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# Out-of-court dispute resolution for families experiencing separation or divorce in Canada

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*The views expressed in this report are those of the authors  
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## Introduction

### Background to the research

Access to justice can be defined in many ways. The Department of Justice Canada has an internal definition which illustrates the broad nature of the term:

Enabling Canadians to obtain the information and assistance they need to help prevent legal issues from arising and help them to resolve such issues efficiently, affordably, and fairly, either through informal resolution mechanisms, where possible, or the formal justice system, when necessary.

Dispute resolution is the process of resolving disputes between two or more parties. Disputes may be resolved through court (litigation) or through out-of-court mechanisms such as mediation or conciliation.

In the area of family justice, using the courts to resolve disputes upon separation or divorce for such issues as each parent's decision-making responsibilities and time with their children, child and spousal support and division of property has proven to be expensive, lengthy and difficult for the parties. As such, governments have long tried to encourage the use of mediation or conciliation – dispute resolution outside of the courts – to resolve issues.

During the COVID-19 pandemic, access to family courts was limited with only “urgent” matters being heard in most jurisdictions for some time. In July 2020, Federal, Provincial and Territorial (FPT) Deputy Ministers tasked an Ad Hoc Working Group that would look at how the pandemic impacted access to justice in family and poverty law.

The Working Group chose several system-focused and people-focused indicators to best measure access to justice.<sup>1</sup> The first system-focused indicator chosen by the Working Group was the number of cases before the courts in the year preceding the onset of the pandemic (2019/20) and in the years during the pandemic (2020/21 and 2021/22). This indicator, on its own, had challenges. If parties were being discouraged from using the courts due to pandemic restrictions and encouraged to use alternative services to resolve disputes, does this court case indicator 1) demonstrate whether people had access to justice, and 2) demonstrate any change to that access? Hence the need to include another system-focused indicator, “Participation in family justice services”, specifically:

The number of participants who completed family justice services (by type, by year pre- and during COVID-19. Two services are being tracked:

- i. Parent education/information sessions; and
- ii. Government-funded out-of-court/early dispute resolution services (such as mediation or conciliation).

However, it became apparent during the collection of the family justice services numbers from the jurisdictions that there was not necessarily conformity among the services offered by government funded out-of-court dispute resolution services.

To better understand these services, how their outcomes are measured and what success means, a supplementary research project was developed. In 2023 the Department of Justice Canada contracted with Catherine Tait Consulting to research government-funded out-of-court dispute resolution services provided in Canada that assist families experiencing separation and divorce. The purpose of this research is to better understand these programs, with a focus on the following questions:

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<sup>1</sup> See the FPT Working Group's report, *Measuring What Matters* at <https://scics.ca/en/product-produit/measuring-what-matters/>

- 1) What are the mediation or conciliation services/programs offered by provinces and territories to resolve family law issues?
  - a. What do these services look like?
  - b. At what point in court proceedings are they mandated? Or offered, if voluntary?
  - c. How many sessions are provided?
  - d. Who provides them?
  - e. What data are captured about them and who participates? How are these data collected and reported?
  - f. Who funds the services?
- 2) How are outcomes measured? What is a successful outcome? Partially successful outcome?
- 3) Which of these factors are consistent across jurisdictions?

This report outlines the research findings. The two next sections describe the research scope and methodology. This is followed by a summary of the commonalities and differences among programs, focussing on the programs' scope, service delivery model, response to and impacts of the pandemic, other recent changes impacting the programs and their service volumes, success indicators and data collection.

## Research scope

The researcher worked with a project team comprised of members of the FPT Ad Hoc Working Group and officials from the Department of Justice Canada to confirm the scope of programs that would be included, as well as an interview guide. The programs and services researched for this report:

- Offer services related to separation and divorce; some services focus on a single legal issue such as child support, while others address a wider range of issues such as parenting arrangements, guardianship and property division.
- Offer out-of-court dispute resolution services; dispute resolution services may be available before, during or after court proceedings or be unrelated to court proceedings. Dispute resolution services that occur only as a step in an actual court proceeding, for example during a family management or case conference, were not included. In addition, administrative services, such as child support recalculation services, were not included.
- Are publicly funded; the service may be publicly delivered, or the province or territory may contract (and pay for) services provided by private practitioners, or the province or territory may subsidize the cost of private services accessed by parents. Some programs include a contribution from the parties based on their income level (sliding scale user fees). Three legal aid programs identified as providing family dispute resolution services were included.

## Methodology

The process to obtain information on publicly-funded, out-of-court dispute resolution services in Canada began with a document review and internet research to identify services and programs that were potentially within scope. Information available from online sources was recorded in a template for each service, by province and territory. Next, the Department of Justice Canada invited members of the FPT Co-ordinating Committee of Senior Officials – Family (CCSO)<sup>2</sup> to identify key informants to be interviewed regarding programs and services in their jurisdiction.

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<sup>2</sup> This committee is composed of senior officials in Canada's federal, provincial, and territorial governments who have responsibility for family law matters.

A total of 16 programs in 11 of Canada’s 13 jurisdictions were identified as being in-scope and included in this research. New Brunswick confirmed there are no publicly-funded, out-of-court dispute resolution services provided in that province. The researcher was unable to establish contact with a representative from Nunavut. are:

**Table 1. The programs included in this research**

British Columbia	<ul style="list-style-type: none"> <li>Family Justice Services Division’s Family Dispute Resolution</li> </ul>
Alberta	<ul style="list-style-type: none"> <li>Family Mediation; King’s Bench Child Support Resolution Program</li> <li>Family Court Assistance</li> </ul>
Saskatchewan	<ul style="list-style-type: none"> <li>Dispute Resolution Office Family Mediation Program</li> <li>Legal Aid Saskatchewan Family Mediation</li> </ul>
Manitoba	<ul style="list-style-type: none"> <li>Family Resolution Services</li> <li>Legal Aid Manitoba Collaborative Law</li> </ul>
Ontario	<ul style="list-style-type: none"> <li>Family Mediation and Information Services</li> <li>Legal Aid Ontario</li> </ul>
Québec	<ul style="list-style-type: none"> <li>Service de médiation familiale</li> </ul>
Nova Scotia	<ul style="list-style-type: none"> <li>Conciliation through Supreme Court</li> </ul>
Prince Edward Island	<ul style="list-style-type: none"> <li>Child Focused Parenting Plan Mediation</li> <li>Child Support Services Office</li> </ul>
Newfoundland and Labrador	<ul style="list-style-type: none"> <li>Family Justice Services</li> </ul>
Yukon	<ul style="list-style-type: none"> <li>Yukon Family Mediation Service</li> </ul>
Northwest Territories	<ul style="list-style-type: none"> <li>Family Law Mediation Program</li> </ul>

The researcher arranged to conduct structured key informant interviews using Microsoft Teams. The interviews focused on confirming the initial internet research results for each program and discussing additional questions. After the interview, the researcher provided a draft version of the combined internet research and interview to interviewees so that the information could be reviewed for accuracy. Fourteen interviews were conducted with representatives of jurisdictions and legal aid programs. A staff member of the Department of Justice Canada conducted the interview with the representative of Québec in French on behalf of the researcher.

**Summary of program features**

Family dispute resolution services and programs in Canada vary in several ways. The next sections summarize the key commonalities and differences among these programs. A comparison table that provides a high-level summary of key elements is provided in Appendix A. **A supplementary document that provides more detailed information for each program or service that was collected through the interview process is available on request ([rsd.drs@justice.gc.ca](mailto:rsd.drs@justice.gc.ca)).**

Note that varying levels of detail were provided during the interview process; this report presents results of the key commonalities and differences between services but has not attempted to document all detailed differences that may exist.



## Program scope

A key aspect that impacts the access to justice provided by dispute resolution programs is their scope: who is eligible for service, the legal issues covered, and their geographic coverage.

### Client eligibility

- Many programs are available to separating couples whether or not they have issues related to dependent children, however, six only serve parties who have a dependent child or child-related issues. Two programs are only available to parents with child support issues.
- All programs serve parents, and six also serve grandparents and/or others who are seeking guardianship of a child with respect to a divorce or separation.
- Programs offered by legal aid agencies require that one or both parties be financially eligible for legal aid.<sup>3</sup> Alberta's Family Mediation program requires that one parent have a gross annual income of less than \$60,000.
- Three programs are only available to parties involved in a court action, while most accept clients who do not have an active court case. Alberta's Family Court Assistance is available only to self-represented litigants.
- Three programs require that at least one party reside in the program's province or territory.

### Issues covered

- Most programs assist their clients to resolve key parenting issues (e.g., parental responsibilities and decision-making, parenting plans) and guardianship.
- Most programs assist with child support; one program only addresses child support issues (Prince Edward Island's Child Support Services Office).
- Most programs also address spousal support; four do not. Alberta's King's Bench Child Support Resolution Program addresses spousal support if the family also has a child support issue.
- Property division is addressed by five programs. Six other programs address minor property division or property division in a limited range of circumstances.

### Geographic coverage

Nearly all programs offer services province- or territory-wide. Exceptions are:

- Alberta King's Bench Child Support Resolution Program is available only in Calgary and Edmonton
- Ontario's Family Mediation Service has mediators in 45 sites that serve surrounding areas
- Legal Aid Ontario offers mediation in 11 sites

## Service delivery models

The service delivery models of the programs vary in the range of services provided, who provides services to parties, and the limits (usually the number of hours) to the service provided. Other aspects include the language and modes of service available, and whether user fees are in place.

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<sup>3</sup> On-site mediation offered by Legal Aid Ontario in Milton for individuals who are in court does not have a financial eligibility requirement.

## Services provided, who provides the service, limits to the service

- **Screening:** Most programs and services provide an intake or initial meeting where the parties are screened for family violence issues. In Quebec, the Comité des organismes accréditeurs en médiation familiale (COAMF)'s Practice Standards Guide requires that mediators know two appropriate tools or means to recognize domestic violence.
- **Dispute resolution services provided:** Most programs provide mediation as the dispute resolution process; eight programs also provide shuttle mediation<sup>4</sup> where it is not appropriate for parties to participate in mediation together. The Nova Scotia Supreme Court Conciliation program and the Alberta Family Court Assistance program provide negotiation rather than mediation. The Alberta King's Bench Child Support Resolution program provides a joint dispute resolution meeting. Prince Edward Island's Child Support Services Office can work with parties separately in an attempt to have them enter into a consent agreement.
- **Documentation of results:** Most programs will draft consent orders, written agreements, a summary of the agreement, report to the court or Memoranda of Understanding to document agreements reached through dispute resolution.
- **Service providers:** Many programs employ mediators or lawyers to provide dispute resolution services, while two contract with external providers and four use a mix of employees and contracted service providers. Staff of Alberta's Family Court Assistance program are primarily social workers. Québec Family Mediation program maintains a roster of accredited mediators and pays their invoices for service according to fee rates set by regulation but does not employ or contract with them directly. Nova Scotia's Conciliation<sup>5</sup> through Supreme Court conciliators are court officers with a legal, social work or psychology background. Prince Edward Island's Child Support Services Office staff have a degree in social sciences, business administration or a related field and experience drafting court documents.
- **Limits to service:** Programs differ in the number of dispute resolution service hours they will provide. Several programs have no formal limits, but staff may have the discretion to discontinue the service if progress is not being made. Others do limit dispute resolution hours, three programs provided a range of 1.5 to 5 hours of service and three provided between 9 to 12 hours. Often where there are time limits, there is some discretion to extend hours if progress is being made. Other service standards and service limits include:
  - Manitoba's Family Resolution Service has a best practice service standard to complete comprehensive co-mediation within 8-10 hours, or mediation<sup>6</sup> within 6-10 hours, but does not have a limit to service hours per se.
  - Ontario Family Mediation and Information Services provides two hours of free on-site service; if an agreement has not been reached within two hours, the parties can choose to continue by way of off-site mediation, paying fees based on income and number of dependents.

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<sup>4</sup> Shuttle mediation occurs where the parties are in separate rooms or locations during the mediation. The mediator goes back and forth, or shuttles, between the parties.

<sup>5</sup> Family Law Nova Scotia describes conciliation as helping parties to negotiate a settlement without going to court (<https://www.nsfamilylaw.ca/programs-services/court-based-adr-conciliation>, accessed October 23, 2023).

<sup>6</sup> Comprehensive co-mediation is done by a family law lawyer who is also a trained lawyer-mediator and is able to mediate on parenting time and decision-making responsibility as well as child support/special and extraordinary expenses, spousal support and property division including pension benefits. Mediation is done by a family mediator with a social work background and can only mediate on parenting time and decision-making responsibility.

- Legal Aid Manitoba’s fixed rate tariff provides between 3.1 and 42 hours for all dispute resolution and legal services required for a case; extensions may be granted in limited circumstances.
- Newfoundland and Labrador’s Family Justice Services has a service standard to complete service within 60 to 90 days from inception.
- Yukon’s Family Mediation Service has an expectation that files will be completed within three to six months.

#### Language and modes of service

- Most programs provide service in English. Accredited family mediators in Québec provide services in French, but many of them offer services in English as well as other languages. Five programs provide service in both English and French.
- Most programs either pay for interpreters for other languages or allow parties to bring their own interpreter.
- Most programs are provided in-person, by telephone and by video. Legal Aid Saskatchewan provides service primarily by video, with in-person or telephone service provided as an exception only. Nova Scotia’s Conciliation through Supreme Court provides service by telephone only. Prince Edward Island’s Child Focused Parenting Plan Mediation is primarily offered in-person; however, it can also be made available via telephone or video.

#### User fees

Most programs and services do not charge user fees. Exceptions are:

- Saskatchewan’s Dispute Resolution Office Family Mediation Program charges fees on a sliding scale based on income. Fees range from a flat fee of \$200 to \$1,700 for the first joint mediation session and a flat fee of \$100 to \$850 for subsequent sessions. The applicable fee is calculated based on the parties’ joint family income and split between the parties either proportionately or as they might agree to split otherwise. Fees can be waived or reduced if the fee is hindering access to the service.<sup>7</sup>
- Ontario’s Family Mediation and Information Service provides two hours of free mediation at the courthouse on the day of the court hearing; if parties opt for off-site mediation and/or additional hours of service, a sliding scale fee based on family income and number of dependents applies.<sup>8</sup> Subsidized fees range from \$5 to \$105 per hour.
- Québec’s Family Mediation Program covers the fees of accredited family mediators for the number of free hours provided for in the Family Mediation Regulation<sup>9</sup>; however, if they wish to continue mediation parents must pay the mediator for any additional hours at the rate provided for in the regulation. The program also allows mediators to charge an administration fee. The program does not pay mediator fees to modify an existing agreement for couples without children.

<sup>7</sup> *The Dispute Resolution Fees Regulations*, The Justice and Attorney General Act, Chapter J-4.3 Reg 1, October 1, 2019

<sup>8</sup> At higher income levels fees are to be negotiated. The schedule of fees can be found at: <https://www.ontario.ca/page/family-mediation-service-providers>

<sup>9</sup> C-25.01, r. 0.7 - Regulation respecting family mediation ([gouv.qc.ca](http://gouv.qc.ca))

## Connection to the court process

Many publicly-funded out-of-court dispute resolution programs provide service to parents who are not engaged in a court action (“voluntary” participation), though some do limit eligibility for service to those who are court-involved (see client eligibility above). In addition, some jurisdictions require participation in dispute resolution as a condition for accessing the court process; these requirements are usually set out in court rules or statutes. Often, both voluntary services and court mandated services are provided by the same program. Jurisdictions that require dispute resolution prior to or during the court process include:

- **British Columbia:** In two provincial court Early Resolution Registries, parties must complete a needs assessment and at least one consensual dispute resolution session unless exempt or where not appropriate, prior to making a court application. In three provincial court Family Justice Registries, parties must complete a needs assessment prior to their matter being scheduled for a first appearance. Family Justice Services Division provides assessment and consensual dispute resolution services, though parents may access private mediation to fulfill the Early Resolution Registry consensual dispute resolution requirement.
- **Alberta:** In most cases, prior to filing a court application that includes a request for child support or child support variation, parties are directed to attend a meeting with the King’s Bench Child Support Resolution program. Participation in the Family Court Assistance program is required in the provincial Calgary, Edmonton and Grande Prairie Courts of Justice (for self represented litigants only).
- **Saskatchewan:** Parties with family law matters that come to court in all judicial centres in Saskatchewan are required to attempt a family dispute resolution process at the close of pleadings before they may continue with any further court proceedings. As well, judges have the discretion to order families whose conflict continues to escalate to a minimum number of mandated dispute resolution sessions.
- **Manitoba:** In the Court of King’s Bench Family Division, parties must have met and attempted to resolve the issues in dispute before going to a Triage Conference at court unless a court order prohibits contact or communication between the parties. Some examples of dispute resolution are mediation, settlement meetings, or a four-way meeting between parties and their lawyers. The Manitoba Family Resolution Service provides comprehensive co-mediation and family mediation, and Manitoba Legal Aid provides four-way meetings.
- **Ontario:** Court action is not required to access the services; however, on-site mediation is a free mediation service available to parties on the day their matter is scheduled for court and off-site mediation is available at any time for a fee.
- **Nova Scotia:** In the Halifax and Cape Breton Supreme Courts, conciliation is a mandatory process for certain types of applications - often those dealing with child decision-making responsibility and parenting time or contact time, child support, and sometimes spousal support. In other locations, cases may be directed to the service.

While not required, participation in dispute resolution is strongly encouraged by Newfoundland and Labrador’s courts where there is the expectation that parties will attempt mediation where safe to do so. In Prince Edward Island, judges may order self-represented parties to work with the Child Support Services Office, but participation is not otherwise mandatory.

## COVID-19 pandemic response and other changes to programs

This section outlines how programs responded to the COVID-19 pandemic and the impact that the pandemic had on service volumes, clients, issues, and service outcomes. It also outlines other recent changes that have either impacted programs directly or changed their operating environment in significant ways.

### Pandemic response and impacts

In response to the COVID-19 pandemic, programs quickly changed their modes of delivery. Some impacts on service volumes were noted, and new legal issues emerged for some families. Service outcomes were largely unchanged for most programs.

- **Mode of delivery:** Six dispute resolution programs began to offer services virtually by telephone and/or video conference. Eight were already providing some services virtually and these quickly transitioned to provide all their services that way. An exception was Prince Edward Island's Child Focused Parenting Plan Mediation, which stopped all service between March and September 2020; after that, in-person service resumed with social distancing or with parents in separate rooms.
- **Service volumes:** Most programs experienced a decrease in service volumes during the pandemic. Some programs noted that court closures resulted in decreased demand for dispute resolution services. Others were unsure whether decreased demand was entirely attributable to the pandemic and some suggested that other factors may have been at play. For example, Alberta's Family Mediation program had not adjusted its income thresholds for some years, resulting in fewer clients being eligible over time. Saskatchewan noted that recent increases in service volumes are likely more attributable to new court requirements to participate in dispute resolution than to the end of the pandemic. Similarly, Ontario suggested that recent increases in demand may have been at least partially the result of new *Divorce Act* amendments that encourage the use of dispute resolution. Yukon's Family Mediation Service experienced staff turnover during this period, which impacted service volumes.
- **Client types:** Nova Scotia's Conciliation through Supreme Court experienced an initial increase in the proportion of its clients that were self-represented, as it was more difficult to obtain counsel during the pandemic. No other program noted changes to the types of clients served.
- **Client issues:** Several programs indicated that the pandemic raised new issues for clients, particularly decision-making regarding vaccinations; four mentioned parenting time or travel during pandemic restrictions and/or decisions regarding return to in-school learning. Five noted that the pandemic created economic stresses resulting in increased demand for changes to child support or separated couples continuing to live together because of difficulty finding accommodation and high housing costs. Five noted increases in the number of family violence issues, high conflict cases or cases with complex issues.
- **Dispute resolution outcomes:** Most programs did not observe significant changes in resolution rates, though at least two did experience some decreased levels of success. Three programs noted that higher levels of conflict or anxiety made settlements more challenging to achieve, but that overall success rates remained unchanged. One program indicated that some parents were more likely to reach an agreement during the pandemic (e.g., more likely to agree to child support with limited disclosure to ensure that they could get some child support in place).

## Non-pandemic changes

Those interviewed were asked whether there were changes that impacted their program or service in the past five years aside from the pandemic. Nearly all programs indicated that some changes had occurred. Changes included new legislation or court rules regarding dispute resolution requirements or the expansion of, or reorganization of, the programs themselves or related family justice programs. These changes make isolating the impacts of the pandemic more challenging. Changes include:

- **British Columbia:** Changes to the Provincial Court Family Rules introduced new requirements for needs assessment (through BC Family Justice Services Division) and dispute resolution (where appropriate) in two large registries in 2019 and 2020. Further Rules changes in 2021 changed forms and some court processes province-wide.
- **Alberta:** The Family Mediation Program's income threshold for client eligibility increased from \$40,000 to \$60,000 in 2023, increasing the number of families eligible for service. The King's Bench Child Support Resolution Program was created as a single program in 2022 operating in two sites; prior to this, it operated as separate programs in each of the two locations.
- **Saskatchewan:** Legislative amendments to the King's Bench Act<sup>10</sup> that set out the family dispute resolution requirements for court cases came into force in early 2020. The new requirements initially applied only in Prince Albert, but now apply province-wide. Legal Aid Saskatchewan's mediation program did not exist prior to the introduction of this requirement.
- **Manitoba:** In February 2019, the Court of King's Bench Family Division instituted a new model for scheduling and case flow of Family Division matters that aimed to resolve cases at the earliest point possible while encouraging out-of-court resolution. Family Resolution Services launched in June 2020, consolidating and enhancing all provincial out-of-court resolution services. Income thresholds for Legal Aid Manitoba increased with more families with property issues becoming eligible for service.
- **Legal Aid Ontario (LAO):** Prior to 2019 LAO served clients who were likely to qualify for an LAO certificate even though they did not necessarily have one. Independent Legal Advice (ILA) Certificates (6 hours) could also be provided to clients. In 2019, LAO service became limited to matters where at least one party had a Legal Aid Certificate<sup>11</sup> and ILA certificates were eliminated across the province.
- **Québec:** The Family Mediation Service expanded the range of clients served by including couples without dependent children, first on a pilot basis starting on February 18, 2021, and then on a permanent basis from June 30, 2022.
- **Nova Scotia:** Nova Scotia now has Unified Family Court province-wide. At the start of the pandemic, the Nova Scotia Supreme Court was assuming responsibility incrementally in counties<sup>12</sup> outside Halifax and Cape Breton Island. Transition for the entire province was complete as of January 1, 2022.
- **Newfoundland and Labrador:** Family Justice Services implemented a new Voice of the Child Report service. The service was implemented in the last two to three years in response to the *Divorce Act* amendments regarding consideration of a child's views and preferences in divorce proceedings.
- **Prince Edward Island:** The Family Law Navigator role was introduced in November 2022. This is a new position that addresses gaps between parties and services within the Family Court Counsellors' Office. The Navigator helps parties sort out the best services for them based on their current family issues. The

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<sup>10</sup> See s. 7.4 in <https://pubsaskdev.blob.core.windows.net/pubsask-prod/140469/Chap-28-2023.pdf>

<sup>11</sup> A legal aid certificate is not required for the on-site mediation services that LAO is providing at the Milton courthouse.

<sup>12</sup> <https://www.courts.ns.ca/resources/notices/update-transition-unified-family-court>

Navigator tracks the family to see where they are at, determines why they did not access a service, helps them with registering for services and follows through with them as they take part in a service. The Supervised Parenting Time and Exchange Program (SPTEP) was transferred to the Department of Justice and Public Safety in late 2018. Originally, SPTEP was only accessible through court orders, but as of January 2023 more sources, including mediators, are able to refer families to SPTEP.

- **Yukon:** The Family Mediation Service transitioned from a pilot project to a continuing program in 2022. The service employed a number of different mediators during the past two years with some differences in practice among them especially with respect to coaching.
- **Northwest Territories:** One mediator is piloting an approach that is intended to better preserve the parents' relationship and give them communication and other skills to use after separation.

In addition to changes that occurred in specific jurisdictions, recent amendments to Canada's *Divorce Act*<sup>13</sup> included a new duty for parties to a divorce proceeding to try to resolve matters through a family dispute resolution process, to the extent that it is appropriate to do so. This amendment came into force on July 1, 2020.

## Service metrics

This section focuses on service volume and service outcome metrics, as well as data collection, reporting and the potential for conducting further research on Canada's out-of-court dispute resolution services.

### Service volumes

The out-of-court dispute resolution services researched vary significantly in their service volumes. They also vary on how volumes are tracked with some capturing the number of individuals participating in dispute resolution, others capturing the number of families or couples involved, and others tracking the number of dispute resolution sessions, legal aid certificates or files. Other subtle differences exist, such as tracking files that were assigned to a mediator versus files where at least one joint session occurred. These definition differences aside:<sup>14</sup>

- Four programs had volumes less than 100 individuals, families, sessions or files per year.
- Four programs had volumes between 100 and 600 individuals, families, sessions or files per year.
- Two programs had volumes between 600 and 1,000 individuals, families, sessions or files per year.
- Three programs had volumes between 1,000 and 5,000 individuals, families, sessions or files per year.
- Two programs reported volumes of over 15,000<sup>15</sup> individuals, families, sessions or files per year.

### Other data collection

Beyond service volume data, three programs collect additional information about clients themselves (e.g., names, date of birth, contact information, child information, location, legal representation), three collect information regarding services provided (e.g., dispute resolution activities, hours of service, location of service, issues addressed, reasons that dispute resolution was not provided), and most captured some service outcome information (see below). Seven collected court related data such as the number of court applications filed or

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<sup>13</sup> <https://laws-lois.justice.gc.ca/eng/acts/d-3.4/page-2.html#h-1285546> s. 7.3

<sup>14</sup> Most reported volumes for 2022/23, one estimated volumes for 2023/24 and others provided an approximate annual average volume. The intent of the interview question was to obtain high-level information regarding service volumes rather than precise data. Information regarding service volumes was not provided by two programs.

<sup>15</sup> None reported volumes between 5,000 and 15,000.



referred to the program, court stage when mediation was completed, or numbers proceeding to court. Seven administer client feedback surveys.

Most programs record information in a case or client management system; however, four programs use a spreadsheet, and one compiles information into a document.

## Service outcomes

Most programs define success in terms of the issues resolved through dispute resolution:

- Most programs record the numbers of cases resolved (all issues resolved), partially resolved (some issues resolved, some not resolved) or not resolved (no issues resolved), with some variation in terminology (e.g., “settled” versus “resolved” versus “agreement”<sup>16</sup>).
- Four programs track other outcome categories in addition to degrees of resolution, such as “reached agreement within allocated number of sessions” or “reached agreement with additional hours,” number of files “closed at intake,” “unable to provide dispute resolution,” “draft MOU,” or “unknown.”
- Three programs simply capture a single outcome such as “cases that resulted in a consent order” or an outcome that does not reflect issue resolution at all, such as cases that were either “closed” or “withdrawn.”
- One legal aid program records the number of matters resolved by mediation versus those resolved at trial. Another legal aid program records the resolution of each individual issue within each case, but for the case as a whole, only records whether the case is “completed” or “not completed.”

## Reporting

Nearly all programs report service data internally and/or to key internal stakeholders. Some information may appear in Ministry estimates, or in Ministry or Legal Aid annual reports, but otherwise data is not generally made public.

## Potential sharing of anonymized data

Those interviewed were asked whether their program would be willing to share anonymized data with Justice Canada for research purposes. There was a general willingness to participate or to consider participation:

- Three programs indicated willingness to share program data, and most said that they would be potentially willing to share data, subject to a specific research request, a review of the privacy implications, and/or an approval process.
- Two programs said that only summary level statistics could be provided.
- Three programs indicated that there are data limitations or capacity issues that could limit their participation.
- Two jurisdictions noted that some data is already provided to Justice Canada under the terms of their Canadian Family Justice Fund agreement.

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<sup>16</sup> Most did not offer a definition of the terms they use, though some specified that “resolved” means that a written agreement or consent order was made.



## Conclusion regarding research potential

Researchers considering undertaking cross-jurisdictional projects about Canada's out-of-court family dispute resolution services face a number of data issues. Some commonalities between programs do exist; most address a range of child-related issues, have similar success measures and pivoted to providing (more) services virtually during the pandemic. However, this project has also demonstrated that programs vary in the scope of clients served, the range of non-child related issues addressed, length of services provided, fees charged (or not), and connection to the court process. They record data using different units of measurement (e.g., families versus files) and record information at different levels of granularity. These factors make comparing service data between jurisdictions more challenging. Even comparing more "people-focused" data (such as client survey results) that speak more directly to clients' experiences in accessing to justice would need to consider the differences between programs that impact that access, such geographic scope of service, client eligibility criteria, range of issues addressed and user fees. As always, when conducting research into client experiences regarding access to justice obtaining the views of those who faced barriers and therefore did not access services is very difficult because they are not included in program service records that contain contact information.

Even within jurisdictions, analysis of trends over time would be complicated by the changing circumstances that programs have experienced. For example, research on the impact of the pandemic on access to justice would need to consider service changes that occurred as a result of the pandemic and other program design or context changes that occurred during the same time period. These other service design and context changes would make the attribution of changes in service volumes or success rates to the pandemic alone more difficult. Nonetheless, there is a general willingness to consider participation in research projects and to potentially share collected data.

## Appendix A: Key program features by jurisdiction and program

Table 1a. Key program features by jurisdiction and program: British Columbia and Alberta

	British Columbia		Alberta	
Program	Family Justice Dispute Resolution	Family Mediation	King's Bench Child Support Resolution Program	Family Court Assistance
<b>Eligibility: Must have child-related issues and/or dependent child</b>	No	Yes	Must have a child support issue	Yes
<b>Eligibility: Low income</b>	No	Yes	No	No
<b>Eligibility: Other</b>	No	No	No	Self-represented litigants only
<b>Locations: Province/territory wide</b>	Yes	Yes	No	No
<b>Locations: Specific sites</b>			Calgary, Edmonton	11 court locations and surrounding areas
<b>Language(s)</b>	English; interpreters for other languages	English; interpreters may be used but are not provided by the program	English; interpreters may be used but are not provided by the program	English; interpreters for other languages
<b>Issues: Child issues<sup>i</sup></b>	Yes	Yes	Child support	Yes
<b>Issues: Spousal support</b>	Yes	Yes	If accompanied by child support	No
<b>Issues: Property division</b>	No	Some property matters	No	No

<sup>i</sup> Child support, parenting responsibilities, guardianship, parenting plans

Table 1b. Key program features by jurisdiction and program: British Columbia and Alberta, continued

	British Columbia	Alberta		
Program	Family Justice Dispute Resolution	Family Mediation	King’s Bench Child Support Resolution Program	Family Court Assistance
User fees	No	No	No	No
Service limits: Hours <sup>ii</sup>	No limits	No limits	One 60-90 minute joint dispute resolution meeting	No limits
Modes of delivery	In-person, telephone, video	In-person, telephone, video	In-person, telephone, video	In-person, telephone, video
Court requirement <sup>iii</sup>	In Victoria and Surrey, parties must complete an assessment and at least one consensual dispute resolution session unless exempt or where not appropriate, prior to making a court application; in Kelowna and Nanaimo, parties must complete a needs assessment prior to matter being scheduled for a first appearance	Court of King’s Bench Rules state that the parties’ responsibility to manage their dispute includes good faith participation in a dispute resolution process	Child support cases in Court of King’s Bench may be directed to participate.	Required in Calgary, Edmonton and Grande Prairie at the Court of Justice (provincial); will be mandatory at both court levels in Calgary and Edmonton by March 2024

<sup>ii</sup> Where hours of service are limited, several programs allow some discretion to provide additional hours if progress is being made.

<sup>iii</sup> Where court requirements exist, exemptions on various grounds are also available.

Table 2a. Key program features by jurisdiction and program: Saskatchewan and Manitoba

	Saskatchewan		Manitoba	
Program	Dispute Resolution Office Family Mediation Program	Legal Aid Saskatchewan	Family Resolution Services	Legal Aid Manitoba
<b>Eligibility: Must have child-related issues and/or dependent child</b>	No	No	No	No
<b>Eligibility: Low income</b>	No	One party must qualify financially for legal aid	No	Must be financially eligible for legal aid
<b>Eligibility: Other</b>	No	No	No	No
<b>Locations: Province/territory wide</b>	Yes	Yes	Yes	Yes
<b>Locations: Specific sites</b>			In-person service in 4 sites	
<b>Language(s)</b>	English; interpreters for other languages	English; interpreters for other languages	English and French; interpreters for other languages	English; interpreters for other languages
<b>Issues: Child issues<sup>i</sup></b>	Yes	Yes	Yes	Yes
<b>Issues: Spousal support</b>	Yes	Yes	Yes	Yes
<b>Issues: Property division</b>	Yes	No	Yes	Some property matters

<sup>i</sup> Child support, parenting responsibilities, guardianship, parenting plans

Table 2b. Key program features by jurisdiction and program: Saskatchewan and Manitoba, continued

	Saskatchewan		Manitoba	
Program	Dispute Resolution Office Family Mediation Program	Legal Aid Saskatchewan	Family Resolution Services	Legal Aid Manitoba
User fees	Sliding scale fees except when ordered to attend High Conflict sessions by a judge	No	No	Legal Aid application fee of \$25; can be waived in certain situations
Service limits: Hours <sup>ii</sup>	No limits	1 hour pre-mediation meeting per party and up to 5 hours joint sessions	No limits	Tariff provides up to 42 hours of legal service
Modes of delivery	In-person, telephone, video	Video; telephone or in person only by exception	In-person, telephone, video	In-person, telephone, video
Court requirement <sup>iii</sup>	Family law matters that come to court are required to attempt a family dispute resolution process at the close of pleadings before they may continue with any further court proceedings <sup>iv</sup>	Family law matters that come to court are required to attempt a family dispute resolution process at the close of pleadings before they may continue with any further court proceedings <sup>iv</sup>	The Court of King’s Bench Family Division scheduling model aims to resolve cases at the earliest point possible. If issues cannot be settled, parties must complete prerequisites, including out of court resolution, prior to obtaining a hearing date before a judge	The Court of King’s Bench Family Division scheduling model aims to resolve cases at the earliest point possible. If issues cannot be settled, parties must complete prerequisites, including out of court resolution, prior to obtaining a hearing date before a judge

<sup>ii</sup> Where hours of service are limited, several programs allow some discretion to provide additional hours if progress is being made.

<sup>iii</sup> Where court requirements exist, exemptions on various grounds are also available.

<sup>iv</sup> Effective July 1, 2022

Table 3a. Key program features by jurisdiction and program: Ontario, Quebec and Nova Scotia

	Ontario		Quebec	Nova Scotia
Program	Family Mediation Services	Legal Aid Ontario	Service de médiation familiale	Conciliation through Supreme Court
<b>Eligibility: Must have child-related issues and/or dependent child</b>	No	No	No	No
<b>Eligibility: Low income</b>	No	One party must qualify for legal aid <sup>ii</sup>	No	No
<b>Eligibility: Other</b>	All parties must agree to mediation and a mediator	One party must have a legal aid certificate; both parties must have counsel <sup>iii</sup>	No	Must have a Supreme Court family action or application
<b>Locations: Province/territory wide</b>	Yes	No	Yes	Yes
<b>Locations: Specific sites</b>	45 sites and surrounding areas	Central West and East Regions only		
<b>Language(s)</b>	English and French; some mediators offer services in other languages or chose to hire an interpreter	English, French also in the East Region; interpreters for other languages	French; many mediators offer service in English and other languages	English; some conciliators can use French. Parties can bring an interpreter
<b>Issues: Child issues<sup>i</sup></b>	Yes	Yes	Yes	Yes
<b>Issues: Spousal support</b>	Yes	In East Region only	Yes	Sometimes
<b>Issues: Property division</b>	Yes	In East Region only	Yes	No

<sup>i</sup> Child support, parenting responsibilities, guardianship, parenting plans

<sup>ii</sup> With the exception that anyone with an active court file can access on-site mediation services provided at the Milton courthouse

<sup>iii</sup> Does not apply in Peel Family Law Services and Dufferin County

Table 3b. Key program features by jurisdiction and program: Ontario, Quebec and Nova Scotia, continued

	Ontario		Quebec	Nova Scotia
Program	Family Mediation Services	Legal Aid Ontario	Service de médiation familiale	Conciliation through Supreme Court
<b>User fees</b>	Free for on-site mediation at courthouse; sliding scale fees for off-site meditation	No fee for mediation	Free hours up to the maximum hours of service provided for in the Family Mediation Regulation; excludes mediator administration fees and additional hours to reach an agreement; service does not pay fees to modify an existing agreement for couples without dependent children	No
<b>Service limits: Hours<sup>iv</sup></b>	On-site mediation provides 2 hours free of charge	No information	Parents: 5 hours for an initial request and 2.5 hours for a review request; couples without dependent children <sup>vi</sup> : 3 hours	No limits
<b>Modes of delivery</b>	In-person, virtual	In-person, virtual	In-person, telephone, video	In-person, telephone
<b>Court requirement<sup>v</sup></b>	No court requirement	No court requirement	No court requirement	Mandatory in Halifax and Cape Breton if directed following the triage process

<sup>iv</sup> Where hours of service are limited, several programs allow some discretion to provide additional hours if progress is being made.

<sup>v</sup> Where court requirements exist, exemptions on various grounds are also available.

<sup>vi</sup> Effective June 30, 2022



Table 4a. Key program features by jurisdiction and program: Prince Edward Island and Newfoundland and Labrador

	Prince Edward Island		Newfoundland and Labrador
Program	Child Focused Parenting Plan Mediation	Child Support Services Office	Family Justice Services
<b>Eligibility: Must have child-related issues and/or dependent child</b>	Yes	Yes	Yes
<b>Eligibility: Low income</b>	No	No	No
<b>Eligibility: Other</b>	No	Self-represented litigants	At least one party must reside in the province
<b>Locations: Province/territory wide</b>	Yes	Yes	Yes
<b>Locations: Specific sites</b>			In-person services available in nine sites
<b>Language(s)</b>	English; interpreters for other languages	English; interpreters for other languages	English and French; client is required to provide an interpreter for other languages
<b>Issues: Child issues<sup>i</sup></b>	Yes, excludes child support	Child support and special expenses only	Yes
<b>Issues: Spousal support</b>	No	No	No
<b>Issues: Property division</b>	No	No	No

<sup>i</sup> Child support, parenting responsibilities, guardianship, parenting plans

Table 4b. Key program features by jurisdiction and program: Prince Edward Island and Newfoundland and Labrador, continued

	Prince Edward Island		Newfoundland and Labrador
Program	Child Focused Parenting Plan Mediation	Child Support Services Office	Family Justice Services
User fees	No	No	No
Service limits: Hours <sup>ii</sup>	10 – 12 one-hour mediation sessions	No limits	Service standard to resolve issues in 60 - 90 days
Modes of delivery	In-person, telephone, video	Telephone, email, in-person, video	In-person, telephone, video
Court requirement <sup>iii</sup>	No court requirement	None, though judge may order parties to work with service	Expectation that parties will attempt mediation where safe to do so

<sup>ii</sup> Where hours of service are limited, several programs allow some discretion to provide additional hours if progress is being made.

<sup>iii</sup> Where court requirements exist, exemptions on various grounds are also available.

Table 5a. Key program features by jurisdiction and program: Northwest Territories and Yukon

	Northwest Territories	Yukon
<b>Program</b>	<b>Family Law Mediation Program</b>	<b>Yukon Family Mediation Service</b>
<b>Eligibility: Must have child-related issues and/or dependent child</b>	Yes	Yes
<b>Eligibility: Low income</b>	No	No
<b>Eligibility: Other</b>	At least one party must reside in NWT	At least one party must reside in Yukon
<b>Locations: Province/territory wide</b>	Yes	Yes
<b>Locations: Specific sites</b>	In-person service available in Yellowknife	In-person service available in Whitehorse
<b>Language(s)</b>	English and French; interpreters for other languages	English; interpreters for other languages
<b>Issues: Child issues<sup>i</sup></b>	Yes	Yes
<b>Issues: Spousal support</b>	Yes	Yes
<b>Issues: Property division</b>	Minor assets / debts	Yes

<sup>i</sup> Child support, parenting responsibilities, guardianship, parenting plans

Table 5b. Key program features by jurisdiction and program: Northwest Territories and Yukon, continued

	Northwest Territories	Yukon
<b>Program</b>	<b>Family Law Mediation Program</b>	<b>Yukon Family Mediation Service</b>
<b>User fees</b>	No	No
<b>Service limits: Hours<sup>ii</sup></b>	1 hour pre-mediation/party plus up to 9 hours joint mediation	1 - 4 mediation sessions of 2 hours each (max of 9 hours mediation)
<b>Modes of delivery</b>	In-person, telephone, video	In-person, telephone, video
<b>Court requirement<sup>iii</sup></b>	None, though judge may recommend that parties attempt mediation	No court requirement

<sup>ii</sup> Where hours of service are limited, several programs allow some discretion to provide additional hours if progress is being made.

<sup>iii</sup> Where court requirements exist, exemptions on various grounds are also available.