

News & Views

ON CIVIL JUSTICE REFORM

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In this Issue

Family Law Innovations

The Talking Together Program Nishnawbe-Aski Legal Services Corporation	3
Excerpts from the <i>Final Report to the Family Court of Australia on The Children's Cases Pilot Project</i>	5
Jennifer E. McIntosh, PhD	
Children's Cases Program Evaluation	7
Adapted from the Australian Family Court website	
Family Court Pilot of Trinidad and Tobago	8
Materials from the Court and extracts from "Family Court Evaluation Second Year Report" Robert G. Hann, Donna Boucaud and Franklyn Murrell	
British Columbia Family Justice Information 'Hub'*	10
Irene Robertson, Provincial Director, Family Justice Services Division, BC Ministry of Attorney General	
Availability of Family Law in French	11
A Self-Represented Family Litigant	12
A. Arshad, BA	
Cross Country Snapshots - Family Courts in Transition	15

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News & Views is intended to serve as an information source on civil justice reform initiatives for lawyers, judges, legal educators, court administrators and members of the public.

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The Canadian Forum on Civil Justice is a non-profit, independent, national organization established in May 1998 to help meet the challenges of modernizing our civil justice systems in Canada. The Forum works collaboratively with all of the sectors and jurisdictions in the justice community in Canada and increasingly, internationally. Serving as a clearinghouse, coordinator and facilitator to share knowledge between jurisdictions in Canada and internationally, the Forum creates new knowledge to address gaps in information and understanding about the civil justice system, acts as a catalyst to transform this into successful reforms, and encourages the evaluation of new initiatives so that we may learn from the reforms that are undertaken. Services are provided in English and French.

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The Talking Together Program of Nishnawbe-Aski Legal Services Corporation



Lost Generations

Aboriginal experiences at Residential Schools and interventions by child welfare agencies have resulted in lost generations of children – disconnected and distanced from their families and cultures. Many First Nations children, particularly starting in the 1960s, were adopted out of their cultures and into non-native homes. Today, child welfare interventions still take First Nations children from their families and cultures. These “lost children” create a serious deficit for First Nations peoples, and steps must be taken to find ways to deal with child welfare cases in an effective, timely and more culturally appropriate manner.

What is Talking Together?

Court processes frequently result in children being removed from their home community. The Talking Together Program is an innovative method of dispute resolution based on traditional circles held in many First Nation communities and used since time immemorial to restore harmony to families and community. By bringing people together to discuss family problems in a non-judgmental way, Talking Together encourages the emergence of a plan of care that has the support of the community, including the courts. This provides an alternative to the court process and returns control over planning and protection of their children to First Nations communities.

Talking Together began in 2002 as a pilot project and is now funded by the Ontario Ministry of Children and Youth Services. In addition, as of November 30, 2006, the Children’s Aid Society is obliged under section 20.2 of the *Child and Family Services Act* to consider:

1. whether alternative dispute resolution could assist with any issue relating to a child who may be in need of protection, and
2. with respect to a native child, to consult with the child’s Band or community to determine whether an alternative dispute resolution process established by the Band or native community, could assist in resolving the issue.

The Program recognizes the capacity of kin network to protect Aboriginal children and emphasizes the importance of cultural continuity in child placements. It is conducted in the form of a circle, where the child, family members, service providers, community members and Talking Together Facilitator meet. The rules of the traditional circle apply. The traditional Circle process is based on respect. In a Circle:

- everyone is equal;
- everyone has a voice;
- everyone listens;
- everything that goes on, or is said, is confidential.

Comments are framed in a non-judgmental way. The aim of the circle is to arrive, by consensus, at an effective plan to bring about resolution of outstanding child welfare concerns. The term Talking Together is used to describe a process that starts with a referral,

moves to a Circle, develops planning, and involves monitoring and evaluation.

The Talking Together Process

Involvement in Talking Together is voluntary. The Circle is client focussed and the goal is to address the harmful issue or behaviour. The process is a less intrusive method of dealing with family problems and protection issues, alleviating the need for the often costly and adversarial family law court system. The Circle considers who has been affected and how they have been affected by the problems the family is experiencing. The Circle then asks the participants “What can be done?” In this Program, the participants and community work as a group to resolve issues toward healing. All those affected are welcome participants and everyone present helps create a Care Plan and assists in resolving the situation and repairing the harm. The Agreement that emerges is the basis of the Plan of Care that is filed with the court.



Images courtesy of the Nishnawbe-Aski Legal Services Corporation

Nishnawbe-Aski Legal Services Corporation (NALSC) has produced two educational videos on traditional circles and the Talking Together process. *The Power of the Circle* and *The Road Back Home* are available by contacting the NALSC Head office at (807) 622-1413.

Referrals to the Talking Together Program come from a variety of sources. These include the Ontario Ministry of Child and Family Services, lawyers, the court, a child welfare client or an elder or other representative of a First Nation community. Child and Family Services and Nishnawbe-Aski Legal Services Corporation, in consultation, make a referral to Talking Together. This begins a parallel process in which the court will generally await the results of a Circle to determine what will happen.

The Plan of Care or Care Agreement comes from the participants and is supported by all the participants. It identifies the programs



or services to be used such as counselling, training, treatment, and education. Organizations such as the Friendship Centre, NAADAP (drug and alcohol awareness workers), Mental Health, treatment centres, teacher(s) and the school system are included as appropriate. Contact person(s) such as Child and Family Services workers, a frontline worker in another program, a counsellor or a minister are named. Timelines, with a target or expected date of completion, even if that is on-going, are established and monitoring and evaluation strategies are created. These latter include progress reports submitted on a regular basis, reconvening of the Circle upon request, feedback in various formats and statistical reporting. An Evaluator is hired to report on the outcome of the Circle. Judges acknowledge the process and therefore usually accept the Plan of Care that comes from the Circle.

Program Evaluation

The Talking Together project has a steering committee comprised of representatives from each of Tikinagan and Kunuwanimano Child & Family Services and NAN Legal Services and affiliated First Nations. For purposes of accountability, this group jointly oversees this program.

All participants in the Talking Together model shall be given the opportunity to provide feedback through an evaluation at the conclusion of the Talking Together relationship. An evaluation of the project, taking into account comments of participants, has been conducted. From the original pilot project, Talking Together has now expanded to the communities of Mishkeegogamang, Wahgoshig, Timmins, Moose Cree and Weagamow.

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Editor's Note

Some of the findings of the *Civil Justice System & the Public* research project were about the difficulties facing Aboriginal families involved with child welfare and guardianship cases in the family justice system. Participants spoke to us from perspectives of the court, child protection and community workers. All agreed that Aboriginal parents and children are significantly over-represented in child protection cases and that Aboriginal people face court in a climate of serious social and cultural discrimination.

For a further discussion of this issue, please see "Our Children are Gone": *Aboriginal Experiences of Family Court* by Dr. Mary Stratton, Research Director, Canadian Forum on Civil Justice, at page 20 in the January/February 2007 edition of *LAWNOW* magazine (See: <http://www.cfcj-fcjc.org/docs/2007/stratton-our-childrenaregone.pdf>). As well, *Balancing the Scales: Understanding the Aboriginal Perspective on Civil Justice*, available at <http://www.cfcj-fcjc.org/publications>, provides perspectives from Aboriginal participants in the *Civil Justice System and the Public* interviews, key contact meetings, focus groups and community workshops.

Nishnawbe-Aski Legal Services Corporation

NALSC has been in existence since 1990. Nishnawbe-Aski Nation (NAN) Chiefs created the corporation to meet the access to justice needs of the members of NAN communities. It is governed by a Board of Directors from various First Nations within the NAN territory. NALSC services 49 communities with a population of approximately 30,000 people. The territory covered encompasses approximately 2/3 of the land mass of Ontario.

The mandate of the corporation includes legal and paralegal services, public legal education, and law reforms. Since the beginning, NAN Chiefs have placed significant priority on the corporation's law reform function. Since 1996, NALSC has had a criminal Restorative Justice Program, which is currently funded by the Aboriginal Justice Directorate of the Department of Justice. NALSC is also an area office for the administration of the legal aid plan for Ontario. Through NALSC, Legal Aid Ontario provides the most direct access to justice for the people of NAN by providing lawyers, duty counsel, justice workers and others. It also coordinates the fly-in courts. The major funders of NALSC and the work they do are Legal Aid Ontario, the Department of Justice Canada and the Ministry of Children and Youth Services.

Excerpts from the *Final Report to the Family Court of Australia on The Children's Cases Pilot Project*^{*1}

Jennifer E. McIntosh², PhD, Director, Family Transitions, Victoria, Australia;

Adjunct Associate Professor at La Trobe University and Associate Senior Lecturer at the University of Melbourne, Australia

Chapter 1 Background

In 1975, the Family Court of Australia opened its doors under the banner of the 'Helping Court' – a family court that would place an emphasis on counselling and 'conferences' as venues for resolving disputes over children and assisting families in transition. However, as the rules that govern adversarial processes became enshrined, and significant delays became the norm for the resolution of anything but relatively straightforward cases, some of the early vision of the Court's founders dimmed.³ While attempts were made to introduce new initiatives along the way, and new rules and procedures were modified, the adversarial process was not fundamentally altered. Parents in such a system emerged from lengthy, costly and often bitter legal processes with escalated acrimony around their children's needs.⁴

The Children's Cases Project (CCP), focuses on the interests of the child and the parents' or caretakers' proposals for the future of the child, rather than the past history of the parties' relationships.

Indeed, the past 15 years' divorce research has heavily implicated adversarial legal processes in family disputes in the exacerbation of parental conflict. Concurrent with this, the serious impact of ongoing parental conflict on children emerged with alarming clarity.⁵ As such, a tension, bordering on an ethical mandate, emerged for dispute resolution to move beyond 'black letter law', to processes that could embrace both the legal and psychological complexities of family separation.

As noted in overseas settings, some attempts at less adversarial processes have tended to be 'add-

ons' to the adversarial framework, rather than truly challenging the dominant culture of adversarial dispute resolution. In recognition of this, the Canadian Family Justice Review Working Group⁶ advocated that the Court system stop 'managing cases to trial' and start 'managing cases to settlement'.⁷ In Australia, Dewar (2005)⁸ observes a system which is now moving beyond the presumption that the best way to deal with dilemmas confronting Family Law is to add yet another rule or regulation. Rather, what is called for is a fundamental redefinition of how disputes are handled.

New Practice Direction

In February 2004, the Honourable Alastair Nicholson, then Chief Justice of the Family Court of Australia issued a new Practice Direction for children's cases presenting to the Court: 'to examine a new way of conducting Family Law litigation that is intended to alleviate some of the problems associated with the current adversarial system of determining a dispute.' (Practice Direction 1.2).

This new approach, The Children's Cases Project (CCP), focuses on the interests of the child and the parents' or caretakers' proposals for the future of the child, rather than the past history of the parties' relationships.

Several core features of the program are:

- Cases become eligible to enter the Project only when mediation has been unsuccessful or is inappropriate.
- Some technical rules have been altered to assist in achieving a better child focus, (for example, the admissibility of hearsay evidence).
- The presiding Judge is charged with an active role in relation to the conduct of the hearing (including deciding the issues to be determined, the evidence that is called, the way the evidence is received, and the manner in which the hearing is conducted).
- Parties in children's cases are able to participate in the Project irrespective of whether they are represented by lawyers or not.

Another key feature of this process was its endeavour to provide a faster resolution of the presenting matters, facilitated by less formal and less costly procedures.

Parental refocus

The Children's Cases Project (CCP) in Australia similarly has set about providing a highly supportive, consensual and less formal process for separating parents to follow, to maximise their chances of settling their dispute effectively, and without full adversarial armoury. The essence of the reform goes beyond the expedition of settlement, to address and accept a new order of social responsibility for ensuring that parenting relationships and family adjustment after separation are not further eroded through adversarial processes. Indeed, a resolve to re-focus parents on the developmental issues at hand is dominant in the CCP model, both in its pre-court processes and in the active child-focused partnership between the social science expert and judge allocated to each case.

The current study

The genesis of this study lies in the Family Court's desire to explore the ways in which this less adversarial approach may impact on parenting and post-separation family adjustment, for parents and children. In addition to the process information yielded by a major evaluation of CCP procedures and efficiency⁹ (the Hunter study)*, the current study sought to explore those variables most likely to buffer children's adjustment to conflicted divorce: the nature of the co-parenting relationship and parents' capacity to provide less acrimonious care for their children post court.¹⁰

(*See Children's Cases Project Evaluation Page 7)

Chapter 4 Summary

Within the confines of this exploratory study, three core questions were examined in relation to parents' experience of the Children's Cases Project:

- How do parents, as parents, experience the two different court streams?
- Considering each court process separately, what impacts if any, can be identified on subsequent parenting alliance and capacity to manage conflict?
- What are parents' perceptions of the impacts of a less adversarial process on their children's well-being?

The resulting data suggest some significant differences in these core outcomes, and point to aspects of the CCP Court process that may stem the flow of damage experienced by litigating families within an adversarial system.

No further harm

Notwithstanding the limitations of a small retrospective design, both the qualitative and quantitative data here suggest that the CCP is associated with greater protection of parental capacity than is the case with the Mainstream approach. As defined by the quantitative data and narratives of participants in this study, the CCP can be summarised as a process that created 'no further harm' to the nature of their co-parenting relationship, and to their children's adjustment, post court. In some cases, the CCP process fostered a degree of improvement in the psychological hostility and acrimony felt for the ex-spouse, as their child's other parent.

Parent's Experiences

The dominant experience of parents who participated in the Mainstream court process was significantly different in a number of respects: As a group, they experienced the court process as neither reparative nor mitigating of further damage to the co-parental relationship. Indeed, they reported further antagonism to an already damaged co-parental capacity.

Conflict

With respect to conflict, both actual and psychological, three months post court the CCP group reported significantly lower acrimony, and lower conflict, in contrast to the Mainstream court group. Associated with these findings, the CCP group reported better emotional functioning of their children, and far greater satisfaction of parents and children with the post-court living arrangements.

They explained normal court would take 12 months longer so we both agreed to CCP. Every step of the way it seemed clear what was going on – before we even started we got to watch a video of what to expect. It made it so much easier. With normal court you don't know when to speak or where to stand or what to call the Judge. I had a court counsellor in the CCP if you needed any help or if you got upset. And we even had her phone number if we weren't in court and we needed some help. The Judge was very polite, and made us feel like humans, not criminals. It was as good as it could be for something bad – if that makes sense. And that was good for my kids.

(Mother in the CCP group)

I think it is important to keep this program going. It is a social responsibility. When emotions are involved you need people to step in for children who need to be protected, no matter what cost. The Court thing was a necessary evil – a necessary process. When we had nowhere to go, it was vital. Any program that softens the blow for children is absolutely vital. This program is a lot better than what we went through before – a lot less formal and a lot better for children. It was better for my children,

because it took the major stress out of it for us (parents) – it was over in a relatively short period of time.

(Father in the CCP group).

Parents choosing to participate

The question has been raised in this report about the nature of parents who elected to participate in the CCP pilot, against those who entered the Mainstream arena. Are the differential results evident in this study attributable to the CCP process, or to the nature of pre-court functioning of the parents, the nature of their conflict and pre-existing contact arrangements? One of the major limitations of this post hoc study is that it cannot provide that data. However, the answer is likely to be that 'both' are true. The Hunter study will provide a greater sense of the ways in which the CCP pilot families differed from the Mainstream group. Here, it was established that the two groups who participated in this study presented with matters of similar complexity and focus, and that parents presented with similar levels of ego maturity, and of pre-separation conflict. The main differences amongst those areas explored came in higher levels of multi-issue Child Protection matters in the Mainstream group, and higher levels of relocation matters and core concerns about parental mental health in the CCP group.

The qualitative findings of this study indicate some patterns of improvement in the CCP group which parents themselves attribute to the nature of the CCP intervention. In particular, the data support a picture of the CCP process 'reaching' the parent, and their remaining parental capacities, during a time of significant stress, to redirect their co-parenting behaviours and attitudes. Here, half of the CCP group specifically referenced the person and actions of the Mediator involved, as helpful and supportive. There was less homogeneity of experience of the Mediator's impact on the parent, compared to the Judge allocated to each case. Amongst many variables, this doubtless reflects the diversity of roles the Mediator played in the CCP pilot, with some parents experiencing a single conversation with the Mediator, some being led through out of court settlements, and other parents going through to a full Family Report assessment and trial involvement by that person.

Substantial impact

CCP parents reported a substantial and predominantly positive impact of the 'person of the Judge', who was seen to be present as a benevolent rather than a punitive authority figure in the case. The dominant experience of a humane and supportive CCP Judge contrasted sharply, indeed almost completely, with the experience of the Mainstream Judge. In a fundamental re-interpretation of Judicial posture within a CCP case, the CCP Judge was predominantly experienced as a respectful, child focused and supportive person, enabling a higher level of reflection, and mitigating against attack - counter attack processes by parties and their legal representatives.

I'd like to say that Judge... Brilliant. Very fair. And I felt like even though I didn't have representation, I felt like I was treated evenly in court and I was listened to. Definitely. It was excellent. You could tell she'd been around the block (in a good way).....As a mother it's extremely stressful. This is your child, the love of your life, but the Judge was guiding me, made it a lot easier.

(Mother in the CCP group)

Certainly this first exploratory study suggests that a loss in judicial impartiality amounted to a clear gain for many parents, who were more often reached, moved and inspired by a Judge who entered their struggle.

Judges will be attracted to or suited to the different role attributed to them by the CCP process.

The magnitude of this move away from traditional Family Court processes is significant in the context of a history of the rule of law, much of it underpinned by the assumption that the best justice derives from thorough adversarial proceedings.¹¹ The losses and gains of this advance will need to be weighed carefully over time. Certainly this first exploratory study suggests that a loss in judicial impartiality amounted to a clear gain for many parents, who were more often reached, moved and inspired by a Judge who entered their struggle.

Further questions

A critical role for this exploratory study is to suggest further questions that need to be asked of court interventions in the lives of separating families. The early evidence found in this study supports investment in future research at a level that can systematically explore the vicissitudes of the CCP processes as applied to a larger and more diverse cluster of cases. Particularly, one would hope for studies that look at a broad foundation of baseline factors in family lives, outcomes of court process, and their interaction with variables such as the style and nature of the role played by Mediator, Judge and legal representatives in the matter. Further, the complexity of Child Protection matters and severe family violence cases within the CCP need to be fully addressed in their own right.

Ultimately, reactivity and defensive exclusion were more successfully kept at bay through such a process, allowing more room for the mind of the parent to be present. In this sense, it appears that the CCP pilot has successfully traversed a middle ground between the application of 'black letter law' and mediation processes which are inherently therapeutic. While a significant finding in its own right, this equally points to the importance of the personality and skill of the judge, in being able to sustain an educative stance and a much higher level of personal connection than has traditionally been the case. Not all

Conclusion - Core impacts

In closing, it might be said that, through the eyes of the parents who participated in this study, the core impacts of the Children's Cases Pilot process centred around the creation of 'no further harm' to their co-parenting relationship, nor to their children's adjustment. Importantly, they report lower conflict and acrimony with their former partner post court. In many cases, it is a process that seems to have allowed a degree of recovery from the psychological hostility felt for their child's other parent.

In the end, the study provides cautious optimism for the Children's Cases Project process, from the perspective of its capacity to better respond to and safeguard the psychological vulnerabilities of the co-parental relationship, post-separation than has been the case in the traditional, adversarial Family Court process. Through its active child focus, personal attunement, accessible, educative and flexible approach, the Children's Cases Project was more likely to protect and promote the very same qualities in parents who attended it.

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Endnotes

*Chapters 1 and 4 of the *Final Report to the Family Court of Australia on the Children's Cases Pilot Project* reprinted with permission of the author. The full report is available at: http://www.familycourt.gov.au/presence/resources/file/eb000508debb97c/McIntosh_CCP_pilot_final.pdf

- 1 The copyright in this material vests in Family Transitions. The views expressed in this report are those of the author, and do not necessarily reflect the views of the Family Court of Australia.
- 2 Family Transitions, 28 Princes Street, Carlton, 3054, Victoria, AUSTRALIA. (03) 9347 2434. Correspondence to mcintosh@familytransitions.com.au
- 3 L. Moloney (personal communication).
- 4 Emery, R. E., Laumann-Billings, L., Waldron, M., Sbarra, D. A., and Dillon, P. (2001). Child custody mediation and litigation: Custody, contact, and co-parenting 12 years after initial dispute resolution. *Journal of Consulting and Clinical Psychology*, 69, 323-332.
- 5 See McIntosh, J. (2003). Enduring conflict in parental separation: Pathways of impact on child development. *Journal of Family Studies*, 9 (1), 63-80.
- 6 Birnbaum, R. and McLavish, W. (2001) Post separation visitation disputes: Differential interventions. Report to the Family, Children and Youth Section, Department of Justice. Canada.
- 7 Cameron, N. and McHale, J. (2006) A new justice system for families and children. *AFCC News*, Winter.
- 8 Dewar, J. (2005) "Legislative change". Paper presentation, The International Forum- Family Relationships in Transition: Legislative, Practical and Policy Responses. December 1-2. Canberra.
- 9 Professor Rosemary Hunter, Griffith University, Queensland.
- 10 As summarised in McIntosh, J. (2003).
- 11 L. Moloney (personal communication).

Children's Cases Program Evaluation

(Adapted from the Australian Family Court website <http://www.familycourt.gov.au>)

A final evaluation report prepared by Professor Rosemary Hunter of Griffith University in Queensland, similarly found that as a less adversarial and more child focused process, the CCP had the potential to assist parents to parent more cooperatively.

Professor Hunter also found that the CCP pilot resulted in a faster court process, and parties who had participated in CCP were generally more satisfied with that process than parties whose dispute was determined using a traditional adversarial approach. View the presentation at: http://www.familycourt.gov.au/presence/resources/file/eb00050586d3c5f/RH_Final_Presentation.ppt



Less Adversarial Trials

The changes to Australia's *Family Law Act*, which took effect on 1 July 2006, included provisions to support a new, less adversarial approach to hearing cases involving children. The Government's new approach is consistent with that taken by the Family Court in its pilot of the Children's Cases Program.

The Family Court takes a less adversarial approach to trials in child-related proceedings. This means a trial in a child-related proceeding:

- is focused on the child(ren) and their future.
- is flexible so that it can meet the needs of particular situations.
- is anticipated to be less costly compared to traditional trials and will save time in court.
- is less adversarial and less formal than is usually the case in a court.
- a family consultant (previously known as a mediator) is in court from the first day as an expert adviser to the judge and parties.
- the parties can speak directly to the judge to tell in their own words what the case is about and what they want for their child(ren).
- the trial starts when the parties first meet the judge.
- the same judge and the same family consultant deals with the matter throughout the trial.

The judge, rather than the parties or their lawyers, decides how the trial is run.

For more information see: <http://www.familycourt.gov.au/presence/connect/www/home/> choose Quick Links and click on "Less adversarial trials".

Family Court Pilot of Trinidad and Tobago

Materials provided by the staff of the Family Court of Trinidad and Tobago. "Family Court Evaluation Second Year Report". Robert G. Hann, Donna Boucaud, and Franklyn Murrell. Judiciary of the Republic of Trinidad and Tobago (2006). Excerpts reprinted with permission; full report available at <http://www.tflawcourts.org>



The Family Court Logo integrates the concept of the support of children by adults, the support of families by the society and the role of the court in this service as depicted by the scales of justice.¹

The Family Court of Trinidad and Tobago clearly stands out - from the physical layout of the building, to its bold, bright, refreshing colours, to the excellent quality of service delivered by highly trained, competent and courteous staff members. Judicial officers from both the High Court and the Magistrates' Court preside in a co-operative and collegial manner within the separate courthouse facility. A great many people from the Judiciary, the government, the private sector and the general public have worked hard to develop a Court whose focus is on its customers and their needs.

Prior to the establishment of this Court, family disputes were handled in the same court environment as criminal and regular civil matters. This close proximity made it very difficult for people with domestic disputes to feel comfortable when bringing their disputes to the court. The atmosphere was certainly not conducive to calm discussion and settlement; it bred combativeness and aggression and left the average litigant feeling alienated from the disposition of their own matter.

The Family Court now encourages people to resolve disputes themselves and will provide specialist assistance and support when necessary. It also provides families with hope, alternatives, opportunities, solutions, reassurances, and decisions. It brings fragmented families together under one roof, in the hope of providing a resolution without winners or losers, and where parties are given the opportunity to focus on finding solutions rather than on continuing conflict. It is a system which embraces legal, psychological,

social, and material issues with a view to adopting a more holistic approach to resolving family disputes.

Design and Technology

The Family Court was designed to be vastly different to other courts in terms of services and infrastructure, with a more comfortable and relaxed environment for all parties. Upon entering, people are quite often surprised by the look and feel of the facility. The choice of soothing colors, pleasing wall finishes, planters, park style benches and the general atmosphere is not what most would expect in a traditional court building.

Additionally, the Court is fully computerized and has an automated case management information system. This improves speed and efficiency when dealing with routine operations associated with the filing, processing, and retrieval of case information. Customers also benefit from this as it reduces the number of times they have to visit or call the Court to obtain information, collect documents, or wait in long lines to collect or pay maintenance monies. Routine documents, such as court orders, are mailed to customers.

The Experience

Mindful that the potential for violence is higher in a family court setting, all persons accessing the Family Court must submit their bags, parcels, and equipment for screening through the baggage scanners. After all items have been satisfactorily screened and searched, persons are invited through a walk-through scanner

Images courtesy of Family Court of Trinidad and Tobago

and undergo a hand scan. These security procedures are quickly executed as visitors enter the Family Court.

At this point, visitors are immediately impressed by the emphasis on customer service. The Court's Security staff direct those entering to a Customer Service Representative (CSR), located at the entrance of each floor of the Family Court. Their role is to ensure that customers feel welcomed and are provided with the information they need for easy navigation through the court system. Parties with attorneys come to the Court in the traditional way in that attorneys file applications on their behalf. Parties who wish to make a magisterial application and are not represented by an attorney must have a private interview with one of three Intake Officers who sets the tone for what is to follow.



The Intake Officer has a broad knowledge of the kinds of issues that families face and the services that will best assist them in resolving their family matters. This Officer assists customers in determining which unit, person or agency will best suit their needs, whether internal or external to the Court. Instead of initiating formal court proceedings, customers may be directed to counseling or mediation services - both of which are located nearby in the courthouse. Such services are also available as part of the High Court or Magistrate's Court litigation proceedings.

If, however, they decide to start proceedings in the Magistrates' jurisdiction, they are sent to a Case Management Officer (CMO) who assists customers in filling out their applications. Once the application is completed and copies printed, the CMO is required to read back to the customer all the information contained in the application, including the hearing room and judicial officer to whom the matter was assigned, the case number, the date, and the scheduled time to appear. The Family Court is the first and only local court in Trinidad and Tobago which provides this type of assistance to unrepresented persons.

In High Court applications involving unrepresented parties, the Deputy Registrar and Marshal and the Section Manager and 2nd Deputy Marshal of the Court² assist such persons in the filling out of the necessary forms. In-house Marshals then assist in the efficient and timely service of all legal proceedings on behalf of the customer.

The Hearing Room

For those initiating proceedings, the Court stresses the importance of customers having a timely hearing before a judicial officer. The standard in the High Court is a first hearing within eight (8) weeks. For the Magistrate's Court, the standard is five (5) weeks. The Hearing Rooms are quite unlike traditional courtrooms, with less intimidating design and layout. Judicial Officers no longer sit in elevated positions but sit at an oval table at the same level with customers. This affords them the opportunity to speak directly with parties and their attorneys. This setting creates an atmosphere which promotes discussion and creates a level of intimacy and privacy, which is empowering for parties. They also come away with the feeling that this Court understands the need for confidentiality in the hearing of their matter and with a sense that they have been heard.³



External Resolution Support Services

The Family Court offers a range of related support services that are all located within one building facility. It is therefore a virtual 'one-stop-shop'. However, the Court recognizes that certain issues related to the family must, of necessity, go beyond the four walls of the courthouse. In those instances, the Family Court will make referrals to other agencies, such as psychologists and psychiatrists, for persons who are in need of special types of assistance that are not provided by the Court. The successful establishment of this Court shows the benefits to be gained from collaboration between the judiciary and external agencies.

Special Facilities

The customer service orientation is also clearly demonstrated by the Family Court having, for the convenience of parents and children, both a Children's Waiting Room and a Youth Waiting Room. These rooms are well equipped with toys, a library, audio-visual sets, computers and other activities to keep children occupied and entertained and are supervised by well-trained and specialized officers.

The Family Court also houses a library, part of the Court Library Services System, focusing on family law and materials relevant to socio-legal issues related to the family. It provides support for all Judicial Officers, the staff of the Family Court and attorneys. It is specially designed to complement the unique judicial, social and mediation services of the Family Court.



Special facilities are also extended to non-English speaking customers, the physically challenged and the visually and hearing impaired who have business before the Court. As well, while the Legal Aid and Advisory Services are not a formal part of the structure of the Family Court, a representative from the Legal Aid and Advisory Authority is on site to offer assistance to those who qualify.

In closing, the Family Court already represents a model of interest to courts around the world. Perhaps one of the most impressive characteristics of the Court, however, is that it continues to look for new and innovative ways to improve its customer service delivery to both internal and external customers. The Family Court is committed to a process of continuous evaluation and improvement. They have developed a comprehensive set of court performance indicators and are using those indicators as the basis for an extensive and intensive two year independent evaluation of the full range of court impacts and processes.

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Endnotes

- 1 Taken from the "Family Court Fact Sheet" at http://www.tlawcourts.org/fc_factsheet.htm accessed July 19, 2007.
- 2 The Registrar of the Court is known as the Registrar and Marshal. Marshals are court personnel who serve court documents.
- 3 "Family Court Evaluation Second Year Report" by Robert G. Hann, Justice Development International Ltd. (JDI), Donna Boucaud, Family Court Manager and Franklyn Murrell, Family Court Statistician, Judiciary of the Republic of Trinidad and Tobago (2006) and available at <http://www.tlawcourts.org>

British Columbia Family Justice Information 'Hub'*

Irene Robertson, Provincial Director, Family Justice Services Division, BC Ministry of Attorney General

Background

In June 2005, the Family Justice Reform Working Group of the Justice Review Task Force made 37 recommendations for changes to the BC family justice system in their Report, *A New Justice System for Families and Children*. (See: http://www.bcjusticereview.org/working_groups/family_justice/final_05_05.pdf)

Included in these are:

- continuing to move away from adversarial approaches and moving more deliberately towards cooperative approaches to the resolution of family law disputes;
- creation of Family Justice Information Hubs offering information, an assessment of needs, and referrals to other services;
- a dispute resolution session before taking a first contested step in a court process;
- having lawyers help clients choose the most appropriate dispute resolution model and provide legal advice and services at all stages of a dispute;
- a unified family court to work with all areas of family law and with judges specialized in family law and court procedures;
- simplified procedures for family law including new court rules, less formal hearings, and use of online forms; and
- subsidizing settlement systems rather than litigation.

Overview of Pilot Hub in Nanaimo

The Justice Services Branch, Ministry of Attorney General and the Legal Services Society,¹ in collaboration with others in the justice system, are piloting a *Family Justice Centre: An Information and*

Service Hub in Nanaimo.² The Hub began operating on April 1, 2007, and currently, people access services provided by the Family Justice Centre at this location. These include dispute resolution services and services provided the Legal Services Society such as Supreme Court Duty Counsel and advice lawyers.

Initially, the pilot Hub will focus on family law matters and provide a broader range of services than is now generally available at Family Justice Centres and the Self-Help Information Centre in Vancouver. Recognizing the importance of providing help early when a family is facing separation, the front-end services of supplying information and education, and assessment and referral are the Hub's primary focus. It is a place where people can come for information, referrals and services to help them resolve their family justice issues.

Information and Education

The Hub's information and education services are especially helpful to the large number of self-represented litigants in the family justice system. The Hub:

- provides people with the information they need to resolve their own disputes wherever possible;
- helps people prepare to participate effectively in the negotiation, mediation or adjudication of their family justice issues;
- provides information about complementary services; and
- offers Parenting After Separation sessions.

The needs assessment is available at any stage of the dispute, but the emphasis is on serving people as early as possible.

Assessment and Referral

Families who need more assistance to resolve their issues can meet with a Family Justice Counsellor who will talk to them about their needs and interests. The purpose of this

assessment is to identify for the client the range of services that are available to them. The Hub's needs assessment service is broad and deep in scope, so that referrals to appropriate services can be made.

The needs assessment is available at any stage of the dispute, but the emphasis is on serving people as early as possible. Protocols are being established to ensure that people are directed to the Hub for this service by key agencies and professionals in the justice system. One example is the implementation of Rule 5 in the *Provincial Court (Family) Rules*, which obliges most parties involved in Nanaimo Provincial Court *Family Relations Act* matters to attend for an assessment.

At the same time, protocols are also being established to ensure that clients can successfully be referred to community services they may wish to access, based on outcomes from the assessment process. These could include referral to drug and alcohol programs, programs for people with mental health issues, options for people affected by domestic violence, the services of a social worker, and programs to assist with debt or other financial issues associated with separation or divorce.

Key Services

Three key family justice services are offered on site at the Hub. Others may be added as the Hub evolves.

a) Dispute Resolution

Dispute resolution is a voluntary collaborative process through which families undergoing separation or divorce attempt to settle their family justice matters with the assistance of a trained mediator. The process takes place in an informal setting where the parties participate in the negotiation and design of an agreement. Dispute resolution services are available in the Hub to assist with the issues of custody, access, guardianship, and family support. Matters involving property and pension divisions are referred to private mediators in the community, and in some cases could be funded by the Legal Services Society.

b) Legal Information, Advice and Representation

Legal information is provided by Family Justice Counsellors. Families may have access to limited legal advice and, when eligible, to legal representation through the Legal Services Society (LSS) which funds counsel to provide limited legal services.

Generally, families are referred to LSS Duty Counsel and advice lawyers in the Hub. The LSS LawLINE and *pro-bono* law clinics are other options that could be recommended. For those clients who need to have a judge decide their issue, the Hub's role is to provide information about the representation available from LSS to eligible individuals, as well as the services available from the private sector. Intake for LSS legal representation in family matters is also located at the Hub.

c) Self-Help

Building on lessons learned in the Vancouver Supreme Court Self-Help Centre, it is clear that people can often resolve their legal issues provided they have access to legal information, information about the family justice system (including information about appropriate dispute resolution options), how to prepare for court and so on. We also know that sometimes people need help accessing that information. The Hub has a resource room with written materials, computers pointed to a Hub website and other key Internet resources, videos and other relevant material. On-site staff at the Hub help link people to appropriate resources and are able to provide legal and other information to clients.

Community and Justice Service Providers

The Assessment and Referral Service described above focuses on strong links between community service providers and staff at the Hub to ensure that families get to the right service as quickly as possible. This also provides an opportunity for community groups and service providers in the justice system to consider how their respective programs can collectively best meet the needs of families. A Local Advisory Group is being developed as an essential component of the Hub to assist with this collective effort.

See: <http://www.nanaimo.familyjustice.bc.ca/>

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Endnotes

1 The Legal Services Society (LSS) is British Columbia's legal aid services provider.

See: <http://www.lss.bc.ca/default/Default.asp> for more information.

2 It is located at #302-65 Front Street, Nanaimo, BC. Telephone: (250) 741-5447 or 1-800-578-8511

* The Pilot 'Hub' is now formally known as the Nanaimo Family Justice Services Centre

Availability of Family Law in French

The Federation of Associations of French Speaking Jurists of Common Law (FAJEFCL) earlier this year commissioned a report on the availability in Canada of family law services in French. The stated purposes of the *National Study on Family Law in French* are to identify existing resources and gaps with respect to family law and to define action priorities. The final Report will be accessible mid-August, in both French and English, on the Federation's website at: <http://www.fajef.ca/>

A Self-Represented Family Litigant¹

A. Arshad, BA

I am a university-educated, working single parent. My income is low², expenses are high and time is precious. Because our child is living full time with me and the other parent lives outside of Canada, I need to be able to make any and all decisions for our child's well being. I decided to seek sole custody and guardianship.

In my attempts to access the legal system, I hoped to:

1. get advice as to what Order would be most appropriate in my circumstances to give me the result I wanted and needed;
2. find out how and what to manage about the court process;
3. get help filling out forms, if necessary; and
4. have sole custody and guardianship of our child granted to me.

I needed to know what Order(s) and procedures applied in my case. I wanted to do the correct thing from the beginning. I was sure I needed legal advice.³ As a self-represented litigant, however, I found manoeuvring through the legal system a very frustrating and convoluted process.

Starting Out - July

I checked the Internet for free or low cost legal advice using key words. All the Internet links seemed rather confusing, especially to someone not knowing where or how to start. I saw similar names for services at different addresses. I opted to go to a student legal clinic first. A very pleasant young man at this clinic said that, although they run a divorce workshop, they do not deal with other family matters or custody. He gave me the numbers for a Legal Information & Advice Phone Line, explaining that they have free lawyers, and to a Family Law Information Centre at the provincial court downtown.

Then...Legal Information & Advice Phone Line

I called the legal advice phone line. I was on hold for about half an hour and then had to leave a message. When I hung up and tried again, the line rang busy. Trying to call in the afternoon used the rest of the day. I finally got through. It was NOT a lawyer I spoke to, it was an intake person wanting to take personal information and a message before a lawyer would call back.

I explained that as I was working I would prefer to make the appointment with the lawyer at my home number during my time off, for a private call. "We don't make appointments," he said. Furthermore, the lawyer would call any day, any time, when the lawyer was free and not to my convenience.

I finally spoke with two different lawyers. The first one explained the type of Order I should pursue. I actually ended up guiding the second one. He thanked me for doing his job for him! This is what the process was like – trying to figure out what services really exist and what information is correct.

And...Family Law Information Centre

At the provincial courthouse, I talked to a woman at the front desk of the Centre. She gave me a brochure for Family Justice Services, which was located in another building. She also gave me a booklet on getting child support *ex juris*.⁴

And...Lawyer Referral Line

The Lawyer Referral Line⁵ allows you to call three lawyers familiar with the area of law in question, for a free consultation. I took full advantage of this and ended up calling more than three because not everyone I called got back to me or I was told they "were not taking new clients."⁶

Through the referral line, I spoke to a very nice \$250/hour lawyer.⁷ She was very helpful in actually giving me more solid information. Unfortunately, I could not afford to hire her. More than ever, I was convinced that, as a low-income earner, I was entitled to legal representation just as much as the next rich guy. So, I was going to get a lawyer – a good lawyer.

But – do I have the option to choose if I am poor?

I decided to talk to as many services providing legal information and advice as I could and to get help with the paperwork and so on. I downloaded copies of forms from the Internet. I researched every Order. I wrote out my case history.

Next...Family Justice Services (FJS)/ Family Mediation Services

I went to FJS and was assigned a Family Court Counsellor. I had done my research in advance and pulled forms and information off the Web to discuss. She tossed aside the forms I brought, saying they were the wrong ones and brought in forms for the Order she said I needed. I asked questions she was unable to answer. She simply replied, "We are not lawyers." Her apparent lack of knowledge in certain areas led her to be quite evasive in answering my questions. I left quite uncomfortable with her shortness with me and with many unanswered questions. I later found out that the forms I had completed were indeed the correct ones for filing.

Then...Legal Aid - The Paper Chase

When I called Legal Aid I was stonewalled. The receptionist told me that my application for legal aid would not even be considered unless I got written confirmation that the various other legal avenues I had tried could not help me. I asked if there was a name for this piece of paper; it wasn't included on the eligibility criteria listed on the website. I was told that there wasn't a name - just to get a handwritten note from each legal venue I had tried.

Then...Family Justice Services – Again

Family Justice Services could not help me as I was going through the superior court. I requested the confirmation letter for legal aid from a different counsellor. That counsellor said that they were well experienced at Family Justice/Family Mediation Services and the paper process could go just as well through them via the provincial court route. She kept pestering me, asking when I wanted to make an appointment and start the court order process through the provincial court. I declined saying my right was to go through the superior court with advice from a lawyer. The FJS counsellor refused a letter, saying she did not believe I needed a lawyer. This lack of respect for me and for what I believed was in the best interest of my child was upsetting. I was unable to get the "paper" from anyone, especially those contacted only by telephone. The woman

at the Family Law Information Centre desk just laughed, saying “That’s ridiculous! We don’t give out such pieces of paper.”

Back to...Legal Aid - September

I finally went into the legal aid office, starting from scratch and taking my chances. Although I had been told to go early, by 8:30 am, I went at 10 am. There were no long line-ups and I talked to another receptionist. I was able to speak to a legal aid intake worker right away. I was nervous and delighted. To my surprise, it went relatively smoothly and they didn’t ask for this confirmation ‘paper’ or even where else I had tried for legal advice. She just asked for my income and I showed my pay stubs. She then gave me the number to the Family Law Office to make an appointment to see an “Opinion Lawyer.”⁸

Legal Aid Family Law Office

The Opinion Lawyer I saw was really nice and friendly. She was very respectful and made notes of my situation. She agreed I needed a lawyer to go into superior court; however, I was rejected by legal aid on the basis that going through superior court would be too costly. The Opinion Lawyer couldn’t overturn the supervisor’s decision. Instead, she offered to write up a Statutory Declaration for me saying I had sole custody of my child. I adamantly said, “No,” remembering a single-parent friend’s problems travelling with her Statutory Declaration. When asked, the Opinion Lawyer admitted the Declaration might not be enough for travel or be taken as seriously as a Court Order.⁹ I had to appeal to the supervisor myself, convincing her that I was ready and everything would go smoothly, before legal aid agreed to take my case. Even then, I was told that if things didn’t go smoothly, they would drop the case and I’d still have to pay.¹⁰

Legal Aid Family Law Office - November

Finally, five months after I started, I was assigned a lawyer at the Family Law Office of Legal Aid. I didn’t see the lawyer until the court date and dealt mostly with her assistants. I went in to sign papers and ask questions, which were answered through an assistant. I asked whether the consent letter from the child’s father should be translated and was told it was not necessary. I asked them to let me know if there was anything else they needed to make sure we were well prepared. Two days later the assistant called with the court date. No mention was made of anything else being needed. The week of the court date, the lawyer’s assistant called me again and asked if I had taken the “Parenting after Separation” course. The what??

Oops!...Parenting After Separation Course

The lawyer forgot to tell me that, for the superior court application, I have to take the mandatory Parenting After Separation course. I called several times to try to register, but no one answered the phone. I eventually called the Department of Justice. Finally, I

The FJS counsellor refused a letter, saying she did not believe I needed a lawyer. This lack of respect for me and for what I believed was in the best interest of my child was upsetting.



Image courtesy of ACC/AJJC

got a call back to register for the next day. Then there was a mad rush to find a babysitter for six hours per night (course and travel) for two consecutive nights. Working during the day, taking care of my child, getting to the babysitter, and bussing back and forth in the middle of the night – all three days before the court date!

The Parenting After Separation lawyer emphasized not to go through provincial court in certain cases - particularly custody cases - even though this is the route that Family Justice Services suggested. Overall, it was a good course, providing some helpful take-home materials. We received a certificate confirming our attendance.

Finally...My Day in Court

I arrived early, before my lawyer. When she arrived just before court, she said that it was potentially a problem that the letter from the other parent had not been translated into English. She saw I was concerned and added that it should be okay but we would see what the judge said.

The superior court process was very quick and smooth thanks to having the proper documents prepared and presented. The judge granted me a Sole Custody and Guardianship Order. We went to the court’s forms processing desk to get certified copies of the Order, and then quickly left. I was so relieved that it was resolved.

Reflections ...

Even as a competent, well-educated person, it was very hard work navigating the legal system. I thought the process would be timely and smooth. Instead, it took much longer than I expected, caused emotional turmoil and our household income suffered. From my experience, low-income litigants will only succeed in getting the assistance they need with a great deal of persistence. It seems that if you can afford a lawyer, the process is easier because you can hire the necessary expertise. If your income is lower, there is greater effort required because you must identify and qualify for services that are available for low income litigants. Months after I began

to seek it, I got a Sole Custody and Guardianship Order through the superior court. It was much harder to do than I thought it would ...or should be.

The creation of centralized services for self-represented litigants is one way to assist people going through family law processes. Many of the barriers I faced could be eliminated or at least reduced to more manageable hurdles if there was a single place to obtain accurate legal information and referral to appropriate services. Fortunately, several provinces are moving to provide such services, particularly in the area of family law.

In Prince Edward Island, for example, all family justice services have been centralized since December 2003. On the opposite coast, BC's Supreme Court Self Help Information Centre was created to provide support and referral on family and civil matters to self-represented litigants. The success of that pilot project led Alberta Justice to conduct a limited mapping exercise to determine availability, gaps and overlaps in services for self-represented litigants. This information was the basis for the creation of the Law Information Centres (LLnCs) in Edmonton, Red Deer and Grande Prairie. These Centres provide support, information and referral to self-represented litigants in these three municipal areas and there are plans for further centres. Back in BC, the first Family Justice Services Centre opened in Nanaimo in April 2007, providing assessment, mediation, legal resources, and referral to community resources and workshops.

Beginning March 1, 2007, a collaborative effort between three government departments in Newfoundland and Labrador began delivering comprehensive family law services through a multi-disciplinary team approach. In June, NL Family Justice Services amalgamated these pilot programs and expanded the service to all areas of the province. Plans are under way for further improvements.¹¹

These are just a few of the changes that are improving access to justice for low income and self-represented litigants, particularly in the area of family law. Some of these programs are highlighted in this issue's "Cross Country Snapshots" and we hope you will read them with interest.

From my experience, low-income litigants will only succeed in getting the assistance they need with a great deal of persistence. It seems that if you can afford a lawyer, the process is easier because you can hire the necessary expertise.



Endnotes

- 1 This is written by a self-represented litigant in her words, about her own personal experience. We have published it so that those of us who work in the system can hear what our client's experiences and expectations are.
- 2 Under \$15,000/year.
- 3 I was in the dark; I didn't really know what I needed a lawyer for (i.e. which legal aspect), although I knew I needed one. If I had money, I could and would go into a lawyer's office and say, "This is my situation..." and ask "What are my options?" Could I prepare anything on my own before hiring a lawyer, to avoid incurring extra costs unnecessarily? But again, I needed advice before I could even take those steps. "Who do I ask about this? Couldn't I just quickly go see a free lawyer for guidance?" Then I could prepare and take some time to think, before making any hasty decisions. It would be nice to have a friendly lawyer in a booth, ask him or her a quick question, go off, do the next step—and have other free lawyers waiting to help at different stages or areas, depending on which process I had to use.
- 4 At that time, the term *service ex juris* slipped from my mind as quickly as she said it. It is daunting when legal (and other) terms are being thrown at you and you don't understand them. Although this lady was rather nice in the beginning, as we went along I felt uneasy when I asked questions. At Family Justice Services, asking questions caused impatience and confusion. Also, as well prepared and competent as I tried to be, I didn't understand the consequences or differences between the Courts. I am educated, but I'm not a lawyer.
- 5 This service is available in every jurisdiction except New Brunswick. The Law Society, the Canadian Bar Association Branch or a Public Legal Information service usually run it. Each jurisdiction has different rules governing the use of the service. Check directly with the service in your jurisdiction for more information.
- 6 I have to admit that I presumed the lawyers were "not taking on more new clients" because they needed paying clients rather than all the 'freebie' people like myself calling all the time.
- 7 I wondered, "Is this the going rate?" Later on I found out that indeed it is, and some times even more! Wow! For someone like me with a limited income, this means even a few hours of advice is unaffordable.
- 8 Who or what was an "Opinion Lawyer?" I wondered what new hurdle this might possibly be. I learned that the Opinion Lawyer was one who looked at my case and wrote an "Opinion" for legal aid about whether I had a good case or not. Legal Aid would then decide whether or not to provide me with a lawyer.
- 9 People talked of "undoing", with a lawyer's assistance, steps they had previously taken as self-represented litigants, resulting in more time and more costs. I was told that travelling internationally without a Court Order could be difficult as overseas officials seemed to believe that "[a]ny lawyer can write up a paper to suit the client's needs."
- 10 I agreed to these terms, but I don't really understand why I shouldn't still have been entitled to a lawyer, especially if it got more complicated.
- 11 Government of Newfoundland and Labrador – Canada. Justice; Health and Community Services; Human Resources, Labour and Employment; "Family Justice Services Celebrates Expansion," news release, June 12, 2007.

Cross Country Snapshots - Family Court in Transition

As the *Civil Justice System & the Public* researchers travelled across Canada between April 2002 and May 2004, team members often observed family court. *Family Court - Coast to Coast* is an edited, composite narrative created from these observations. It was first presented to the Nova Scotia Family Law Symposium, in Truro, Nova Scotia on December 1, 2004. The full narrative is available online at <http://cfcj-fcjc.org/publications/cjsp-en.php#7> Details of the *Civil Justice System & the Public* project, a collaborative partnership research project funded by the Alberta Law Foundation and the Social Sciences and Humanities Research Council of Canada are also available. See: <http://cfcj-fcjc.org/research/>

While our researchers observed some striking differences in the feelings, attitudes and processes within the various family courts, the overall court experience could most often be described as one of fear, frustration and weary despair. Since we first collected and reported on those observations, however, many changes have begun to take place in family courts across the nation. Some of these promising family law innovations are collected for you in this issue's Cross Country Snapshots.

As we gathered these family court related snapshots, we were encouraged to find another theme emerging. Each of these programs highlights or relates in some significant way to collaborative processes that are integral to the success of the innovation. It can be difficult to establish and maintain true collaborative networks; however the benefits of doing so appear to be worthwhile.



Canada

The Canadian Family Justice System – A Model for Collaboration

Each year, many Canadian children are affected by the separation or divorce of their parents. While governments cannot eliminate the conflict that can arise when parents divorce, Federal, Provincial and Territorial governments have helped reduce the negative consequences for children by collaborating on reforms to the family justice system.

Such reform has been an issue of broad public discussion in recent years. A federal government strategy supporting families through separation and divorce, now in its final year of implementation, grew out of extensive work on family justice reform, including research, national consultations and ongoing collaborative work with the provinces and territories.

In addition to this strategy, federal, provincial and territorial governments worked together to develop *The Inventory of Government-Based Family Justice Services*. It is a user-friendly tool available on the Internet, accessible to all Canadians who need to know about government-based family justice services in their jurisdiction and elsewhere in Canada. The Inventory can be found at: <http://canada.justice.gc.ca/en/ps/pad/resources/fjis/browse.asp>

The Inventory is just one of many innovative services that have been developed or improved over the past decade to help families through difficult times. Other services include parent education programs, mediation services, family law information centres and information lines. Of special interest here because of its innovative approach to a sometimes conflictual and always costly issue – child support variations – is a new service, the *Child Support Recalculation Service*. This service, now available in some provinces, offers parents and courts a faster, less costly and less adversarial way to determine and update child support amounts.

The Federal Government's support for families has included a focus on children's needs. An important part of the current strategy has been the development of information, programs and services to help children through their parents' separation or divorce – through collaboration with our Provincial and Territorial partners. For example, several educational programs for children exist across Canada. A website for children was developed by the British Columbia government in collaboration with the BC Law Courts Education Society, to offer children from five to twelve, as well as adults, information they need <http://www.familieschange.ca>

Another successful collaboration is the popular workbook produced by the Community Legal Education Association of Manitoba (CLEA) with the support of the Department of Justice Canada. This workbook is for children eight to twelve years old, whose parents are going through a separation or divorce. It contains stories, quizzes, puzzles and other appealing activities for kids. Finally, a recently launched federal government website, with pages for children aged ten to twelve and thirteen and up, addresses the difficult issue of family violence in an age-appropriate but informative way <http://www.familyviolencehurts.gc.ca>

All these projects to improve the family justice system are the result of fruitful collaborations.

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British Columbia

The Judicial Case Conference and its Impact on Family Law

A paradigm shift towards a more collaborative family law process is occurring. In BC, one procedural innovation that has probably done more than anything else to support this is the Judicial Case Conference.

At first glance, a Judicial Case Conference (JCC) appears to be a very simple administrative step along the litigation path. In fact, it is an ingenious device to put an emotional break on the cycle of acrimony that often flows from a break up. The significance of this can not be underestimated. By being prevented from making inflammatory accusations against each other at the beginning of the lawsuit, often on legally irrelevant matters, the parties have a chance to focus on the substantive legal issues. The sooner they can separate their emotions from the legal issues, the sooner they can see a path to a sensible resolution.

A meeting in court with a Judge or Master has a different atmosphere than sitting down with a mediator. The court process is not voluntary and has authority and legitimacy that mediation can never attain. Lawyers are respectful towards each other and deferential towards the judicial officer; all the parties are on their best behaviour. This is particularly important given the intense emotional climate in many family law proceedings.

The parties are made acutely aware of the alternatives to settlement. They are generally warned about the substantial legal costs of ongoing litigation. Being forced to face fixed dates for discoveries, pre-trial conferences, and trials, not only do they have a definite time line in which to try to resolve their differences but, by having a clear path ahead, they know that they must deal with their problems or face substantial legal costs and the uncertainty of a trial.

JCCs are a unique opportunity to hear from a Judge or Master about relevant evidentiary and substantive legal issues. An experienced Judge or Master can reinforce the advice that we as lawyers have hopefully already given. It is often very useful for the “difficult spouse” to hear from the court, in a less formal setting than an open court room, the harsh realities to be faced.

By having a face-to-face meeting in a formal but not too rigid setting, the parties and their counsel have an opportunity to hear each other and exchange views with ongoing judicial input. Often, it is the first time that the parties have an opportunity to say in their own words what it is that is truly bothering them. Sometimes the emotions conveyed can humanize the process and lead to a fuller understanding from the other side.

Face-to-face negotiations before a judicial figure provides for immediacy and sensitivity to the other side’s position, which is hard to obtain in any other setting. Collectively, the focus is on “win/win solutions” and not on a “zero-sum game.” Subtleties and complexities that are not possible in the usual adversarial setting of the court room can be incorporated. The interests of the parties are at the forefront rather than satisfying any craving to “get even.”

One of the explicitly stated purposes of a JCC is to force early disclosure. This greatly enhances the settlement opportunities, since proper financial disclosure is a fundamental component of any rational negotiating process. Clear timelines for disclosure are important and should be enforced, probably much more strenuously than they are currently.

JCCs have now become a permanent fixture of the family law process and if they are properly utilized, the chances for settlements increase substantially. The system has become more “user friendly” and thereby added to the satisfaction of our family law clients. Although there is always room for improvement in the JCC process, the more collaborative nature of family law today is due in large part to their increased use.

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Alberta

Alberta LInCs

Alberta is meeting its goal of increasing access to justice by opening new Centres to support the needs of self-represented litigants (SRLs) across the province. In a three year effort to understand the growing needs of SRLs, Alberta has developed Law Information Centres (LInCs) to provide support to this group of Albertans.

Opened in April 2007, the Edmonton and Red Deer LInCs served over 400 clients who required support in criminal or civil matters up to the end of June. LInCs help SRLs learn about general court procedures, locate and fill out court forms, learn about legal advice

options, find out about alternatives to court and get general legal information.

We have seen an increase in the number of individuals choosing to represent themselves in court in the last few years. Unfortunately, Albertans who do not have a legal background often find the court system difficult to navigate on their own and this can lead to delays. Our goal is to provide access to legal information and reduce the frustration and the amount of time needed to deal with court cases involving self-represented litigants.

Making appropriate information available to assist Albertans before, during, and after their day in court will reduce the amount of court time needed for these cases and reduce delays overall.

Ron Stevens QC, Minister of Justice and Attorney General

In June we opened our Grande Prairie location, which provides information on civil, criminal and family matters. As part of the LInC initiative, we are collaborating with the already established Family Law Information Centre (FLIC) in Edmonton. In Alberta, Family Law Information Centres were established in Edmonton and Calgary almost ten years ago, and provide information to clients needing support with family law issues. Now, FLIC often sends clients to access the LInC services, as we are able to provide extended services to clients.

In Red Deer, the FLIC and LInC offices both opened on April 2 and the FLIC coordinator, who provides family law information, took part in the same training as the LInC coordinators. These two offices collaborate on an almost daily basis to resolve client issues.

In Grande Prairie, a new service model is being tested, in which the LInC coordinator provides services in all matters of law, including family, combining both LInC and FLIC activities in the LInC office. There is no distinction between LInC and FLIC in Grande Prairie and all services are offered under the LInC banner.

Through cooperation and collaboration between government, the justice community and community service providers, the Law Information Centre and the Family Law Information Centre provide more opportunities for Albertans to access justice.

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Saskatchewan

Support Variation Project and Family Law Information Centre

The Support Variation Project (SVP) is a new initiative of Saskatchewan Justice, Family Justice Services Branch. This Regina area pilot project assists parents with limited income by providing information and services to facilitate changes to their existing child support order or agreement. SVP also operates a smaller satellite office in Saskatoon at the Family Justice Services Branch – Social Work Unit.

A parent wanting a variation can apply to the SVP and SVP will contact the other parent. If the parents meet the project's criteria, SVP will help the two to negotiate an agreement about the change. Criteria to qualify for assistance from the pilot project are available at: <http://www.saskjustice.gov.sk.ca/FamilyJustice/support/pdf/supportvariationbrochure.pdf>

When agreement can be reached, SVP prepares the court documents or agreement. Parents are encouraged to seek independent legal advice, although they have the option to sign a waiver if they decide not to do so. The order or agreement is then filed with the court. If the judge approves it, the order is entered and SVP provides the parents with copies. Support payments are then governed by the new order or agreement.

If the parents cannot reach agreement with SVP's help, the matter may end up in court. For a low-income self-represented litigant, SVP can provide assistance with completion of court forms. Clients may also be referred to the Family Law Information Centre for assistance. SVP does not provide legal advice, nor does it represent parties in court.

SVP does not enforce or mediate access or custody orders or agreements. It does not deal with property issues or spousal support. It also does not compel parents to participate in the variation process; parties must consent to this. Where a parent refuses to

participate or to disclose information, SVP cannot facilitate the variation request. A low-income parent may not be ready to ask for a variation or may have other family issues. In that case SVP's Information and Resource Centre offers information on Child Support Guidelines, support tables, maintenance enforcement, family courts, Family Justice Services Branch, or directs the parent to the appropriate agency for further help.

Access Variation Project

In August 2006, Saskatchewan Justice established a two-year pilot project operating in Saskatoon and area to more effectively link existing services for parents facing various child access issues. Through this project, parents who are separated or divorced receive assistance from a team of parenting, legal and conflict resolution professionals to establish more open lines of communication to develop and maintain appropriate access arrangements for their children. Up to four mediation sessions are available free of cost if the admission criteria are met. Admission criteria include an income component that is dependent on family size.

Both projects are made possible through collaboration between Saskatchewan Justice and the Department of Justice Canada.

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Manitoba

Collaborative Family Law at Legal Aid Manitoba

Legal Aid Manitoba (LAM) provides legal help to people with low-incomes, handling more than 80,000 contacts last year. Family Law services include divorces, separations, child custody, maintenance enforcement, child protection, private guardianships and more recently, the opportunity to participate in Collaborative Family Law. This is a pilot program where lawyers, specifically trained in this process, are appointed for most family matters where both parties qualify for legal aid.

Legal aid staff counsel is appointed for each party and the matter is settled through a negotiated agreement rather than going to court. Overflow cases are referred to a small number of private Bar lawyers who take the cases on the regular family tariff. This is a unique alternative for some couples. The goal is to resolve issues pertaining to divorce, separation, time sharing for children, spousal support, child support and property division through negotiated settlement with both parents and their lawyers, without going to court. Legal staff help parents find common ground in the best interests of the child as opposed to a more adversarial approach of building a case against each other.

Collaborative law is a relatively new movement in North America and, since 2003 four lawyers at Legal Aid Manitoba - Al Loney, Cathryn Lovegrove, Randy Woodman and Sam Raposo - have been practising this approach. Each parent has their own lawyer but must agree to negotiate a settlement without going to court. Early results suggest it is an important new option within family legal aid.

I'm attracted to this approach because if I can provide some tools for mom and dad to make it easier to communicate and negotiate with each other,

reducing their conflicts, ultimately it's better for the kids. It's also good for Legal Aid because when people have more control over outcomes up front, we can expect fewer future variations.

Cathy Lovegrove

There can be the perception that what we are doing is easier [than the traditional adversarial approach], but that's not the case. I realized there had to be a better way than slinging affidavits back and forth. This allows clients to decide what will be happening in their life. In collaborative law we tackle legalities as well as the emotional issues that have led people here. We get into the 'whys'. That can be draining, but it is a real solution-oriented practise.

Randy Woodman

The Collaborative Law Project at LAM was created by Director of Operations Gil Clifford and Executive Director Gerry McNeilly as a pilot project with federal government funding "and is a real tribute to their creativity," says Cathy. "Manitoba is an innovator on this front and I know other Legal Aid plans are watching us."

A full evaluation was completed on the first two years of the pilot project and approximately one quarter of all family certificates at LAM are issued under the collaborative law umbrella.

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Ontario

Pro Bono Students Canada & the Family Law Project

Pro Bono Students Canada (PBSC) is the world's first and only national student *pro bono* organization dedicated to providing free legal information to communities in need. Since its inception in 1996, PBSC has engaged over 12,000 Canadian law students in exciting programs designed to enhance their legal education, while providing critical *pro bono* services to hundreds of public interest organizations, community groups, government agencies, courts and tribunals, and lawyers working *pro bono*.

PBSC's Family Law Project (the FLP) began as a collaboration by law students at the University of Toronto and Osgoode Hall law schools, and was inspired by a 1998 speech given by the Honourable Mr. Justice Harvey Brownstone. In his speech, Justice Brownstone estimated that as many as 70% of family court litigants lack legal representation. Elaborating on the difficulties that are faced by these individuals, he later wrote that the "overwhelming majority of our litigants are unrepresented and rely solely on duty

counsel; many litigants are new to Canada and do not speak either of our official languages; and a large number of our litigants are functionally illiterate. Our caseload volumes are crushingly high and continually increasing, and we are regularly unable to comply with statutorily mandated timelines for the prompt resolution of cases." Justice Brownstone works in the Ontario Court of Justice in North Toronto, one of the busiest family courts in Canada.

The FLP addresses the needs of the courts and the judiciary to ease the demand placed on the administration of justice by the increasing numbers of unrepresented people entering the legal system. Through the FLP, upper-year law students volunteer under the supervision of duty or advice counsel to assist unrepresented family law litigants in the courts. Students explain the basic court processes to clients and assist them with the difficult, intimidating, but singularly important task of completing their court forms (which include pleadings and motion record materials) in an effective

tive manner. Students work with duty and advice counsel to serve greater numbers of unrepresented clients, thereby reducing client wait-times and back logs in the system. In these ways, the FLP contributes to the efforts of the legal profession to promote access to justice for unrepresented individuals by enabling them to present their best case to the court.

The FLP provides students with an opportunity to gain hands-on experience and to develop their legal drafting and client interviewing skills. Students who engage in the program also gain a clearer understanding of how the family court system works and the impact of the law on families. In addition, the FLP promotes the *pro bono* ethic that is such an important part of the legal profession.

Since 1998, during each academic year, PBSC student volunteers from law schools across Ontario have helped over 10,000 unrepresented litigants through the FLP. The program is now active at the Family Courts in Windsor, London, Brampton, Toronto, North York, Kingston and Ottawa. Since 2001, Legal Aid Ontario (LAO) has also provided critical support for law students across the province to continue this work over the summer months. The FLP has also responded to requests from the Bar, bench and courts in

Victoria, Calgary, Saskatoon and Halifax to develop new programs in their areas. In all these locations, Court Managers, on behalf of their respective Ministries, have provided a key element for the success of the project – office space and administrative resources at the courts. By enabling student volunteers to be physically present in the courthouses, meeting with and assisting unrepresented litigants under the supervision of duty or advice counsel, the FLP promotes access to justice that is as timely and effective as possible.

For more information about PBSC, the FLP, or how we can work with you to develop new projects and initiatives

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Québec

Family Justice Outreach Initiative

In the upcoming year, Éducaloi will undertake an exciting new project that will address some of the unmet needs of the official language English minority community in Québec with respect to the family justice system.

Éducaloï, in partnership with Consensus Mediation Center and the Community Health and Social Services Network, will provide English-speaking parents who are separated or divorced with legal information on child support, support enforcement, and parenting arrangements. These parents will also receive information on conflict resolution tools that they can use to resolve disputes relating to child support and parenting arrangements. Although the project focuses on the needs of parents, the information developed in the project will also be provided to professionals and other intermediaries who help parents undergo separation or divorce (for example, social workers, community center staff, counsellors, relatives, and friends).

A booklet containing legal information on child support, support enforcement, and parenting arrangements, as well as information on conflict resolution tools will be published. A lawyer from Éducaloï and a mediator from Consensus Mediation Center will present the information contained in the booklet in information sessions for English-speaking parents who are separated or divorced and the professionals and other intermediaries who help these parents. The information sessions will target English-speaking communities located in Montréal and in small towns and rural regions in Québec. The information sessions in Montréal will be given in-person. The information sessions for communities in

small towns and rural regions will be presented using the distance education video-conferencing network established by the Community Health and Social Services Network. These information sessions will be broadcast to more than one community at the same time. A moderator from the Community Health and Social Services Network will moderate the information sessions. Parents, professionals and other intermediaries participating in the information sessions will receive the booklet in advance; they can also ask questions during the information sessions. This project is funded by the Department of Justice Canada.

Éducaloï is a non-profit organization whose mission is to inform Québécois of their rights and obligations by providing legal information in everyday language. It provides information in both French and English.

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New Brunswick

New Brunswick's New Processes

Court-Ordered Evaluations Support Program (C-OESP)

Parents in private litigation who have been ordered to have a custody evaluation may apply to C-OESP. This program provides income-scaled financial assistance with the costs of a court-ordered custody evaluation. This evaluation can include "Voice of the Child" interviews, psychological assessments, home studies, parenting capacity assessments, 'focused evaluations' and other processes, as long as it is for the purpose of helping the court determine the best interests of the child.

Each parent must apply separately. Applications must include completed application forms, income information similar to that required for determination of child support under the *Federal Child Support Guidelines*, copies of all court orders related to custody and access, and a completed Intake Form which includes detailed information for the eventual use of the evaluator. Successful applicants receive an Acceptance Letter and an Evaluator Instruction letter, which detail the level of C-OESP assistance they are eligible to receive.

C-OESP applicants are themselves responsible to locate, agree upon, and engage the services of an evaluator. Upon completion of the evaluation, the evaluator will bill C-OESP for the C-OESP subsidized portion of their invoice. Parents are responsible to pay the evaluator for any charges in excess of those covered by C-OESP.

Child Support Variation Service (CSVS)

The CSVS is a pilot project in Saint John judicial district providing free access to a conciliation service to assist parents to reach an agreement to vary their child support arrangements. This service provides a Conciliation Officer - a neutral, senior family law lawyer - to meet with both parties. The Officer reviews their documents and verbal information and then provides a recommendation based upon the Officer's understanding of the fact situation and the applicable *Federal Child Support Guidelines* calculation. If the parties agree with the recommendation, a Consent Order to vary child

support is immediately drawn up for signatures, and filed with the court for eventual consideration by a judge. If no agreement is reached, the case goes before the court.

All persons wishing to vary a child support order must file a Notice of Motion to Vary in the usual manner, whereupon they are given two dates: a date for a hearing at court, and an earlier date with CSVS. If an agreement is reached at CSVS, the court date can be released for use with another matter; if there is no agreement, the parties can proceed to their court hearing with no further delay.

There are six senior family law lawyers who meet with CSVS clients on a rotational basis. Each lawyer has been oriented in the use of a conciliatory approach. It is, for all practical purposes, *pro bono* work, as they are paid a per diem of \$275. Five CSVS meetings are scheduled every Wednesday.

The Conciliation Officer will conduct 'shuttle' negotiations, so parties who do not wish to meet in person with the other party may choose to be in another room. They will also conduct meetings by telephone. CSVS resolves between 65% and 70% of cases, saving parties considerable cost and time. It also releases court time for other matters.

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Nova Scotia

Nova Scotia Grandparent-Grandchild Access

Family law issues, particularly as they relate to custody of, and access to, children, are especially difficult. This is no less so when dealing with the issue of access between grandparents and grandchildren. Fortunately, in most cases, arrangements relating to the custody and access of children, including access by grandparents and others, are settled without recourse to litigation and the courts. The cases that do come before the courts, therefore, represent a very small percentage of the overall number of family law cases.

Legislation in all Canadian jurisdictions allows grandparents to apply for custody of, or access to, their grandchildren. There is no jurisdiction in Canada, however, which provides access as of right to grandparents, usually referred to as a "presumptive right of access."

In Nova Scotia, section 18(2) of the *Maintenance and Custody Act* provides that a parent or guardian or "other person with leave of the court" may apply for custody over or access to a child. Although not explicitly referred to, this provision has been used by grandparents to obtain access to their grandchildren. In Nova Scotia, an applicant must therefore first obtain the leave or permission of the court in order to bring an application. Such leave, although sometimes denied, has been granted by the Nova Scotia courts in appropriate circumstances.

Legislative provisions in all jurisdictions in Canada also mandate that courts must decide upon an access application on the basis of the child's "best interests." These interests are to be paramount in

reaching any decision. The “best interests of the child” standard requires each case to be assessed on its own merits, as determined by careful consideration of the particular facts presented by the case.

The Commission is of the view that existing Nova Scotian legislation, when seen through the lens of the best interests of the child, currently strikes the right balance. As a result, the Commission is not in favour of creating an automatic right of access on the part of grandparents or other relatives. Having said this, however, the Commission does see opportunity for reform in the area of grandparent-grandchild access.

These include that

1. the *Maintenance and Custody Act* be amended, to provide a “best interests of the child” list of factors to be considered in deciding access cases, similar to the provisions in the *Children and Family Services Act*.
2. section 18(2) of the *Maintenance and Custody Act* be amended to identify explicitly grandparents as a potential category of applicant.
3. the leave provision in section 18(2) of the *Maintenance and Custody Act* be retained.

See the full Report at: <http://www.lawreform.ns.ca/Downloads/GrandparentFinal.pdf>

The Law Reform Commission of Nova Scotia is an independent advisor to government. Created in 1991, the Commission is funded by the Government of Nova Scotia and by the Law Foundation of Nova Scotia.

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Prince Edward Island

PEI Integrated Services

Since December 30, 2003, Prince Edward Island has offered integrated family law services at the Honourable C. R. McQuaid Family Law Centre. The Centre operates from the belief that the future of society depends on the well-being of its children. Since individuals, families, communities and governments all share responsibility for achieving that well-being, families must be valued and supported. The Centre was established to provide programs and services, in a coordinated manner, to families going through separation and divorce. Its mission is to develop and continue family justice programs and services which promote and emphasize the best interests of the child.

The Centre houses the Family Law Section of the Office of the Attorney General. This includes the Family Court Counsellors' Office, including mediation services; the Parent Education Program; the Child Support Guidelines Office; the Administrative Recalculation Office; and the Maintenance Enforcement Program. All services are free of charge.

The Family Court Counsellors' Office prepares Home Studies for custody and access cases in the courts and mediates custody, access and child support issues between parties as an alternative to proceeding to court.

The Positive Parenting from Two Homes and Positive Parenting From Two Homes “For Kids!” Programs, from Parent Education, provide free information sessions to parents and kids who are separated and/or divorced and parenting or living from two homes. Evaluation of the program indicates that such parent education programs lessen parental discord over child custody, access, and support issues and enable parties to proceed to earlier resolution of their problems. The program was expanded in 2004-2005 to include delivery to inmates of the provincial correctional facility.

In the summer of 2005, the Parent Education Program collaborated with the provincial correctional facility. The facility had a project underway where inmates produced story sacks to help in young children's literacy programs. This project involved taking a children's book and producing wooden characters, a game and a puzzle to accompany the reading of material. Since the adult program has been delivered at the facility, inmates took on the task of making a story

sack to go along with the *Dinosaurs' Divorce* book used in the youngest “For Kids!” program. They indicated that they were happy to do something to “give back” to the program.

The Child Support Guidelines Office provides free information sessions on the *Federal Child Support Guidelines* and assistance to unrepresented parties proceeding through the courts on an initial application for child support or a variation of child support.

The Administrative Recalculation Office conducts the administrative recalculation of child support in cases where the discretion of the court is not required and the original order/agreement provides for the automatic administrative recalculation of child support annually. This allows the parties to update child support in accordance with their income, without proceeding back through the courts.

An interactive, secure website is used to increase information sharing between the PE Maintenance Enforcement Program and its clients and between the PE Program and other Maintenance Enforcement Programs across Canada. (<https://eservices.gov.pe.ca/meps/index.jsp>) Clients can receive information about the status of their case, a payment history (previous 12 months), and a list of enforcement actions taken in the past 12 months. The website also includes frequently asked questions about the Maintenance Enforcement Program and links to general information about other services offered at the Family Law Centre.

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Newfoundland and Labrador

Newfoundland and Labrador Family Justice Service Division

The new Family Justice Services Division (FJSD) provides a single point of entry and access to family law services in Newfoundland and Labrador. There are 11 FJSD offices, organized into four regions throughout the province. Each region has a multi-disciplinary team of counselors and mediators. In June 2007, four expanded FJSD sites were officially opened.

The FJSD is a Division of the Supreme and Provincial Courts of Newfoundland and Labrador. It is a partnership among several government departments and agencies including the Departments of Human Resources, Labour and Employment; Health and Community Services; Education; the Newfoundland and Labrador Legal Aid Commission and the Community Health Initiative Inc. Provincial and regional committees were established to assist in the coordination and implementation of this multi-departmental and multi-disciplinary family justice services model.

The Division aims to deliver comprehensive family justice services outside of the adversarial court system in a manner that meets children's needs and promotes timely and just resolution of disputes.

The idea of settling disputes and very acrimonious family matters by employing non-adversarial alternative resolution dispute mechanisms involves a fundamental change in thinking about how the court system should operate. Moving family disputes out of the adversarial setting of the courtroom and providing alternative means, not only to help them resolve their disputes but also to provide them with the support to do so, is really long overdue.

Chief Justice Derek Green

The FJSD provides services in all family law matters to individuals who make an application to court or alternatively, request services in custody, access, child support and spousal support matters. The Division provides parent education, dispute resolution and counseling services to families who are experiencing issues of custody, access, child support and spousal support.

Parent education sessions cover the emotional, physical, economic, and legal elements of separation and divorce. They also include information about children's needs, communication and the FJSD

process. For clients who are unable to travel to an FJSD office, a DVD version of the information session is provided.

Dispute resolution services include everything from facilitated telephone negotiations on simple child support issues to face to face mediation sessions. After individual intake meetings, the mediator conducts dispute resolution sessions in the most effective and safe manner given the parties' situation and needs. In addition, where there are high conflict issues or fractures in parent-child relationships, the FJSD Counselor may provide counseling services to support the process.

The FJSD Mediator serves as a neutral third party facilitating negotiations. The Counselor's role is to provide a means for the children's needs and feelings to be respected during the dispute resolution process. For some clients, the Counselor may also provide counseling on communication skills or new partner issues, as well as assistance with the emotional process of separation and divorce.

The dispute resolution process may result in verbal agreements, court orders, memoranda of understanding or the withdrawal of court applications. Clients are encouraged throughout the FJSD process both verbally and in writing to obtain legal advice, especially prior to signing any agreement.

There are plans for additional changes to the delivery of family law services, including expansion of the alternative dispute resolution approaches to Child, Youth and Family Services. Funding for the project is provided by the Poverty Reduction Strategy.

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Nunavut

Creating the Nunavut Family Abuse Intervention Act

Based on, and guided by, Inuit Qaujimajatuqangit (knowledge) and principles of healing, the Nunavut *Family Abuse Intervention Act* was created. This December 2006 Act comes from extensive community consultations and collaborations that achieved a consensus of what needed to be done in response to the high levels of family violence in Nunavut. As well, the governments of Saskatchewan and Nunavut - two totally different worlds, miles and miles apart physically - used each others experiences to make this Act come to life.

Commitment to the process by communities, individuals, organiza-

tions and government was so great that when a January blizzard threatened cancellation of the Inuuqatigiitsiarniq Symposium, participants and facilitators hastily adjourned to the only other meeting site and continued! There, and at a second location where a few participants were also stranded, sessions continued long past the completion of the formal agenda. One included a sharing circle lasting late into the night.

Participants determined that "the solution to violence does not come from outside the community, but exists within it."¹

Collaborative work continued, including meetings with various service agencies, judges, the courts, and elders. Some elders observed that no one had ever asked them before what they thought about the law. It was explained that, since this is the law of Nunavut, and they are the people of Nunavut, it was their role and their right to talk about what they thought about the law. For them, this was a new and empowering concept.

Incorporating the Symposium recommendations, the results of the various meetings and supported by previous work of Pauktuutit Inuit Women of Canada, the result is the preparation of a comprehensive, culturally appropriate strategy to address these issues. The Act is one part of this strategy.

Inuit healing principles embodied in the Act's provisions are:

Piliriqatigiinnngniq – working together for the common good;

Avatikmik Kamattiarniq – environmental wellness;

Pijittsirarniq – service to others and leadership;

Pilmmaksarniq – empowerment;

Qanuqtuurunnarniq – resourcefulness and adaptability; the capacity to be creative, flexible and solution oriented.

Aajiiqatigiinnngniq – cooperation and consensus; healing is successful only to the extent that it is reciprocal, based throughout on the opinion and contributions of both client and counselors, leaders and community members each recognizing the value of the other's perspective. Solutions are reached by consensus and are therefore sound.

As well as stressing the importance of inuuqatigiitsiarniq, which

means respecting others, relationships and caring for people, and tunnganarniq, which means fostering good spirit by being open, welcoming and inclusive, the Act is interpreted and administered in accordance with certain stated principles. Included among these stated principles are that all Nunavummiut are entitled to be treated with respect, that the views of elders deserve careful consideration and respect, and that members of the extended family should be given the opportunity to be heard and their opinions should be considered when decisions affecting their interests are being made.

Remedies available for family abuse include a unique Community Intervention Order. A Community Intervention Order allows the community to be involved when they see a family abuse problem. Any interested person may make submissions to the designated justice of the peace hearing an application for a Community Intervention Order. It is intended to be used before the situation becomes an emergency requiring an Emergency Protection Order. Also available are an Assistance Order and a Compensation Order.

Endnote

1 Page 12, *Final Report of the Inuuqatigiitsiarniq Symposium*, Government of Nunavut, Department of Health & Social Services, 2006.

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Northwest Territories Emergency Protection Orders

On April 1, 2005, the new *Protection Against Family Violence Act* came into effect in the Northwest Territories. The Act provides additional legal tools to help protect people who are threatened with family violence by allowing Emergency Protection Orders, Protection Orders and Warrants to permit entry. Protections under this Act are available to anyone in a family or intimate relationship. For example, a spouse or former spouse, someone who has had a child with the accused, or the parent or grandparent of any of these people may apply.

The main tool in the Act is the Emergency Protection Order (EPO). These Orders help protect victims of family violence who, because of the serious or urgent nature of their situation, require assistance without delay. Sufferers of family violence can apply for an EPO, 24 hours a day/7 days a week, either by contacting their local RCMP or by calling 1-866-223-7775, the YWCA Alison McAteer House. The RCMP and Family Violence Counsellors at the shelter are designated and trained to assist people in applying to a Justice of the Peace for the Orders.

The Emergency Protection Order is a short-term solution and provides some safe time to make longer-term plans around safety for the abuse sufferer, the children and the relationship. An EPO can grant sole use of a home or other property, restrict communication between the people involved, and order the seizure of weapons or firearms by the police. The new legislation accesses

the experience and expertise of McAteer House's trained family violence workers, who were already providing immediate and follow-up support to family violence sufferers. The workers also help women to assess their own risk and determine the best options given their particular circumstances.

An unintended consequence of this legislation is a stronger working relationship between the RCMP and the women's shelter, who now work more closely together. Each agency has a better appreciation for the difficult work that each does and understands that they are attempting to create similar final results while approaching issues from different perspectives.

Emergency Protection Orders are issued by Justices of the Peace and reviewed by the Supreme Court, who may agree with the Order, or hold a hearing where they can agree with, change, or revoke the Order.

A key element of this new legislation's implementation is the extensive public education and training. It is important that people understand what the legislation can and, more importantly, cannot do. Information on the Act is available in 10 languages, eight of them aboriginal, and there is oral information that can be listened to, rather than read.

The government of the NWT also wants to know what the public thinks about the process to apply for an Emergency Protection

Order and is interested in suggestions on how best to educate people in the NWT about the new *Protection Against Family Violence Act*. We are also meeting with people whose work brings them in contact with victims of family violence

Evaluation:

We anticipated we would receive approximately 50 applications per year. In the first year, however, over 116 were received and since then, well over 220 applications have been dealt with, from 22 communities!

A limited, six month evaluation looking for gaps in the process has been done and all recommendations were addressed by November 2006. Within the next five years, we are hoping to have an external performance evaluation done to get a sense of what difference, if

any, this legislation is making. Go to: http://www.justice.gov.nt.ca/FamilyViolence/FVPA_main.htm for more information.

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Yukon

Yukon Family Law Case Conferences

The Supreme Court of the Yukon has issued a Practice Directive, effective May 1, 2007, that applies to all family law proceedings. It requires a family law case conference to be held with a judge within 60 days of the date of service of the proceeding, except in those cases that are exempt. (Exemptions may be granted by a judge and are outlined in the Directive.) Failure to hold a family case conference within 60 days may result in an application being struck or adjourned by the presiding judge. A lawyer or a party may speak to the Trial Coordinator to request a Family Law Case Conference on a family law proceeding filed before May 1, 2007.

The purpose of the family law case conference is to ensure that all parties are aware of the alternative dispute resolution procedures that are available and to discuss the appropriate procedure for the particular case. The judge may address the following matters:

1. A discussion of the alternative procedures of private mediation, collaborative practice, judicial mediation, settlement and arbitration;
2. A discussion of some of the well-established principles of custody, child support, spousal support and property division;
3. A discussion to identify and narrow the issues;
4. Setting timelines where appropriate;
5. The judge may make any Order that could be made under Rule 35 for pre-trial conferences.

Where appropriate, the judge may also make the following Orders:

1. The judge may appoint a single expert to report on financial and property issues;
2. Where matters are unopposed or uncontested, the judge may order substituted service, interim interim or interim custody and child support, financial disclosure, preservation of property and other Orders that may be appropriate based upon affidavit evidence;
3. The judge may recommend that a custody and access report be prepared or that a Child Advocate be appointed.

Where the parties reside within 30 kilometres of Whitehorse, they must attend the conference in person with their lawyer, if they have one. For those further away, telephone attendance or videoconference may be permitted. The judge who presides at the conference will normally be seized of the case, except where it is appropriate or necessary for another judge to hear any matter that may arise.

The family law case conference will be tape recorded, but the tape will remain in the judge's chambers, unless a judge orders otherwise. A clerk may be present and if Orders are made or directions given, the judge will prepare a case conference memorandum. Any response disputing the accuracy of the memorandum must be filed within 14 days. The judge may issue a final memorandum and Orders must be prepared and filed as in any Chambers application.

Scheduling matters and service requirements are included in the Directive and possible penalties for non-compliance are set out. See: <http://www.yukoncourts.ca/courts/supreme/pd.html> for the complete Directive.

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