably higher than claimant spouse’s income	2	1.7	18	15.4	67	57.3	26	22.2	4	3.4
Potential payor has income of \$75,000 or more	8	6.8	41	35.0	48	41.0	15	12.8	5	4.3
Trade off of property in lieu of monetary spousal support	26	22.2	55	47.0	27	23.1	2	1.7	7	6.0

Source of data: Survey on the Practice of Family Law in Canada.  
Total N=117

In cases where both child support and spousal support are issues, respondents were asked which issue is typically dealt with first. Almost all respondents (94 percent; n=107) stated that child support is dealt with first. Only six percent (n=7) said that both issues were resolved together, and no respondents said that spousal support was dealt with first.

When asked if it is useful to try to establish non-binding spousal support guidelines, over three quarters of respondents (78 percent; n=87) said yes, and 22 percent (n=24) said no. In unsolicited comments, one respondent stated, “*nothing could be worse than the current mess.*” On the other hand, another respondent cautioned:

I am very worried about this initiative. These will be “binding” as soon as they are released (i.e., now). We need to have a debate about whether we should even have guidelines.

## 2.9 FAMILY VIOLENCE

The Government of Canada strongly believes that it is important to send a message that all aspects of the family law system must take into account incidents of family violence involving the child or a member of the child’s family. Survey respondents were asked if they always make inquiries to attempt to identify cases of family violence. Over three quarters of respondents (76 percent; n=80) said yes, while 24 percent (n=25) said no. However, when asked if they use a screening tool (i.e., standardized questionnaire) to identify cases of family violence, almost all respondents (90 percent; n=94) said no, while 11 percent (n=11) said yes. Respondents who said they did use a screening tool were asked what tool they used, and most (n=5) said they use their own, which suggests they are not using a standardized measure.

When asked if they are familiar with the services available for their clients in cases where there is family violence, the vast majority of respondents (89 percent; n=93) said that they are;

six percent (n=6) said that they are not, and six percent (n=6) said that there are no services available in their area.

Respondents were asked, in cases involving spousal violence, how the court addressed the issue, and how frequently it occurred. As indicated in Table 2.16, over one third of the respondents (35 percent) indicated that the court rarely addressed the issue. When the court did address the issue, the most likely response was to deny custody to the abusive parent (31 percent of respondents said this occurred often, and nine percent said it almost always occurred). Court responses that respondents stated were rarely used included: access was denied to abusive parent (48 percent); parents were educated on the effects of family violence on children (43 percent); and child was given legal representation (41 percent). Specific comments provided by respondents included:

There is a significant failure by court to recognize that an abuser’s pursuit of access issues is possibly (in many cases) motivated by a desire to continue control or harassment of the victim, and to assess access claims in that light.

Courts do not get the effects of violence on kids—we need legislative change, training—we need “best interest” defined to include mandatory consideration of violence—we need a rebuttable presumption against custody or access to abusing parent.

**Table 2.16 Respondents’ Reports on How the Court Addressed the Issue in Cases Involving Spousal Violence and How Frequently it Occurred**

Court Response	Rarely		Occasionally		Often		Almost Always		Missing	
	n	%	n	%	n	%	n	%	n	%
Assessment services were used	34	29.1	32	27.4	21	17.9	2	1.7	28	23.9
Child was given legal representation	48	41.0	31	26.5	12	10.3	2	1.7	24	20.5
Access supervision was ordered	17	14.5	47	40.2	26	22.2	5	4.3	22	18.8
Exchange supervision was ordered	29	24.8	36	30.8	21	7.9	6	5.1	25	21.4
Counselling services were used	27	23.1	35	29.9	26	22.2	8	6.8	21	17.9
Parents were educated on the effects of family violence on children	50	42.7	24	20.5	16	13.7	2	1.7	25	21.4
Access was denied to abusive parent	56	47.9	29	24.8	9	7.7	1	0.9	22	18.8
Custody was denied to abusive parent	15	12.8	27	3.1	36	30.8	11	9.4	28	23.9
Court did not address the issue	41	35.0	25	21.4	12	10.3	10	8.5	29	24.8

Source of data: Survey on the Practice of Family Law in Canada.  
Total N=117

Respondents were also asked, in cases involving child abuse, how the court addressed the issue, and how frequently if occurred. Table 2.17 shows that one half of the respondents (50 percent) indicated that the court rarely addressed the issue. When the court did address the issue, the most likely responses were: to deny custody to the abusive parent (63 percent of respondents said this occurred often or almost always); and access supervision was ordered (61 percent said this occurred often or almost always). Court responses that respondents stated rarely were used included: parents were educated on the effects of family violence on children (35 percent); child



was given legal representation (32 percent); and court made referral to child welfare agency (29 percent).

There were interesting differences in respondents' reports on how the court addresses cases involving spousal violence and child abuse. The court is much more likely to deny custody and access to abusive parents in cases of child abuse, than in cases of spousal violence. The court is also much more likely to order access supervision and use an assessment service in cases of child abuse. Surprisingly, the court is also more likely to not address the issue of family violence when child abuse is involved than when spousal violence is involved.

All respondents were asked if training sessions on spousal violence issues are available to family justice professionals in their jurisdiction. Over one half (58 percent; n=57) said no, while 42 percent (n=41) said yes. Respondents who said yes were asked if they thought the training was adequate, and one half (53 percent; n=18) said yes, and 47 percent (n=16) said no.

**Table 2.17 Respondents' Reports on How the Court Addressed the Issue in Cases Involving Child Abuse and How Frequently it Occurred**

Court Response	Rarely		Occasionally		Often		Almost Always		Missing	
	n	%	n	%	n	%	n	%	n	%
Assessment services were used	11	9.4	26	22.2	24	20.5	27	23.1	29	24.8
Child was given legal representation	37	31.6	22	18.8	23	19.7	10	8.5	25	21.4
Access supervision was ordered	2	1.7	22	18.8	45	38.5	26	22.2	22	18.8
Exchange supervision was ordered	22	18.8	27	23.1	22	18.8	10	8.5	36	30.8
Counselling services were used	23	19.7	28	23.9	31	26.5	5	4.3	30	25.6
Parents were educated on the effects of family violence on children	41	35.0	26	22.2	14	12.0	3	2.6	33	28.2
Access was denied to abusive parent	22	18.8	29	24.8	29	24.8	8	6.8	29	24.8
Custody was denied to abusive parent	6	5.1	9	7.7	34	29.1	40	34.2	28	23.9
Court made referral to child welfare agency	34	29.1	26	22.2	15	12.8	9	7.7	33	28.2
Court did not address the issue	58	49.6	14	12.0	2	1.7	2	1.7	41	35.0

Source of data: Survey on the Practice of Family Law in Canada.  
Total N=117

When asked if training sessions on child abuse issues are available to family justice professionals in their jurisdiction, approximately one third (36 percent; n=35) said that they were, while 64 percent (n=62) said no. Respondents who said yes were asked if they thought the training was adequate, and 59 percent (n=17) said yes, and 41 percent (n=12) said no.

## 2.10 GENERAL COMMENTS

The survey concluded by asking respondents if they had any other comments about the family law system in Canada. Respondents used this opportunity to voice their views; 42 respondents made 117 responses. The most common responses were: the need for affordable support services (17 percent of the respondents); shortfalls in legal aid (14 percent); and, the need for case/settlement conferences (12 percent). Comments made by respondents included the following:

Collaborative law is the best dispute resolution system that I have seen in my 21 years of practice. I am a trained mediator but use services of other mediators. I am trained in collaborative law and do participate in collaborative law cases. Mediation is good and collaborative law is great as far as accomplishing dispute resolutions.

Legislative amendments are required to mandate that judges shall: a) order early risk assessment; b) order early custody and access assessments; c) put in place safety planning techniques such as supervised exchange, supervised access, restraining orders to err on the side of caution pending the outcome of assessments; and d) order therapeutic intervention to protect children—i.e., gear access to abusive parents based on successful completion of therapy recommendations.

It takes too long to get an order because we have too few judges.

The criminal justice system has more court judges, prosecutors and legal aid defence [than the family law system] because of the risk of incarceration. Victim services are under funded, family law services are also under funded, and whole families are at risk of devastating results of separation (financial difficulties, emotional damage, self esteem).

Stop focussing on assessments and put resources into mediation and settlement conferencing. Assessments often alienate or are unhelpful because they are superficial and really allow parties to be/remain passive in the system—i.e., someone else will decide the future by way of recommendation. Parties with lawyers and judges need to take ownership of issues and work out a future plan, but parties need resources through more parent education, more counsellors available, more/better mediation and more focus on judicial settlement processes.

I would like to see a special program (multidisciplinary, fast-track) for resolution of custody and access issues. A mediator should work with the parents as intensively as possible and, if consent can't be reached, the mediator should report to a judge, with recommendations as to involvement of counsellors and/or independent legal representation for children. This should be available to families even pre-separation—to encourage the development of a parenting plan (even an interim plan) so that the parent can advise the children about what will be happening at the same time as they inform the children of the separation. I would like the family justice system to be more proactive, rather than reactive.

Legal aid is something that needs to be reformed. The rates are so low that lawyers cannot take the work or must cheat when rendering accounts. The effect is to cheapen the work that family lawyers do and I see an erosion of pride and an increase in indifference. Some legal aid lawyers go through the motions. Young lawyers stay away from legal aid cases, not only because of the rates but because they do not want to be stigmatized as a “legal aid lawyer.”

The biggest problem is time delay. There are so many cases which, at least in Nova Scotia, don't meet the criteria necessary for an emergency hearing, with the result that parents and children are left in limbo for significant periods of time. People may be left without support or child access for months to years—and this can't effectively be addressed retroactively. Interim arrangements need to be addressed more effectively.



## **3.0 WORKSHOPS**

The workshops were intended to gain more in-depth information from a smaller group of lawyers and judges concerning family law issues. Workshops included the following topics: (1) parenting arrangements; and (2) family violence. Each workshop had two facilitators and two recorders. The workshops began with a brief introduction of the issue by the facilitators, and the balance of the workshop was spent discussing the issues and hearing participants' views. An effort was made by the facilitators to keep comments relatively brief in order to allow for as many people as possible to be involved. The facilitators asked for a number of questions to be answered by a show of hands. A list of questions was prepared by CRILF to assist the facilitators in guiding the discussion.

### **3.1 PARENTING ARRANGEMENTS**

#### **3.1.1 Workshop Outline**

- Is there a typical parenting arrangement?
- Are you seeing different parenting arrangements than a few years ago? If so, what type and why is that?
- What would lead to better parenting arrangements? Would parenting plans help guide parents to arrive at parenting arrangements? Should they be formalized in legislation or regulations?
- How much do separation agreements impact on the final parenting arrangements post-divorce?
- Do you use terminology other than “custody” and “access?” If so, what do you use and under what circumstances? Does it benefit your clients to use other terminology? How so?
- Is access denial a problem? If yes, under what circumstances? How do you ensure that non-custodial parents can exercise their access rights?
- Are you seeing more cases where access enforcement is a problem compared to a few years ago? If so, why? Do you believe that there actually are more cases, or are more cases being pursued through the legal system?
- Are you aware of the provisions that were in recently proposed amendments to the *Divorce Act* and, if so, has this had an impact on your practice (even though the bill wasn't passed)?
- What issues regarding parenting arrangements are being heard in court? Is this an appropriate use of court time?
- Is there a perception of gender bias in the courts and, if so, how can it be fixed?

### 3.1.2 Workshop Results

#### *Terminology*

Workshop participants were asked about their usage of terminology other than “custody” and “access.” Approximately half the workshop participants reported that they use the term “custody.” When asked what terminology they use, other participants said that they use such terms as: “shared parenting,” “parenting,” “co-parenting,” “primary parenting,” “primary parent,” and “parallel parenting.” About one quarter of the workshop participants said they use the term “access.” Terms used by the other participants included: “parenting time,” and “parent care and control.” A participant from Toronto avoids using the “labelling” terms altogether, saying instead “the child resides with the mother...,” or “the child resides with the father...” Likewise, a participant from Nova Scotia said agreements are done without labelling the arrangement; the parent is simply named in the agreement. When asked if anyone used the term “visitation parent,” only one participant said yes. The comment was made that “you don’t visit your kids; you parent your kids [even if you are not the ‘custodial’ parent].”

Workshop participants were asked why they use terminology other than “custody.” One participant replied that “custody” makes it sound like the child is chattel. One participant said that some parents demand use of the terms “custody” and “access,” but the participant tries to avoid it. Another participant said that it is sometimes hard to avoid using the terms because other ancillary matters require the traditional terminology. A participant from Montreal said that even though the heading in an agreement is labelled “custody and access,” there is no use of that terminology in the actual paragraph. Instead, the paragraph would read: “the mother shall have the child...and the father shall have the child...”

#### *Access Denial*

Workshop participants agreed that access denial is a problem. Approximately one half of the group had been involved in enforcement applications for access, and almost one fifth of the group reported that the denial of access provided for in an agreement or court order occurs in over 25 percent of their cases. One participant said that two thirds of his cases involve an access dispute. Another participant said that it is definitely a problem, especially in cases involving an alcohol or drug addiction.

One participant said that the problem is broader than access; it is tied to money and parent control. The concern was raised that child support dollars may be lost if the amount of access obtained crosses the 40% threshold and it is then not exercised. A judge from Alberta had a number of cases of “attempted extortion,” where access was being denied to gain more child support. One participant said that the government needs to consider the issue of separating amount of child support from time spent with children (i.e., Guidelines, s. 9).

A participant from Ontario thought that there should be a law that requires a family court order dealing with access after a bail hearing in cases of domestic violence. This participant said there are often inconsistencies of conditions of bail with prior family court orders.

Access denial is a major problem according to a participant from Regina, who said it occurs in 30 to 40 percent of the participant’s cases. For example, a father who has a visitation schedule

worked out might ask, “What if she doesn’t let me see the child? It’s a good question. He could call the police, but they tend to take the view that it’s not their business. It would be easier to have some sort of mechanism to enforce access.”

The comment was made that the problem of access denial is “not a black and white issue,” and that there is an unevenness in the judiciary with respect to enforcing access rights.

A legal aid clinic lawyer from Ontario commented that what needs to be addressed is resources, e.g., supervised access. When asked if they had supervised access services available to them, approximately two thirds of the participants said they did.

A Toronto lawyer said that access denial was a problem when they had a litigation-oriented approach to family law, but now that they practice collaborative family law it is no longer a problem because of the consensual nature of that process.

### ***Proposed Amendments to the Divorce Act***

Almost all of the workshop participants were aware of the provisions that were in the recently proposed amendments to the *Divorce Act* (formerly called Bill C-22, which died on the order paper in November 2003) regarding parenting arrangements. When asked if the proposed amendments had an impact on their practice (even though the bill was not passed), approximately 60 percent of the group said they did. A respondent from Halifax said that it was what started them to cease using the terms “custody” and “access”. This respondent now uses “shared parenting,” and avoids the “loaded” terminology. A PEI respondent thought the fact that the federal government had agreed in policy to the use of neutral terminology was very helpful. A mediator from Vancouver agreed, and said that from an educational perspective, it was very helpful to be able to use the new language.

One judge reported considerable reliance on the proposed amendments. A judge from Ontario commented that the cases that are reported are not a good cross section of cases. This judge said there is a much larger percentage of cases in favour of joint parenting than the reported cases would reflect.

A participant from Victoria reported that judges have been reluctant to use terms that do not have statutory definitions. The term “custody” is legally defined under federal legislation, as is “guardianship” under provincial law. When asked if anyone was resistant to using the proposed terminology, one participant responded yes, because it created problems with the passport office.

### ***Parenting Arrangement Issues Being Heard in Court***

Workshop participants were asked what issues regarding parenting arrangements are being heard in court. A participant from PEI said that an issue that continues to be litigated is that of the amount of access time and its interaction with the Federal Child Support Guidelines (s. 9), i.e., the 40 percent rule. When asked how many workshop participants had significant problems with the 40 percent rule, just about everybody raised their hand.

An Edmonton lawyer said a common issue is an insistence by parents for an equal 50/50 split of custody for shared parenting, i.e., one week on and one week off. This participant was seeing a

more aggressive desire by fathers to ensure the 50 percent as an assertion of the importance of involvement of both parents, without consideration of whether it was meeting the child's needs. Almost all workshop participants agreed that they have seen an increase in "50 percent" cases.

There was a clear sense that the number of cases in which fathers are seeking more involvement with their children post-separation has increased dramatically in the past few years.

A participant from Calgary said that she thought the increase in shared parenting cases is because the issue is tied to the Federal Child Support Guidelines, and a potential decrease in the payor's financial obligation. Another participant disagreed, and thought that the increase is because fathers are more involved with their children than they were in the past. Another participant described this as men being more genuinely bonded to their children and, upon separation, these men are heartbroken, have a sense of loss, and need to be with their children. A third reason mentioned by another participant is that fathers are now more aware that there are other options available to them.

Workshop participants discussed these three reasons for an increase in the number of shared parenting cases. A judge from Alberta agreed with the second reason, and said she had not had a problem with fathers in shared parenting situations being unwilling to pay child support. A lawyer said that they try to avoid the "fight of time," and instead talk about financial contribution. One participant said they agree that all three reasons are valid, but perhaps the approach of tying child support to parenting time is an "insult." This participant didn't think dads are opposed to paying support, but the problem is that the receiving parent's income is not taken into account. A less offensive approach would be to look at what resources there are for two family units, which takes the issue of money away from parenting time.

A participant from Quebec said that the process for determining child support is different in Quebec, since Quebec opted out of the Federal Child Support Guidelines. In Quebec, both parents' incomes are taken into account and prorated with time spent with the child(ren). This participant said that she represents more mothers than fathers. In her experience, the fathers always paid the support. When the mother was the payor, however, every case but two ended up going to court.

When the group was asked what they thought the most predominant reason was for an increase in shared parenting cases, approximately one quarter of the workshop participants thought it was due to Federal Child Support Guidelines provisions, one quarter thought it was because fathers are more aware of their options, and one half thought it was because fathers are more involved with their children. When asked who thought it was "all of the above," approximately one half to two thirds of the group said yes. A participant from Nova Scotia agreed that all three reasons were valid, but also thought that it depends on the degree of involvement of the father. This participant had a case where the father thought he should be paid to babysit his children. The father expressed indignation when he was sent to a parenting class.



### ***Typical Parenting Arrangement***

None of the workshop participants thought that there is a “typical” parenting arrangement.

Workshop participants were asked what services they were using, and what the trends were. A Calgary lawyer responded that he used judicial dispute resolution, which is similar to lawyer-assisted mediation, but had better results in high conflict cases. An Edmonton lawyer reported the use of collaborative family law and four-way settlement meetings. Another participant also reported use of the collaborative process and child specialists.

### ***Gender Bias in the Courts***

Approximately one half of the workshop participants thought that there is gender bias in the courts. When asked against whom, these participants said against men. No participants thought that gender bias against women was a problem. One participant said that male clients think there is a gender bias against them. When the group was asked if this is increasingly so, approximately ten participants raised their hands, while about four disagreed. One participant commented that it depends on the judge, and that is it a huge problem in the part of Nova Scotia where they practice.

The workshop participants who thought there was gender bias in the courts were asked if they thought the problem was getting worse, getting better, or about the same as in the past. Approximately three quarters thought the problem of gender bias in the courts was about the same; about one quarter thought it was getting better, and nobody thought it was getting worse.

One participant said that they have observed a shift away from gender bias in the courts as children become more involved in the process, and let it be known what they want. The question was raised as to whether children are being involved, or whether parents are manipulating the children. The group was asked if they thought parental alienation was a significant problem. Approximately one half of the group said it was. One participant said they have a number of interim custody applications where parental alienation is an issue.

### ***Impact of Separation Agreements on Final Parenting Arrangements***

Workshop participants were asked about the longer-term effects of separation agreements, and whether the agreements are generally honoured post-divorce. One participant responded that it was hard to answer that since, as lawyers, they only hear from clients again when there is a problem; if the clients are happy, the lawyers don't hear from them. Participants were then asked what percentage of their clients calls them back to renegotiate a separation agreement. About one third of the group reported that it occurs in 10 percent of their cases, three participants said it occurs in about 25 percent of their cases, and nobody reported that it occurs in 50 percent or more of their cases.

Interestingly, one workshop participant said that they find that the most hotly contested agreements are the ones that tend to stand up over time. “It’s the ones who just want to get it over with that make a mistake.” Another participant said that good detailed agreements stand up, especially if they include fall-back conditions (e.g., if no decision is made by a certain date, then this will happen).

## 3.2 FAMILY VIOLENCE

### 3.2.1 Workshop Outline

- How aware are lawyers and judges about the issue of family violence and its effects on family law cases? Are lawyers and judges aware that the social science literature shows that exposure to spousal violence is harmful to children?
- In cases involving spousal violence, do you always raise the issue with the court (e.g., through pleadings, affidavits, submissions)? If not, why not?
- Does the presence of spousal violence affect how you resolve a case? If so, how?
- Does the presence of spousal violence affect custody and access determinations by the courts? Do you think it should? Do your clients think it should?
- Does the presence of spousal violence affect the exercise of access? If so, how?
- Is there a perception of gender bias in the courts and, if so, why?
- Is the family justice system adequately protecting victims of abuse (i.e., are parenting arrangements compromising safety)?
- Are you aware of the provisions that were in recently proposed amendments to the *Divorce Act* in regard to family violence and, if so, has this had an impact on your practices (even though the bill wasn't passed)? Family violence was listed as one of best interest criteria—would this particular change influence the approach taken by practitioners in these cases? If so, how?
- To what extent are false allegations of spousal or child abuse an issue? To what extent are intentionally false allegations of abuse an issue? How should these problems be addressed?
- Do you have cases where clients don't raise legitimate concerns of family violence? If so, why do your clients not raise these issues?

### 3.2.2 Workshop Results

#### *Awareness Level of Lawyers and Judges about the Issue of Family Violence and its Effects on Family Law Cases*

A participant from New Brunswick in practice 29 years said that the judiciary is sensitive to the issue of family violence. This participant, however, wanted to distinguish between interim and final orders. On interim orders, lawyers often don't have the opportunity to cross-examine on affidavits and judges have a limited basis on which to resolve credibility issues arising from conflicting affidavits. Judges are then reluctant to factor in family violence because there is no way to independently test the claim. So, for example, you might want a supervisory order, but don't get it. When asked if there was enough judicial training, the participant from New

Brunswick said that it varies from court to court, with younger judges having more of an understanding of family violence issues.

Workshop participants were asked if they thought judges needed significantly more education on the issue of family violence, and approximately one fifth of the group said yes. A participant from Manitoba said that it wasn't just judges who needed more training; magistrates in that province who deal with emergency civil orders also needed more education on the issue, adding that all "first instance," or emergency response people need more education.

The group was asked if they thought judges were aware of the social science literature that shows that exposure to spousal violence is harmful to children. Approximately one half of the workshop participants thought that judges needed to be more aware of the social science literature. Participants were then asked if they thought lawyers who represent family clients were aware of the literature. A participant from British Columbia said that they didn't want to be "unpolitically correct," but in their experience, family violence is used as a tactic. If a fight is provoked, the police will be called and will remove the husband from the home. This participant said it is difficult to distinguish between a "true case" of family violence and one that has been blown out of proportion. For example, an affidavit might say, "my husband is abusive." The word "abusive" is overused. You don't get "my husband hit me on such and such a day...."

### ***False Allegations of Spousal Abuse***

Workshop participants were asked if they thought false or exaggerated allegations of spousal abuse are a significant problem. Almost one half of the group raised their hands. Participants were then asked if they thought false allegations are not a significant problem, and about one quarter of the group agreed with this statement.

Participants were then asked if they thought that there are significant numbers of women who are being abused, but are not being brought before the courts. Almost one half of the group reported yes. A lawyer pointed out that this question is being asked of people who don't have training in family violence. While training is key for judges, it is also very important for lawyers.

Workshop participants were asked if they thought they had adequate training in family violence issues, and about one third said yes. Participants were then asked how many thought that they needed more training, and almost three quarters of the group said yes. One participant who teaches family law at the University of Manitoba said that there is only one required course in family law for students and, in that course, only one week is spent on domestic violence; the participant felt it was not enough. Participants who had received training in family violence issues were asked where they received their training, and the response was in shelters, often as a volunteer. A judge from Alberta said that it doesn't matter how much training you have, it's still a credibility issue if the courts do not have screening up front.

Another participant said that cases involving males who are domestically abused are harder to deal with than cases where women are abused. Participants were asked how many had cases with male victims, and about one fifth of the group said they did. One participant said it doesn't happen very often, but it's a very difficult problem when it does. The distinction was made that while the numbers might not be significant, the issue is.

Workshop participants were asked if mutual abuse was a prevalent problem. About eleven participants reported that it was, while three reported that it was not a prevalent problem.

A lawyer from Nova Scotia said that the biggest problem is that men will not admit being abused. Even if it is reported, they often don't want you to do anything about it. The issue only comes out after there is an establishment of trust between the lawyer and the client. Men will often not see themselves as victims of abuse, but will admit that inappropriate actions have taken place, e.g., their spouse hit them, or pushed them.

There needs to be a focus on the impact of violence in the home, including the impact on children. Often, even women will not see themselves as victims, but will say they are the recipients of family violence. The facilitator asked if "victim" labels should be avoided, and the lawyer said yes. It is important to find out what is going on in the household.

Workshop participants were asked if they ask family law clients screening questions related to physical abuse. Just over one half of the group reported that they did, and five participants reported that they did not.

### ***Raising the Issue of Family Violence with the Court***

Workshop participants were asked if they always raise the issue of family violence with the court. A lawyer from Ontario said it's a "judgment call" as to whether or not they will raise it. They have to analyze the actual circumstances and strengths of the client, and ascertain whether she can go through that process and survive it. The process itself can be very damaging to the client. The facilitator asked if this occurred in cases where relief from violence was sought, such as an exclusive possession order, or in cases of custody and access. The participant said that they always raise the issue with the court when it is for relief from violence; in cases of custody and access, it is a judgment call.

A lawyer from Calgary said she had a client whose husband threatened to kill her a year previously. The lawyer didn't think she would be able to get a restraining order, so she advised her client to go to court to seek an emergency protection order under Alberta domestic violence legislation by herself. The client did get the emergency order, but was killed by her husband two weeks later. Another respondent agreed that judges want to see if the violence has happened recently before it is taken into account.

A judge from Alberta said that whether a case involved spousal violence or conflict, it was all going to harm the child. Instead of getting into a "he said, she said" dispute resolution process, the judge should establish a regime that does not require the parents to interact (parallel parenting). This might involve mutual restraining orders, but this is not necessary in all cases.

Workshop participants were asked how many do not always raise the issue of family violence with the court, and about one half of the group said that they do not always raise the issue. When asked how many always raise the issue "right off the bat," about nine participants reported that they do. A lawyer from Nova Scotia said that he often doesn't raise the issue of family violence unless on instruction from the client, because if the issue is raised, there is a mandatory checklist and Social Services has to get involved. It creates a huge problem in his jurisdiction, as clients

may be concerned about loss of their children to Social Services if the agency becomes aware of family violence issues.

A participant from Winnipeg said that it is important to think about the question of whether to raise the issue of family violence, because the court is not always the best way of managing conflict. The participant stated that “a court order does not stop a knife.” Often the conflict can be better managed in other ways.

### ***Resolving a Case that Involves Spousal Violence***

Workshop participants were asked if the presence of spousal violence affected how they resolve a case. A participant from British Columbia said that she assumes that a man who hits his wife will also not pay spousal support or child support on a regular basis, and will warn their client. The presence of spousal violence makes this participant automatically feel that she can't rely on average law-abiding actions, because the fellow is not socialized enough. A participant from Winnipeg said that the presence of spousal violence changes the process she uses. She will not go to mediation, and even has to be careful in court itself. There could be a raised eyebrow or tic that the lawyer might not catch, but the client will. A participant from Nova Scotia said that there is a heightened sense of awareness of just how vulnerable clients can be. It also underscores the need for training.

Workshop participants were asked if they had ever been threatened by abusive partners of their clients themselves, and about four fifths said they had been threatened. Participants were then asked if they had ever been assaulted, and about one sixth said yes.

A judge from Vancouver said that there is a trend across the country to require people to go to a judicial case conference to try to reach a resolution. As judges, the participant said that they sometimes don't pick up on the underlying issues, and don't know how to do that at a case conference. The group was asked how many shared this concern, and about one fifth reported that they did.

A participant from Manitoba said that there are various “flash points” where domestic violence can escalate, such as following separation and following orders. One of the worst murders this participant was aware of occurred shortly after an interim order was made, so there are ramifications of raising the issue.

### ***Spousal Violence and its Effect on Custody and Access Determinations***

Workshop participants were asked if they were satisfied with how the courts deal with the relationship between spousal violence and custody and access issues. A judge from British Columbia said that it is often difficult to get enough information about these cases. Are the children victims now? Did the children witness the spousal violence? This participant felt that there was a need for more training in the area.

Another participant said that the Muriel McQueen Fergusson Centre for Family Violence Research in New Brunswick just finished a study on the issue. The study found that in cases of documented spousal abuse, there is often child abuse as well. It raises a lot of questions such as: Do we need child representation legislation? Should custody assessments be funded? Legal aid is

only available to clients who will say that there are domestic violence issues. All of these issues point to the need for more social science research.

An Ontario lawyer agreed, and said that she had a case where the abusive husband was removed from the home after he was charged. An adolescent son then started to abuse the mother, so the court gave the children back to the father. The children are being raised by an abusive man, and learning the abusive behaviour only continues the cycle of violence.

### ***Proposed Amendments to the Divorce Act***

Workshop participants were asked if they were aware of the provisions that were in recently proposed amendments to the *Divorce Act* (formerly Bill C-22, which died on the order paper in November 2003) in regard to family violence, and approximately 75 percent of the group said yes. When asked if this proposed provision on domestic violence had an impact on their practice (even though the bill wasn't passed), nobody said that it did.

### ***Gender Bias in the Courts***

Workshop participants were asked if they thought there was gender bias in the courts, in cases of family violence. One participant said that there is a gender bias against men. He said that one time when he raised the issue of a male client being abused, the judge nearly threw him out of court. Participants were asked if they thought gender bias against men was a significant problem in the family law system. Ten participants said yes. Participants were then asked if they thought gender bias against women was a significant problem, and five participants said yes.

A lawyer from Nova Scotia said that a recent cartoon illustrates how pervasive the problem is. The cartoon shows a couple going into family court; the woman is walking through a "normal" door and the man is entering through the "dog door." This participant said that they were also almost thrown out of court for raising issues of violence against men. A participant from British Columbia told of a case where an abused man committed suicide, resulting in a huge outcry against the judge in the case. This participant did not think the courts are biased, but thought that the media reporting often unfairly raises this issue.

Workshop participants were asked how many had a significant number of male clients who thought the system was biased against them. Over 90 percent said they did. When asked how many had a significant number of female clients who thought the system was biased against them, only two said yes.

A lawyer from Toronto said that there are also cultural issues in terms of reporting abuse and shame, particularly with new Canadians. Participants were asked how many thought this was a significant issue, and two thirds of the group thought it was. One visible minority lawyer disagreed, and said that in her 15 years of practice, culture was not a significant issue at all in regard to domestic violence, because it affects all ethnic groups.

A lawyer from Nova Scotia said that she was asked to represent a 15-year-old girl who had immigrated to Canada. The child said that in the country she was from, it was legal to beat your children with sticks. This lawyer said that there are cases where culture comes into play. She also had other cases of excessive discipline that raised cross-cultural issues.

Workshop participants were asked if spousal abuse is an issue among minorities. A participant responded that it is a significant issue as well. Participants were asked if the cases were more complex. A participant said yes, because they still have to live in the same social milieu after the separation. A participant from Ontario mentioned the issue of “Sharia” (Muslim law), and questioned whether Muslim clients truly have a choice about whether to use this approach when the alternative is to be an outcast from the community. Another lawyer from Ontario said that it is often assumed that people from different cultures have lower incomes, but that domestic violence is prevalent throughout all income levels, although reporting practices may differ.

### ***Protecting Victims of Abuse***

Workshop participants were asked if the family justice system is adequately protecting victims of abuse. A participant from Nova Scotia had some concerns, and said that some judges order joint custody, even in cases of proven domestic violence.

One participant said that there are a lot of lawyers who don’t even raise the issue of family violence, and as a result victims of abuse are not being adequately protected. Lawyers themselves are minimizing the problem. Lawyers are frequently not raising domestic violence concerns at the interim stage. If they do raise it later, the court will question why it wasn’t raised previously and there may be doubts about the credibility of the allegation. Another participant said that assessments are not being done early enough, and they should still be paid for.

Participants were asked whether they would like to see legislation that specifically raises domestic violence as a factor in custody and access cases, and three quarters of the group said yes.





## **4.0 SUMMARY AND CONCLUSIONS**

In this chapter, the overall findings from the Survey on the Practice of Family Law in Canada are presented. In addition, the findings from the workshops on parenting arrangements and family violence are summarized. The concluding section highlights positive and negative aspects of the family law system in Canada, as identified by the lawyers, judges, and justice system professionals who participated in the workshops and completed the surveys.

### **4.1 SUMMARY OF SURVEY AND WORKSHOP FINDINGS**

#### **4.1.1 Demographics of Survey Respondents**

- Of the 117 surveys returned, 92 percent were completed by lawyers, six percent were completed by judges, and two percent were completed by other professionals.
- The lawyers involved in the survey had been practicing family law an average of 17 years, and 81 percent of their practice involved family law cases.
- The largest proportion of respondents were from Ontario, Alberta, and Nova Scotia, and their client base was mostly large urban (>100,000 population) (54 percent) and small urban (10,000 – 100,000 population) (29 percent).
- Almost one third of lawyers said they conduct mediation sessions.
- A substantial proportion of respondents had attended education and training programs in the following areas: child support guidelines, spousal support, custody/access, and property division.

#### **4.1.2 Case Characteristics**

- Survey respondents handled an average of 93 family law cases in the past year; an average of 74 percent of those involved children.
- Over one quarter of survey respondents' family law cases with children involved were variations of previous orders/agreements.
- Survey respondents reported that cases were resolved most frequently in the following manners: settled by negotiation before trial (48 percent) and settlement conference (24 percent), with only a minority (14 percent) being decided by a judge.
- Issues that survey respondents identified as most likely to require a trial and judicial decision to be resolved in divorce cases were: spousal support (74 percent); custody (54 percent); and property division (44 percent).
- Issues that survey respondents identified as most likely to require a trial and judicial decision to be resolved in variation cases were parental relocation (64 percent) and spousal support (60 percent).

### 4.1.3 Services

- Survey respondents said they keep informed about family justice services through the following mechanisms: colleagues; provincial/territorial continuing legal education courses; local professional seminars; professional associations and meetings; national or international conferences; and professional publications.
- Lawyers who responded to the survey reported that their clients are either somewhat informed or not at all informed about family justice services/issues at the outset of their case. Clients are most likely to be informed about child support issues, marriage or relationship counselling, and individual counselling. Clients are least likely to be informed about collaborative family law, child assessment services, parenting plans, and supervised exchange.
- Survey respondents said that their clients were most likely to get their information about family justice services/issues from friends and family members, the Internet, media stories or advertising.
- According to the survey, lawyers were most likely to inform their clients about, or refer clients to, the following family justice services: maintenance enforcement programs; individual counselling; parenting education programs; mediation services; parenting plans; and marriage or relationship counselling.
- Over two thirds of the survey respondents reported that their clients are somewhat willing to use family justice services. For clients who are not willing to access family justice services, respondents said the biggest obstacles were: time delay; lack of trust in the service; cost; and location of service.
- Survey respondents said that their cases are somewhat more likely (51 percent) or much more likely (19 percent) to be settled out of court because of the family justice services that are available.
- Survey respondents reported that the following services would be helpful to their clients, but are not available in their community: supervised access/affordable supervised access; mediation/affordable mediation; parent information/education services or programs; and assessments/assessors/assessment centres.
- Over half of the survey respondents (57 percent) said there is a Unified Family Court in their province/territory. In general, about half of the respondents agreed or strongly agreed that Unified Family Courts have positive consequences, while about one quarter disagreed or strongly disagreed.
- Over half of the survey respondents (59 percent) who do not have Unified Family Courts in their jurisdiction said they would like to see them established.

#### **4.1.4 Best Interest Criteria**

- According to the survey respondents, the processes most likely to be consistent with the best interests of the child are arrangements made as a result of mediation, and arrangements negotiated by lawyers (on their own or after judicial conference).
- The majority of survey respondents (63 percent) said that the provincial/territorial legislation in their jurisdiction included specific criteria for determining the best interests of the child. The vast majority of those respondents (94 percent) reported that they also use those criteria in cases under the *Divorce Act*.
- A somewhat surprising 44 percent of survey respondents said that even when parents are aware of the negative effects of separation/divorce on their children, this awareness does not affect their behaviour. The most common reasons given for this were: parents are unable to isolate their children's interests from their own; the emotional and/or financial repercussions of the separation interfere, and parents can't get past their anger; even when parents are aware, they have difficulties changing their behaviour; parents often use their new awareness against the other parent; and the ability to change depends on their education level, relationship between the parties, and their willingness to change.
- Over one half of the lawyers responding to the survey (56 percent) thought that parenting plans are a good mechanism for ensuring that the best interests of the child are met in all cases, and over one quarter (29 percent) thought they were a good mechanism in high conflict cases.
- Survey respondents said that parenting plans were used in just under one third of their cases (31 percent) involving children. One third of respondents (33 percent) said they have a form they use as a guide for parenting plans, and 84 percent who said they did not have a form said they would find a form useful.
- The vast majority of lawyers responding to the survey reported that they found parenting plans were somewhat or very helpful to their clients. Respondents said parenting plans can diminish day-to-day conflict between parents, help parents to focus on the child, help to identify aspects of parenting and provide guidelines for parents, provide predictability when dividing parental tasks, give parents ownership of their plan and allow them to tailor the plan to their individual needs.

#### **4.1.5 Child Representation**

- Survey respondents thought that the best mechanisms to enable children to voice their views were assessment reports (74 percent) and legal representation for the child (65 percent).
- Survey respondents thought the following factors were important when deciding what weight should be given to the child's views: age of child; indication of parental coaching/manipulation; ability of child to understand the situation; child's reason for views; ability of child to communicate; and the child's emotional state.

- The older the child, the more weight respondents thought should be given to their preferences regarding custody decisions. While 56 percent of survey respondents thought no weight should be given to children under the age of six, 92 percent thought the preferences of children 14 or over should be weighed heavily.

#### 4.1.6 Custody and Access

- Almost three quarters of survey respondents said that they often or almost always use terminology other than “custody” and “access” in their agreements. However, almost two thirds reported that they rarely or occasionally use alternate terminology in their orders.
- Workshop participants said they use the following terms instead of “custody”: “shared parenting,” “parenting,” “co-parenting,” “primary parenting,” “primary parent,” and “parallel parenting.”
- Workshop participants said they used the terms “parenting time” and “parenting care and control” instead of “access.”
- Almost all of the workshop participants were aware of the provisions that were in the recently proposed amendments to the *Divorce Act* (formerly Bill C-22, which died on the order paper in November 2003) regarding parenting arrangements. Approximately 60 percent of the group said that the proposed amendments had an impact on their practice with increased use of parenting plans or new terminology even though the bill was not enacted.
- Three quarters of survey respondents thought that legislative changes to the *Divorce Act* to replace the terms “custody” and “access” with “parenting order” would promote a less adversarial process.
- The majority of survey respondents said that parents shared decision making often or almost always in the areas of health and education.
- Workshop participants noted that the number of cases in which fathers are seeking more involvement with their children post-separation has increased dramatically in the past few years.
- When workshop participants were asked what they thought the most predominant reason was for an increase in shared parenting cases, approximately one quarter thought it was due to Federal Child Support Guidelines provisions, one quarter thought it was because fathers are more aware of their options, and one half thought it was because fathers are more involved with their children.
- None of the workshop participants thought that there is a “typical” parenting arrangement.
- Approximately one half of the workshop participants thought that there is a gender bias in the courts, and that the bias is against men. Approximately three quarters thought the problem of gender bias against men was about the same as in the past, about one quarter thought it was getting better, and nobody thought it was getting worse.

- Approximately one half of workshop participants said they have been involved in enforcement applications for access, and almost one fifth of the group said that the denial of access provided for in an agreement or court order occurs in over 25 percent of their cases.
- When parents do not comply with their custody/access orders, survey respondents reported that the most frequent problem is that the access parent was late returning the child.
- Approximately one half of the workshop participants said that parental alienation was a significant problem in their practice.
- Lawyers who responded to the survey reported that very few of their cases involved supervised access (eight percent) or supervised exchange (six percent). Supervised access was most likely to be recommended in cases of child abuse allegations, substance abuse, and mental health concerns. Supervised exchange was most likely to be recommended in cases of high conflict and spousal violence.
- Lawyers who responded to the survey reported that parental relocation was an issue in 12 percent of their cases with children involved. In cases where parental relocation was an issue, the most common reasons were to be with a new partner, to be closer to family/friends, and employment opportunity.
- According to the survey, the most common circumstances in cases of parental relocation were when the custodial parent wished to move within the province/territory and when the custodial parent wished to move to a different province/territory.

#### **4.1.7 Federal Child Support Guidelines**

- Survey respondents overwhelmingly agreed that the Guidelines are meeting their objectives. Almost all respondents agreed or strongly agreed that the Federal Child Support Guidelines have resulted in a better system of determining child support than the pre-1997 system. Similarly, the vast majority of respondents agreed or strongly agreed that cases are settled more quickly since the implementation of the Guidelines; that most cases are resolved simply by relying on the tables to establish amounts of support; and, in cases involving litigation, that the issues to be resolved are more defined and focussed than prior to implementation of the Guidelines.
- Survey respondents reported that very few of their cases (six percent) involved undue hardship applications.
- Over one half of survey respondents said that income disclosure is often or almost always a problem. The most frequent reasons for this were self-employed income, unwillingness to disclose or provide supporting documentation, problems with tax returns, and undisclosed income/cash payments.

- Over one third of survey respondents said that second families are an issue often, and one half said they are an issue occasionally. The most common reasons were that: second families affect the standard of living because there are too many demands on a limited income; they create access problems; and, child support payors with second families often refuse to acknowledge first family obligations.
- Survey respondents identified the most problematic areas of the Guidelines as: section 9—shared custody and the 40 percent rule; section 7—special or extraordinary expenses; children over the age of majority/post-secondary education; and, second families.
- Almost all workshop participants said they had significant problems with the shared custody provision in the Guidelines.

#### **4.1.8 Spousal Support**

- Survey respondents reported that spousal support was an issue in one half of their cases.
- Three quarters of survey respondents said that there is inconsistency in how spousal support applications are handled.
- The circumstances that survey respondents reported occurred often in cases where spousal support is an issue are: claimant spouse is a stay-at-home parent; claimant spouse was a stay-at-home parent to children now grown and is not in the labour force; and, payor's income is considerably higher than claimant spouse's income.
- In cases where both child support and spousal support are issues, almost all survey respondents stated that child support is dealt with first.
- Over three quarters of survey respondents said it would be useful to try to establish non-binding spousal support guidelines.

#### **4.1.9 Family Violence**

- Three quarters of workshop participants said that they were aware of recently proposed amendments to the *Divorce Act* in regard to family violence, but nobody said this proposed legislation had an impact on their practice.
- Three quarters of the workshop participants said that they would like to see legislation that specifically raises domestic violence as a factor in custody and access cases.
- Over three quarters of lawyers who responded to the survey indicated that they always make inquiries to attempt to identify cases of family violence. However, almost all respondents said that they do not use a screening tool to identify cases of family violence.
- Approximately one half of the workshop participants said that false or exaggerated allegations of spousal abuse are a significant problem.

- Almost one half of the workshop participants said that there are significant numbers of women who are being abused, but they are not raising the issue of abuse before the courts.
- About one fifth of the workshop participants said they have had cases with male victims of spousal abuse.
- Approximately one fifth of workshop participants thought that a gender bias against men is a significant problem in the family law system, and one tenth thought that gender bias against women is a significant problem.
- About two thirds of the workshop participants said that there are cultural issues in terms of reporting abuse.
- About four fifths of the workshop participants said that they had been threatened by abusive partners of their clients, and one sixth said that they had been assaulted.
- About one half of the workshop participants said that they do not always raise the issue of family violence with the court.
- In cases involving spousal violence, over one third of the lawyers who responded to the survey indicated that the court rarely addressed the issue. When the court did address the issue, the most likely response was to deny custody to the abusive parent.
- In cases involving child abuse, one half of the lawyers who responded to the survey indicated that the court rarely addressed the issue. When the court did address the issue, the most likely responses were to deny custody to the abusive parent, and to order access supervision.
- Approximately one fifth of the workshop participants said that judges needed significantly more education on the issue of family violence, and one half thought that judges needed to be more aware of the social science literature, in particular about the effects of spousal abuse on children.
- Over one half of survey respondents said that training sessions on spousal violence issues are not available to family justice professionals in their jurisdiction.
- Almost two thirds of survey respondents said that training sessions on child abuse issues are not available to family justice professionals in their jurisdiction.
- About three quarters of the workshop participants said that they needed more training on family violence issues.

## **4.2 CONCLUSIONS**

The purpose of this project was to collect baseline data on the practice of family law in Canada. This project was undertaken in accordance with the Results-based Management and Accountability Framework for the Child-centred Family Justice Strategy of the Department of

Justice Canada. This project provides baseline data on family law practice, as well as information about current views on issues and concerns of family lawyers and judges.

It is anticipated that if this type of project is repeated every two years, it will provide an indication of the success of the Child-centred Family Justice Strategy. Re-administering the Survey on the Practice of Family Law in Canada at regular intervals will provide trend data that will allow for examination of changes over time, as well as allowing for professionals to offer views on policy and law reform issues.

Overall, data from the survey and the workshops indicate that there are many positive aspects of the current family law system in Canada. One of the most positive components identified by project participants is the Federal Child Support Guidelines. It is clear from the responses received that the Guidelines are meeting their stated objectives and that they have resulted in a much fairer determination of child support than the former regime. Over 90% of survey respondents agreed or strongly agreed that the Guidelines have resulted in a better system of determining child support than the pre-1997 system.

Participants indicated strong support for case resolution mechanisms other than the traditional judicial resolution of cases. In fact, participants indicated that only about 14% of their cases are resolved by a judge after a hearing or trial. Mechanisms that respondents indicated as most effective were negotiation between lawyers before trial and settlement conferences.

The vast majority of the lawyers who responded to the survey reported that they found parenting plans were helpful to their clients. One third of the lawyers said they have a form that they use as a guide for parenting plans. Of the respondents who do not have a form, 84% said they would find a form useful.

Participants were also very much in favour of changes in terminology as outlined in the proposed (but not passed) legislative amendments to the *Divorce Act*. Almost all of the workshop participants indicated that they were aware of the provisions in the recently proposed amendments, and about 60% of participants said that these provisions had an impact on their practice. Three quarters of survey respondents thought that legislative changes to replace the terms “custody” and “access” with “parenting order” would promote a less adversarial process.

While project participants identified many positive aspects to the current family law system in Canada, they also highlighted some areas needing improvement. As mentioned above, participants were very supportive of out-of-court mechanisms for settling family law disputes. However, participants also reported that affordable support services were lacking, most notably supervised access, mediation, assessments, and parent education. Survey respondents noted that their clients are generally not well informed about family justice services and issues at the start of their case, which suggests the need for enhanced public legal education initiatives.

Survey respondents identified spousal support as a problematic area in their practice, and three quarters of them indicated that there is inconsistency in how spousal support applications are handled. Over three quarters of the respondents said that it would be useful to try to establish non-binding spousal support guidelines, an initiative that is currently being pursued by the



Department of Justice Canada. Although no questions were asked about family law legal aid, a number of respondents volunteered that this is a major concern.

Another problematic area identified by project participants was family violence. Three quarters of workshop participants said that they would like to see legislation that specifically raises domestic violence as a factor in custody and access cases. Participants indicated that in a significant proportion of their cases involving spousal violence or child abuse, the court rarely addressed the issue. One half of the workshop participants thought that judges needed to be more aware of the social science literature on family violence. Three quarters of the participants also said that they themselves needed more training on family violence issues. Over one half of survey respondents said that training sessions on spousal violence issues are not available in their jurisdiction, and two thirds said that appropriate training sessions on child abuse issues are not available for them in their jurisdiction.

Survey respondents' opinions on Unified Family Courts were somewhat mixed. Just over half of the respondents agreed that Unified Family Courts have positive consequences, while about one quarter disagreed. Over half of the survey respondents who do not have Unified Family Courts in their jurisdiction said they would like to see them established. Survey and workshop participants who noted problems with Unified Family Courts stated that judges sitting in these courts needed family law experience for the system to work efficiently and effectively, raising concerns about the rotation into these courts of judges without appropriate expertise.

Even though project participants were very positive about the Federal Child Support Guidelines, they did identify a few problematic areas. One half of survey respondents said the income disclosure is often or almost always a problem. Other problematic areas include shared custody, special or extraordinary expense, children over the age of majority, and second families.

In conclusion, this project has provided a baseline of information on the characteristics of cases handled by family law lawyers in Canada, as well as legal professionals' opinions on the current family law system. It has identified aspects of the family law system that are working well, and has highlighted areas where improvement is desired. This information will be useful to the Department of Justice Canada as it further develops and implements its Child-centred Family Law Strategy, and interesting for policy makers and others who want to better understand the functioning of Canada's family law justice system.



**APPENDIX A**  
**ADVISORY COMMITTEE MEMBERSHIP**



## **ADVISORY COMMITTEE MEMBERSHIP**

Ms. Lise Lafrenière-Henrie  
Senior Counsel/Coordinator  
Department of Justice Canada  
Ottawa, Ontario  
(representing the Department of Justice Canada)

Ms. Marie Gordon, Q.C.  
Cochard Gordon  
Barristers & Solicitors  
Edmonton, Alberta  
(representing the Canadian Research Institute for Law and the Family)

The Honourable R. James Williams  
Supreme Court of Nova Scotia  
Family Division  
Halifax, Nova Scotia  
(representing the Federation of Law Societies of Canada)



**APPENDIX B**  
**SURVEY ON THE PRACTICE OF FAMILY LAW IN CANADA**





## **SURVEY ON THE PRACTICE OF FAMILY LAW IN CANADA\***

The Canadian Research Institute for Law and the Family is conducting this survey as part of a project funded by the Department of Justice Canada. This survey is intended to obtain current information on the characteristics of cases handled by family law practitioners in Canada, and to obtain information from both lawyers and judges concerning family law issues.

We would appreciate your assistance in completing this survey. Please be assured that your anonymity will be maintained and that responses will not be attributed to individuals.

This project is intended to help increase understanding of areas that should be addressed in law reform. Family law practitioners have important perspectives, and you are encouraged to participate.

As an incentive for participating in this project, if you complete the survey, your name will be entered in a draw for one of several prizes, including: two waivers of the registration fee for the 2006 National Family Law Program; five \$50 gift certificates to Tim Hortons; and five \$50 gift certificates to Chapters. To enter this draw, please complete the entry form attached to this page, remove it from the survey, and drop both the entry form and the completed survey off at the Conference Registration Desk before 5:30 p.m. on Wednesday, July 14, 2004. The draw will be made on Wednesday evening. Entry forms will be destroyed after the draws are made.

Thank you for your cooperation in completing this survey.

\* Ce questionnaire est également disponible en français. Veuillez vous adresser au comptoir des inscriptions.

## SURVEY ON THE PRACTICE OF FAMILY LAW IN CANADA

*Please complete the following questions according to your experience. Where we ask you to specify a proportion of your cases, we realize that you cannot provide an exact figure; an approximation is fine. Where we ask you to estimate a frequency of occurrence, please use the following scale as a guideline: Rarely = 0-10%; Occasionally = 10-50%; Often = 50-90%; Almost Always = 90-100%. If you would like to make additional comments for any question, please use the general comments page on the last page of the survey, and indicate the question to which your comment relates.*

### **1.0 Demographic Information**

- 1.1 In what province(s)/territory do you work? \_\_\_\_\_
- 1.2 What is your profession?  
 Lawyer – private practice  
 Lawyer – government or agency  
 Lawyer – clinic  
 Judge [*Please go to Question 1.7*]  
 Other (please specify) \_\_\_\_\_
- 1.3 If you are a lawyer, how long have you been practicing family law? \_\_\_\_\_ years  
What proportion of your practice involves family law cases? \_\_\_\_\_ %
- 1.4 Is your client base:  
 Mostly large urban (>100,000 population)  
 Mostly small urban (10,000 – 100,000 population)  
 Mostly rural (<10,000 population)  
 Fairly equal mix of urban and rural
- 1.5 Are you registered with a lawyer referral service?  
 Yes     No  
If yes, what proportion of your cases come from a lawyer referral service? \_\_\_\_\_ %
- 1.6 If you are a lawyer, do you also conduct mediation sessions?     Yes     No
- 1.7 In the past five years, have you taken any training, including continuing education courses, on the following family law issues? (Please check all that apply.)  
 Dispute resolution (e.g., mediation)                       Collaborative family law  
 Family violence     Child support guidelines  
 Custody/access     Property division  
 Spousal support  
 Other (please specify) \_\_\_\_\_

## 2.0 Case Characteristics

- 2.1 How many family law cases have you handled in the past year? \_\_\_\_\_
- 2.2 What proportion of these cases involved children? \_\_\_\_\_%
- 2.3 In what proportion of the family law cases that you have handled in the past year was either party funded by legal aid? \_\_\_\_\_%
- 2.4 What proportion of your family law cases with children involved are variations of previous orders/agreements?  
\_\_\_\_\_ % [Judges: Please go to Question 2.8]
- 2.5 How would you classify the majority of your clients?  
 Primarily custodial (or primary care) parents  
 Primarily non-custodial parents  
 Approximately equal proportions of custodial and non-custodial parents
- 2.6 In what proportion of your cases in the past year was the final resolution of the case accomplished in the following ways?
- |   |         |
|---|---------|
| Settled by parents                          | _____ % |
| Settled by mediation                        | _____ % |
| Settled by negotiation before trial         | _____ % |
| Settled by settlement conference            | _____ % |
| Resolved by collaborative family law        | _____ % |
| Decided by a judge after a hearing or trial | _____ % |
- 2.7 In what percent of your family law cases is there an interim order that is, in effect, the final judicial disposition, because the case is thereafter resolved without a trial?  
\_\_\_\_\_ %
- 2.8 In your experience, in a *divorce* case, which of the following issues are most likely to require a trial and judicial decision to be resolved? (Please check all that apply.)  
 Child support                       Custody                                       Access  
 Spousal support                       Property division                       Child support arrears  
 Spousal support arrears
- 2.9 In your experience, in a *variation* case, which of the following issues are most likely to require a trial and judicial decision to be resolved? (Please check all that apply.)  
 Child support                       Custody                                       Access  
 Spousal support                       Child support arrears                       Spousal support arrears  
 Undue hardship                       Parental relocation (mobility)

### 3.0 Services

3.1 How do you keep informed about family justice services (i.e., services available to clients to assist them in family law matters, e.g., counselling, education, mediation etc.)? (Please check all that apply.)

- |   |   |
|---|---|
| <input type="checkbox"/> Colleagues   | <input type="checkbox"/> Local professional seminars            |
| <input type="checkbox"/> National or international conferences                          | <input type="checkbox"/> Professional associations and meetings |
| <input type="checkbox"/> Internet   | <input type="checkbox"/> Newsletters                            |
| <input type="checkbox"/> Provincial/territorial continuing legal education courses      |   |
| <input type="checkbox"/> Professional publications (reporting services, journals, etc.) |   |
| <input type="checkbox"/> Other (please specify) _____                                   |   |

Which of these sources is most helpful to you in keeping informed about family justice services?

\_\_\_\_\_

[Judges: Please go to Question 3.9]

3.2 In general, how well informed are your clients about the following at the outset of their case?

	Very well informed	Somewhat informed	Not at all informed	They are misinformed	N/A
Marriage or relationship counselling	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Individual counselling	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mediation services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Child assessment services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Collaborative family law	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parenting education programs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parenting plans (written document jointly developed by parents)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Psychological effects of divorce on children	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Domestic violence services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Supervised access	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Supervised exchange	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Child support issues	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Family Law Information Centres	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Maintenance enforcement programs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Financial assistance services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Legal Aid services/Duty counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Spousal support issues	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Variation or recalculation services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

3.3 Where do your clients get their information about the above? (Please check all that apply.)

- Friends/family members
- Another lawyer
- Media stories or advertising (e.g., television, radio, newspaper)
- Books
- Internet
- Court services
- Public legal education and information association
- Parenting education programs
- Other (please specify) \_\_\_\_\_

3.4 How often do you inform your clients about or refer your clients to the following?

	Rarely	Occasionally	Often	Almost Always
Marriage or relationship/counselling	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Individual counselling	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mediation services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Child assessment services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Collaborative family law	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parenting plans	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parenting education programs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Domestic violence services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Supervised access	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Supervised exchange	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Maintenance enforcement programs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Financial assistance services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Legal Aid services/Duty counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Variation or recalculation services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

3.5 How willing are your clients to use family justice services?

- Very willing       Somewhat willing       Not willing

For clients who are not willing to access family justice services, what is the biggest obstacle?

- Cost       Time delay       Location of service  
 Lack of trust in service       Other (please specify) \_\_\_\_\_

3.6 To what extent do you think that your cases are more likely to be settled out of court because of the family justice services that are available?

- Not more likely       Somewhat more likely       Much more likely

3.7 Are there services that are not available in your community that you think would be helpful for you and your clients? If so, please specify.

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3.8 Are family justice services available to your clients in their official language of choice?

- Yes       No

3.9 Is there a Unified Family Court in your province/territory?       Yes       No

3.10 To what extent do you agree that Unified Family Courts accomplish the following?

	Strongly agree	Agree	Disagree	Strongly disagree
Simplify procedures	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Provide easy access to various family justice services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Provide timely resolution to family law matters	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Produce outcomes tailored to individual needs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

3.11 If your province/territory does not currently have Unified Family Courts, would you like to see them implemented?

Yes  No

Please explain. \_\_\_\_\_

\_\_\_\_\_

#### 4.0 Best Interest Criteria

Currently, subsection 16(8) of the *Divorce Act* provides that in making a custody order, the court shall take into consideration only the best interests of the child of the marriage as determined by reference to the condition, means, needs, and other circumstances of the child.

4.1 In your experience, are most parenting arrangements that are made through the following processes consistent with the best interests of the child?

	Yes	No
Arrangements made by parents themselves	<input type="checkbox"/>	<input type="checkbox"/>
Arrangements made as a result of mediation	<input type="checkbox"/>	<input type="checkbox"/>
Arrangements negotiated by lawyers (on their own or after judicial conference)	<input type="checkbox"/>	<input type="checkbox"/>
Arrangements that are a result of collaborative family law	<input type="checkbox"/>	<input type="checkbox"/>
Arrangements made by a judge after a trial or hearing	<input type="checkbox"/>	<input type="checkbox"/>

4.2 Does the provincial/territorial legislation in your jurisdiction include specific criteria for determining the best interests of the child?

Yes  No

If yes, do you use these criteria in cases under the *Divorce Act*?

Yes  No If No, why not? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

4.3 In your experience, when parents are aware of the negative effects of separation/divorce on their children, does this awareness affect their behaviour?

Yes  No If no, why not? \_\_\_\_\_

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4.4 In your opinion, are parenting plans (i.e., a detailed written plan jointly developed by parents to address their child's care and needs) a good mechanism for ensuring that the best interests of the child are met?

Yes, in all cases  Yes, in high conflict cases  No

4.5 In what proportion of your cases with children involved are parenting plans used?

\_\_\_\_\_ % [*Judges: Please go to Question 5.1*]

4.6 Do you have a form that you use as a guide for parenting plans?

Yes  No

If no, do you think a guide would be useful?

Yes  No

4.7 In your experience, how helpful are parenting plans to your clients?

Not very helpful  Somewhat helpful  Very helpful

Please explain \_\_\_\_\_

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## 5.0 Child Representation

The United Nations *Convention on the Rights of the Child* asserts the right of the child to participate in decisions that affect his or her life.

5.1 What are the best mechanisms to enable children to voice their views? (Please check all that apply.)

- Judicial interview with child
- Testimony by child
- Assessment report
- Legal representation for child
- Non-legal representation for child
- Legislative provision that parents should consult their children respectfully when making parenting arrangements upon separation
- Other (please specify) \_\_\_\_\_

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5.2 Which of the following factors are important when deciding what weight should be given to the child's views? (Please check all that apply.)

- Age of child
- Ability of child to communicate
- Ability of child to understand the situation
- Child's emotional state
- Child's reasons for views
- Indication of parental coaching/manipulation
- Other (please specify) \_\_\_\_\_

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5.3 How much weight should be given to the preferences of a child regarding custody decisions at the following ages?

	None	Light	Heavy
Under 6 years of age	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6 to 9 years of age	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10 to 13 years of age	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14 years or older	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## 6.0 Custody and Access

6.1 How often do you use terminology other than "custody" and "access" in your *agreements*?

- Rarely                       Occasionally                       Often                       Almost Always

6.2 How often do you use terminology other than "custody" and "access" in your *orders*?

- Rarely                       Occasionally                       Often                       Almost Always



6.3 In your experience, how often are parents sharing decision-making in the following areas?

	Rarely	Occasionally	Often	Almost Always
Health	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Education	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Religion	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cultural	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other (please specify) _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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6.4 If legislative amendments to the *Divorce Act* replace the terms “custody” and “access” with “parenting order,” which includes decision-making responsibilities and parenting time, to what extent do you think this would promote a less adversarial process?

Not at all                       Somewhat                       To a great extent

6.5 When parents do not comply with their custody/access orders, what are the circumstances of the case? Please indicate how often this has occurred in your experience.

	Rarely	Occasionally	Often	Almost Always
Access parent does not exercise access	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Access parent is late returning child	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Custodial parent refuses access for no valid cause	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Custodial parent refuses access for cause (e.g., access parent intoxicated)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Child refuses visit with access parent	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Frequent changes in schedule	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Family violence concerns	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other (please specify) _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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[Judges: Please go to Question 6.10]

6.6 What proportion of your cases with children involved include supervised access?

\_\_\_\_\_ %

6.7 Under what circumstances do you recommend supervised access to your clients? (Please check all that apply.)

- In high conflict situations
  - In situations of spousal violence
  - In situations where there are allegations of child abuse
  - In situations where there is substance abuse
  - In situations where there are mental health concerns
  - I don't recommend supervised access
  - Not available in my jurisdiction
  - Other (please specify) \_\_\_\_\_
- 

6.8 What proportion of your cases with children involved include supervised exchange?  
\_\_\_\_\_ %

6.9 Under what circumstances do you recommend supervised exchange to your clients? (Please check all that apply.)

- In high conflict situations
  - In situations of spousal violence
  - In situations where there are allegations of child abuse
  - In situations where there is substance abuse
  - In situations where there are mental health concerns
  - I don't recommend supervised access
  - Not available in my jurisdiction
  - Other (please specify) \_\_\_\_\_
- 

6.10 In what proportion of your cases with children involved is parental relocation (mobility) an issue?  
\_\_\_\_\_ %

6.11 In cases where parental relocation is an issue, how often are the following reasons given?

	Rarely	Occasionally	Often	Almost Always
Employment opportunity	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Educational opportunity	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
To be closer to family/friends	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
To be with new partner	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
No particular reason	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other (please specify) _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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6.12 In cases where parental relocation is an issue, what are the circumstances? (Please indicate how often each of the following occurs in your experience.)

	Rarely	Occasionally	Often	Almost Always
Custodial parent wishes to move within the city	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Custodial parent wishes to move within the province/territory	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Custodial parent wishes to move to a different province/territory	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Custodial parent wishes to move outside the country	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Access parent wishes to move within the city	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Access parent wishes to move within the province/territory	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Access parent wishes to move to a different province/territory	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Access parent wishes to move outside the country	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other (please specify) _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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## 7.0 Child Support Guidelines

Please express your opinion regarding the following statements.

- 7.1 Overall, the Child Support Guidelines have resulted in a better system of determining child support than the pre-1997 system.  
 Strongly Agree       Agree       Disagree       Strongly Disagree
- 7.2 Cases are settled more quickly since the implementation of the Guidelines.  
 Strongly Agree       Agree       Disagree       Strongly Disagree
- 7.3 Since implementation of the Guidelines, most cases are resolved simply by relying on the Tables to establish amounts of support.  
 Strongly Agree       Agree       Disagree       Strongly Disagree
- 7.4 In cases involving litigation, the issues to be resolved are more defined and focussed than prior to implementation of the Guidelines.  
 Strongly Agree       Agree       Disagree       Strongly Disagree
- 7.5 What proportion of your child support cases involve undue hardship applications?  
 \_\_\_\_\_ %



## 8.0 Spousal Support

8.1 In your experience, in what percent of cases is spousal support an issue?

\_\_\_\_\_ %

8.2 In your experience, is there consistency in how spousal support applications are handled?

Yes       No

8.3 In cases where spousal support is an issue, what are the circumstances of the case? (Based on your experience, how often do each of these occur?)

	Rarely	Occasionally	Often	Almost Always
Claimant spouse is a stay-at-home parent	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Claimant spouse was a stay-at-home parent to children now grown and is not in labour force	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Couple had no children and claimant spouse is not in labour force	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Respondent's income is considerably higher than claimant spouse's income	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Potential payor has income of \$75,000 or more	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trade-off of property in lieu of monetary spousal support	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other (please specify)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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8.4 In cases where both child support and spousal support are issues, which matter is typically dealt with first in most cases?

Child support       Spousal support       Both are resolved together

8.5 Do you think that it is useful to try to establish non-binding spousal support guidelines?

Yes       No

*[Judges: Please go to Question 9.4]*

## 9.0 Family Violence

9.1 Do you make inquiries in every case to attempt to identify cases of family violence?

- Yes  
 No

9.2 Do you use a screening tool (i.e., a standardized questionnaire) to identify cases of family violence?

- Yes If yes, which one(s)? \_\_\_\_\_  
 No

If yes, do you use the screening tool with both women and men?

- Yes  
 No

9.3 Are you familiar with the services available for your clients in cases where there is family violence?

- Yes  
 No  
 No services available in my area

9.4 In cases involving spousal violence, how did the court address the issue? (Please indicate how often this has occurred in your experience.)

	Rarely	Occasionally	Often	Almost Always
Assessment services were used	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Child was given legal representation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Access supervision was ordered	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Exchange supervision was ordered	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Counselling services were used	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parents were educated on the effects of family violence on children	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Access was denied to abusive parent	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Custody was denied to abusive parent	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Court did not address the issue	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other (please specify)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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\_\_\_\_\_

9.5 In these cases involving child abuse, how did the court address the issue? (Please indicate how often this has occurred in your experience.)

	Rarely	Occasionally	Often	Almost Always
Assessment services were used	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Child was given legal representation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Access supervision was ordered	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Exchange supervision was ordered	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Counselling services were used	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parents were educated on the effects of family violence on children	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Access was denied to abusive parent	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Custody was denied to abusive parent	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Court made referral to child welfare agency	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Court did not address the issue	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other (please specify)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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9.6 Are training sessions on *spousal violence issues* available to family justice professionals in your jurisdiction?

Yes       No

If yes, is the available training adequate?

Yes       No

9.7 Are training sessions on *child abuse issues* available to family justice professionals in your jurisdiction?

Yes       No

If yes, is the available training adequate?

Yes       No

