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BACKGROUND PAPER

FAMILY MEDIATION CANADA CONSULTATION ON CUSTODY, ACCESS AND CHILD SUPPORT

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Family Mediation Canada
Consultation on Custody, Access and Child Support

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Presented to:

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TABLE OF CONTENTS

| | |
|---|-----|
| ACKNOWLEDGEMENTS | iii |
| EXECUTIVE SUMMARY | iv |
| 1.0 INTRODUCTION | 1 |
| 1.1 Purpose of the Project | 1 |
| 1.2 Methodology | 1 |
| 1.3 Organization of the Report..... | 1 |
| 1.4 Limitations | 2 |
| 1.5 Demographics of Survey Respondents | 2 |
| 2.0 CUSTODY AND ACCESS ISSUES..... | 4 |
| 2.1 Best Interests of the Child..... | 4 |
| 2.2 Voice of the Child..... | 6 |
| 2.3 Family Violence..... | 8 |
| 2.4 Managing High Conflict Situations | 9 |
| 2.5 Promoting Non-adversarial Dispute Resolution Mechanisms | 9 |
| 2.6 Access and Compliance | 11 |
| 2.7 Clarifying Terminology and Parental Responsibilities..... | 14 |
| 3.0 CHILD SUPPPORT GUIDELINES ISSUES | 19 |
| 3.1 Child Support Paid Directly to Children..... | 19 |
| 3.2 Disclosure of Information | 19 |
| 3.3 Child Support Obligations of a Spouse Who Stands in Place of a Parent | 20 |
| 3.4 Defining Shared Custody | 20 |
| 3.5 Determining the Child Support Amount in Shared Custody Arrangements..... | 21 |
| 4.0 SUMMARY AND POLICY IMPLICATIONS..... | 23 |
| 4.1 Custody and Access Issues | 23 |
| 4.2 Child Support Issues | 27 |

APPENDIX A: SURVEY ON CUSTODY, ACCESS AND CHILD SUPPORT ISSUES 31

APPENDIX B: SUPPORTING TABLES: RESPONDENTS' WRITE-IN COMMENTS..... 49

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EXECUTIVE SUMMARY

The Department of Justice Canada hired the Canadian Research Institute for Law and the Family (CRILF) to analyze questionnaires completed by members of Family Mediation Canada on issues surrounding custody and access and the Federal Child Support Guidelines. The purpose of the survey was to obtain feedback from mediators about their experiences with custody and access issues and the Guidelines, as well as their perceptions of the need for changes, both legislative and otherwise, in these areas. Participants were asked to comment on issues and policy options based on their professional knowledge and experience.

To facilitate delivery of the survey, the questionnaire was handed out with the registration materials to all delegates to the fall 2000 Family Mediation Canada Conference in Hull, Quebec. The questionnaire was translated into French by the Department of Justice Canada for the benefit of francophone delegates. In cooperation with Family Mediation Canada, questionnaires were also distributed to all members who had not attended the conference (either by mail, e-mail or fax).

A total of 157 surveys were completed and returned to CRILF. Of these, 42 percent were completed by mediators, 39 percent by lawyers, 17 percent by social workers, and 15 percent by psychologists/therapists. The overwhelming majority of respondents said they practise mediation (91 percent). Highlights of the survey findings are presented below.

Custody and Access Issues

- Almost all respondents agreed that the *Divorce Act* should continue to include the “best interests of the child” test.
- The majority of respondents thought that the *Divorce Act* should include more specific criteria respecting the best interests of the child.
- Most respondents agreed that legislative reforms or service improvements were necessary to better enable children to voice their views when parenting decisions affecting them were being made.
- More than one half of respondents thought that legislation should define high conflict spousal relationships.
- Most respondents thought that there should be specialized legislative provisions or other procedures to deal with high conflict disputes.
- Three quarters of respondents thought that subsection 9(1)(b) of the *Divorce Act* (imposing a duty on lawyers to inform and discuss with their clients the availability of mediation facilities) should be strengthened.
- Respondents were very supportive of the following mechanisms or services to help parents resolve disputes about their children: mediation, parenting education programs, marriage/family counselling and parenting plans.

- The majority of respondents thought that counselling and mediation services should be voluntary. The majority of respondents thought that parenting education programs and parenting plans should be mandatory.
- More than three quarters of respondents agreed that legislative measures stronger than section 16(10) (the “friendly parent clause”) or other measures were required to promote children’s extensive and regular interaction with both their parents.
- Most respondents thought that parents should be encouraged to formalize in a written agreement or court order their custody and access arrangements.
- More than two thirds of respondents thought that costs should be specifically included as part of an access order when extensive and regular access arrangements involved financial costs.
- Two thirds of respondents thought that the Federal Child Support Guidelines should reflect an adjustment for access costs.
- More than one half of respondents thought that stronger legislative or other measures were required to promote children’s extensive and regular interaction with their grandparents.
- Respondents were asked which of four legislative options they would like to see implemented to clarify terminology and parental responsibilities. The majority of respondents favoured Option 4: Shared Parenting, followed closely by Option 3: Allocating Parental Responsibility.

Respondents were also asked their opinions about what legislative reforms or other reforms, services or mechanisms were needed to address a variety of custody, access and child support issues. Based on the results of this survey, it is clear that some of the issues could be addressed with legislative changes, while others need different approaches. A summary of the recommended legislative and other reforms as suggested by the respondents to this survey is presented below.

Suggested Legislative Reforms

- Respondents thought that several specific “best interests of the child” criteria were particularly important and should be included in the *Divorce Act*.
- Respondents supported several legislative changes that would recognize family violence as a factor in decision making about children after separation and divorce.
- More than one half of respondents thought that a legislative definition of high conflict spousal relationships should include long-term disputes involving high degrees of anger and distrust.
- One half of respondents thought that lawyers and judges should be required to explain to each party the obligations a parenting order creates and the consequence of non-compliance with orders.

- When extensive and regular access arrangements involve financial costs, respondents thought that costs should be specifically included in an access order, that the Federal Child Support Guidelines should reflect an adjustment for access costs, and that costs should be shared in proportion to income.
- When asked how to handle a situation in which a custodial parent wishes to move to a location that would affect the current access arrangements, most respondents thought that decisions should be based on the “best interests of the child.” Three quarters of respondents said that there should be a statutory notice period (e.g. 90 days) to allow time for altering access schedules, negotiation or litigation when necessary. Almost three quarters of respondents thought that financial arrangements should be adjusted to allow regular visits by the non-custodial parent, and two thirds thought that the custodial parent should have to show that the reason for the move is something other than to frustrate access by the non-custodial parent.
- Respondents were asked what legal approaches could address the problem of enforcing access orders. Almost two thirds suggested that provincial legislation or court rules were needed to facilitate quick reaction by courts. One half of respondents thought that legislation should provide a statutory definition of wrongful access denial and provide remedies for access denial to be used only when denial is wrongful. One half thought that legislation authorizing courts to order compensatory access and compensation for expenses incurred as a result of access denial was needed.

Other Suggested Reforms, Services and Mechanisms

Respondents were supportive of the following reforms to address a variety of custody and access issues:

- parenting education programs;
- better access to counselling services;
- better access to mediation services;
- assessment services;
- better access to legal aid;
- parenting plans;
- improved access supervision services;
- education for professionals;
- improved availability of information.

Child Support Issues

Respondents were asked a series of questions about potential changes to the Federal Child Support Guidelines. Legislative changes that respondents favoured are summarized below.

Suggested Legislative Reforms

- All but two respondents thought that direct child support payments to children at the age of majority or older should be allowed in certain circumstances.
- Most respondents thought that information about the status of children at the age of majority or older should be provided to the parent paying child support.
- Almost three quarters of respondents thought that the Federal Child Support Guidelines should be changed so that the parent paying child support receives information about the finances of children at the age of majority or older.
- When asked what procedure the Guidelines should include for calculating the amount of child support a step-parent pays, almost one-half of respondents said that the child support amount should comprise the table amount minus the amount any other paying parent pays.
- The vast majority of respondents thought that time should not be the only criterion for defining shared custody. Respondents thought that judges should also be allowed to consider other factors based on the level of parental responsibility.
- Respondents thought that the following factors should be included in a definition of shared custody: the decision-making process, the living accommodations for the children in each parent's home, the existence and content of a parenting plan, how parents share the children's expenses, and the proximity of the parents' residences and the feasibility of the arrangement.
- When asked their opinion on how the time element of shared custody should be defined, two thirds of respondents indicated that the parents should share their children on a "substantially equal" basis.
- There was no clear consensus on what term should be used to capture the concept of shared custody in the Guidelines for the strict purposes of determining child support.
- Respondents were asked how child support should be determined in shared custody arrangements. One half thought that formulas should be used, although respondents differed in the amount of discretion they thought judges should have in deviating from formulas or tables.

1.0 INTRODUCTION

1.1 Purpose of the Project

The Department of Justice Canada hired the Canadian Research Institute for Law and the Family (CRILF) to analyze questionnaires completed by members of Family Mediation Canada on issues surrounding custody and access and the Federal Child Support Guidelines. CRILF conducted a similar consultation in July 2000 with delegates to the Federation of Law Societies of Canada National Family Law Program in St. John's, Newfoundland. To enhance comparability between the findings of the two surveys, the content of the survey instrument for both projects was kept as similar as possible.

The purpose of the second survey was to obtain feedback from mediators about their experiences with custody and access issues and the Guidelines, as well as their perceptions of the need for changes, both legislative and otherwise, in these areas. Participants were asked to comment on issues and policy options based on their professional knowledge and experience.

1.2 Methodology

To facilitate delivery of the survey, the questionnaire was handed out with the registration materials to all delegates to the fall 2000 Family Mediation Canada Conference in Hull, Quebec (see Appendix A for a copy of the questionnaire). Participants were asked to drop off their completed questionnaire at the conference registration desk during the conference. The questionnaire was translated into French by the Department of Justice Canada for the benefit of Francophone delegates.

In conjunction with the survey, a consultation on custody, access and child support issues was held during the conference to gain more in-depth information from a small group of conference participants. The consultation was led by two representatives from the Department of Justice Canada.

In cooperation with Family Mediation Canada, questionnaires were also distributed to all members who had not attended the conference (either by mail, e-mail or fax). These members were asked to return the questionnaire by mail or e-mail to Family Mediation Canada by November 28, 2000. Out of approximately 1,200 questionnaires distributed, 17 English questionnaires were returned at the conference, 108 English questionnaires were returned by mail, 25 French questionnaires were returned by mail, and 7 English questionnaires were returned by e-mail.

1.3 Organization of the Report

This report is organized into four main sections. Analysis of the survey items dealing with custody and access issues is presented in Section 2.0, and of items dealing with the Federal Child Support Guidelines in Section 3.0. Section 4.0 summarizes the overall findings of the survey and discusses policy implications. A copy of the survey instrument is contained in Appendix A. Appendix B presents a summary of participants, write-in comments.

1.4 Limitations

The most important limitation of this survey is that it was not conducted with a random sample of all mediators in Canada; thus, the results should not be generalized to the profession as a whole.

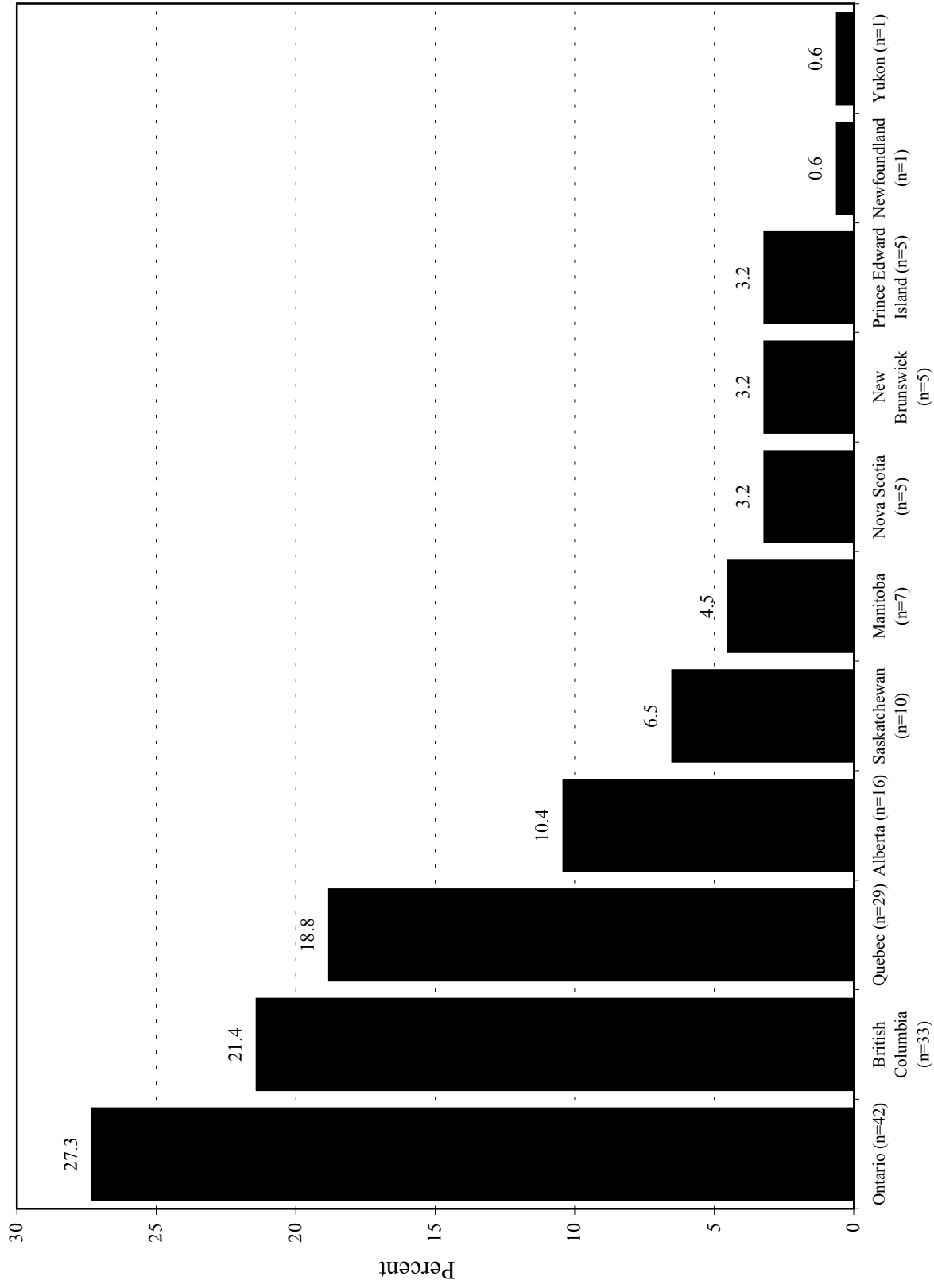
1.5 Demographics of Survey Respondents

A total of 157 surveys were completed and returned to CRILF. Of these, 42 percent (n=66) were completed by mediators, 39 percent (n=61) by lawyers, 17 percent (n=27) by social workers, and 15 percent (n=23) by psychologists/therapists.¹ Twenty-four respondents indicated an “other” profession, such as assessor, educator or judge. The majority of respondents were from Ontario (27 percent), British Columbia (21 percent) and Quebec (19 percent) (see Figure 1.1).

Respondents were asked if they practise mediation. The overwhelming majority said yes (91 percent; n=138). When asked approximately how many custody and access cases they had handled in the past year, respondents reported a wide range (0 to 2,000), with an average of 73. When asked how often they refer their clients to a lawyer, 39 percent of respondents said always, 29 percent said frequently, 29 percent said occasionally, and only 4 percent said never. The majority of respondents (75 percent) said that their cases proceed to litigation occasionally, and 16 percent said they frequently proceed to litigation. When asked how often they settle cases involving custody and access issues, 85 percent said frequently and 6 percent said always. Similarly, when asked how often they settle cases involving child support issues, three quarters of respondents (75 percent) said frequently and 7 percent said always.

¹ Since respondents were able to list more than one profession, the figures do not add to 100.

Figure 1.1: Percentage of Respondents from Each Province or Territory



Total N = 157. Missing Cases = 3.

2.0 CUSTODY AND ACCESS ISSUES

2.1 Best Interests of the Child

Almost all respondents agreed (94 percent) that the *Divorce Act* should continue to include the “best interests of the child” test. Some respondents who did not agree actually went one step further and said that the test should be the “best interests of the family” (see Appendix B, Table B-1). As one respondent said, “...the child’s needs must be viewed as being closely related to the well-being of the parents. An estranged parent does not bode well for the child.”

The majority of respondents (85 percent) thought that the *Divorce Act* should include more specific criteria respecting the best interests of the child. Respondents were then asked to rate specific criteria as being of high, medium or low importance or as not relevant to the best interests of the child. As indicated in Table 2.1, the criteria respondents felt were of highest importance were protecting the child from harm caused by violence, maintaining a strong and stable relationship with both parents, and providing for the basic needs of the child (e.g. the child’s health and education).

Respondents were also given the opportunity to suggest other criteria that should be specified in the *Divorce Act* respecting the best interests of the child. These responses (n=29) varied widely, and are shown in Appendix B, Table B-2. One respondent thought that an important factor was the “willingness of each parent to take on the responsibilities of joint custody: planning; organizing; initiating matters for the child; as well as consistently following through on spending time with the child.” Another said, “No form of ‘one shoe fits all’ approach will work—but the pre-separation parent-child relationship patterns are highly relevant—the arrangement that was in place prior to separation. A harm reduction approach over a rights-based approach is fundamental in the family arena. In that sense, a parent predisposed to peacemaking rather than violent/adversarial resolution is helpful to the child.”

Not all respondents were in favour of including specific criteria in the *Divorce Act*. One respondent cautioned: “All of these criteria are so subjective, judgments would depend so much on the particular judge, and being too specific about what is required in a law only leads to absurdities and impracticalities when applied to particular cases.”

Table 2.1: Respondents' Ratings of the Importance of Specific Best Interests of the Child Criteria

| Best Interest Criteria | Level of Importance | | | | | | | | |
|---|---------------------|------|--------|------|-----|------|--------------|------|--|
| | High | | Medium | | Low | | Not Relevant | | |
| | n | % | n | % | n | % | n | % | |
| Need to protect the child from physical or psychological harm caused by violence or exposure to violence | 132 | 96.4 | 4 | 2.9 | 1 | 0.7 | 0 | 0.0 | |
| Opportunity for the child to maintain a strong and stable relationship with both parents | 126 | 90.6 | 12 | 8.6 | 1 | 0.7 | 0 | 0.0 | |
| Arrangements that encourage the child's emotional growth, health, stability and physical care at every stage of the child's development | 109 | 79.6 | 24 | 17.5 | 2 | 1.5 | 2 | 1.5 | |
| Ability of parent(s) to provide guidance, education, basic needs and other special needs of the child | 98 | 73.7 | 29 | 21.8 | 6 | 4.5 | 0 | 0.0 | |
| Protecting the child from continued exposure to conflict between parents | 100 | 73.0 | 30 | 21.9 | 7 | 5.9 | 0 | 0.0 | |
| Willingness of each parent to encourage a close relationship between the child and the other parent | 98 | 71.0 | 31 | 22.5 | 9 | 6.5 | 0 | 0.0 | |
| Quality of the relationship that the child has with the parent(s) | 80 | 58.0 | 48 | 34.8 | 10 | 7.2 | 0 | 0.0 | |
| Ability of the parents to cooperate and communicate with each other on important issues concerning the child | 76 | 55.5 | 43 | 31.4 | 17 | 12.4 | 1 | 0.7 | |
| Personality, character and emotional needs of the child | 73 | 53.7 | 53 | 39.0 | 8 | 5.9 | 2 | 1.5 | |
| Opportunity for the child to maintain a strong and stable relationship with other members of his or her family | 72 | 52.9 | 62 | 45.6 | 2 | 1.5 | 0 | 0.0 | |
| Ensuring there is no preference in favour of either parent on the basis of that parent's gender | 69 | 50.7 | 36 | 26.5 | 17 | 12.5 | 14 | 10.3 | |
| Ability of the child to adjust to the new parenting arrangement | 55 | 40.1 | 66 | 48.2 | 14 | 10.2 | 2 | 1.5 | |
| Child's cultural, ethnic and religious background | 38 | 27.9 | 64 | 47.1 | 27 | 19.9 | 7 | 5.1 | |
| Opinions and wishes expressed by the child | 36 | 26.5 | 73 | 53.7 | 27 | 19.9 | 0 | 0.0 | |
| Caregiving role assumed by each parent before the break-up | 30 | 21.9 | 69 | 50.4 | 39 | 24.1 | 5 | 3.6 | |

2.2 Voice of the Child

The United Nations Convention on the Rights of the Child asserts the right of the child to participate in decisions that affect his or her life. Respondents were asked if they thought that legislative reforms or service improvements were necessary to better enable children to voice their views when parenting decisions affecting them were being made. The vast majority (79 percent) said yes. Respondents were then asked their opinion about specific measures to do this. More than one half (54 percent) favoured assessment reports, 41 percent non-legal representation for the child, and one third (35 percent) legal representation for the child. Only 21 percent favoured a judicial interview with the child. Respondents were least likely to favour testimony by the child (13 percent) and a legislative provision that states that parents should consult their children respectfully when making parenting arrangements upon separation (18 percent).

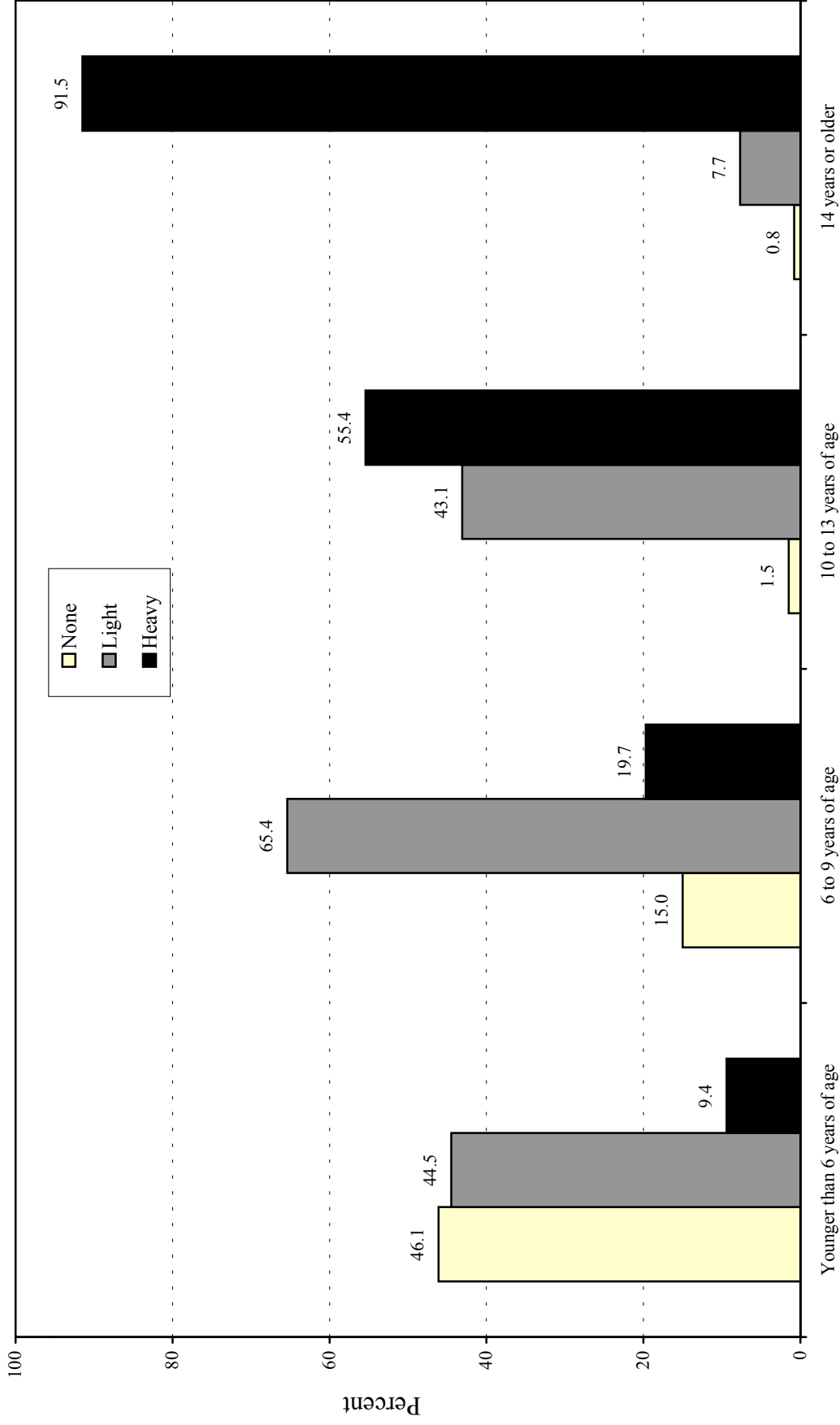
Respondents were asked if there were other legislative reforms or service improvements they thought would be helpful to enable children to voice their views. The most common suggestions of the 31 given were bringing in a neutral or impartial mental health professional with expertise in interviewing children, and mandatory parenting education to enable parents to make informed decisions about their children (see Appendix B, Table B-3).

When commenting on this question, respondents expressed concern about directly involving children in decision making. One respondent said, “I am very concerned at soliciting children’s direct participation in litigation as a litigant—children are in a dependent position; potential for abuse of position of trust is very high, for either parent.” Another suggested that there be a minimum age at which children could be involved in decision making, and that “protocols and minimum training standards of the person doing the assessments should be established.”

When asked about factors they thought should be considered when deciding what weight should be given to the child’s views, respondents were very supportive of all the factors listed: age of child (81 percent), ability of child to understand the situation (74 percent), indication of parental coaching (69 percent), child’s emotional state (69 percent), ability of child to communicate (69 percent), and child’s reasons for views (68 percent). Respondents made 30 other suggestions for factors to be considered. The most common responses were the quality of the relationship between parent and child, the child’s maturity, and the ability or training of those interpreting the child’s views (see Appendix B, Table B-4).

Respondents’ comments indicate the complexity involved in deciding what weight should be given to the child’s views. One respondent said this is “very tricky. By the time issues reach the court, the children have been influenced by one parent or the other.” Another said, “One must always take into account the child’s wishes, the underlying reasons, and the emotional state of the child; however, we must be careful who we choose to hear/interpret the child’s wishes—complex loyalty bonds, impact of violence, or attachment to a particular parent must be fully understood and reported.” A respondent advised that “It’s best to keep children shielded from the adversarial process. Using their voice in the cause of non-adversarial resolution is different, and can be ethically justified.”

Figure 2.1: Respondents' Views on How Much Weight Should be Given to the Preference of Children in Specified Age Ranges



Total N = 157. Missing Cases for Younger than 6 years of age = 29; 6 to 9 years of age = 30; 10 to 13 years of age = 27; and 14 years or older = 27.

Respondents were fairly consistent when asked how much weight should be given to the preferences of a child at specified ages regarding custody decisions. Predictably, the older the child, the more weight respondents thought should be given to their preferences (see Figure 2.1). While 46 percent thought no weight should be given to the preferences of children younger than 6, 65 percent thought the preferences of 6- to 9-year-old children should be weighted lightly, and 92 percent thought the preferences of children 14 or over should be weighted heavily. For children ages 10 to 13, 43 percent of respondents thought their preferences should be weighted lightly, and 55 percent thought they should be weighted heavily. A common response to this question was “it depends.” As one respondent put it, “You can’t answer based on age—it depends on the child.”

2.3 Family Violence

The Government of Canada strongly believes that it is important to send a message that all aspects of the family law system must take into account incidents of family violence involving the child or a member of the child’s family. Survey respondents were asked how legislation should recognize family violence as a factor in decision making about children after separation and divorce. As shown in Table 2.2, two options received the most support from respondents: history of family violence should be a factor considered in evaluating the “best interests of the child” test and legislation should provide that domestic violence is a factor that negatively affects children and should be considered in determining parenting arrangements.

Table 2.2: Respondents’ Views on How Legislation Should Recognize Family Violence in Decision Making About Children

| Factors | n | % |
|---|----------|----------|
| History of family violence should be a factor considered in evaluating the “best interests of the child” test | 139 | 88.5 |
| Legislation should provide that domestic violence is a factor that negatively affects children and should be considered in determining parenting arrangements | 130 | 82.8 |
| Legislation should clarify that shared parenting should not be ordered when this could cause abuse, serious harm or injury | 109 | 69.4 |
| Legislation should provide that supervised access should be ordered when necessary to protect the child | 107 | 68.2 |
| Legislation should create an offence for false allegations of abuse or violence | 103 | 65.6 |
| Legislation should provide a statutory definition of family violence | 85 | 54.1 |
| Legislation should preclude mandatory mediation when there is evidence of family violence | 56 | 35.7 |
| Other | 28 | 17.8 |

There were 32 other suggestions made by 28 respondents for how legislation should recognize family violence as a factor in decision making (see Appendix B, Table B-5). Some respondents commented that mediation should not be used in situations involving family violence; however, one respondent said, “Family violence comes in many degrees—let the parties decide if they feel that violence is such a factor that they cannot mediate. If the victim spouse says mediation should be attempted, then respect those wishes.” Another respondent said that “emotional abuse may be experienced by one parent without the other’s intention, and therefore whether an allegation is ‘false’ or not would require careful definition. For instance, constant demeaning, criticizing and bullying behaviour is not apparent to the perpetrator because he/she has usually incorporated this behaviour into their personality over many years.”

Respondents were also asked what other reforms or service improvements would be useful. The majority of respondents supported each of the following options: more education for parents on the effects of family violence on children (76 percent), better access supervision services (69 percent), better counselling services (68 percent), independent assessment services (64 percent), more education for professionals on the effects of family violence on children (61 percent), and better access to legal aid (51 percent). Respondents made 37 other suggestions (see Appendix B, Table B-6), the most common being better access to low-cost/no-cost counselling services for victims, children and abusers and mandatory parenting education.

2.4 Managing High Conflict Situations

Experts agree that exposure to unresolved, high conflict situations increases risk factors in children. Respondents were asked if legislation should define high conflict spousal relationships, and 59 percent said it should. When asked what factors should be included in a legislative definition of high conflict spousal relationships, the most often given responses were long-term disputes involving high degrees of anger and distrust (57 percent), chronic disagreements over parenting issues (47 percent), history of misuse of the legal system (46 percent), and unsubstantiated allegations of poor parenting (38 percent). The most common other responses of the 29 given were a history of abuse or violence and substance abuse (see Appendix B, Table B-7).

Most respondents (80 percent) thought that there should be specialized legislative provisions or other procedures to deal with high conflict disputes. When asked what type of legislative provisions or other procedures would be workable and useful, over half of the respondents agreed with the following measures: specialized education for parents on high conflict cases (70 percent); special counselling services (65 percent); special assessment services (61 percent); and special mediation services (60 percent). Of the 24 other suggestions given by respondents, the most common was to have a trained individual to assist high conflict families (see Appendix B, Table B-8).

2.5 Promoting Non-adversarial Dispute Resolution Mechanisms

Subsection 9(1)(b) of the *Divorce Act* imposes a duty on lawyers to inform and discuss with their clients the availability of mediation facilities. Respondents were asked if subsection 9(1)(b) should be strengthened, and three quarters (74 percent) said yes. Respondents were then asked to suggest ways that subsection 9(1)(b) could be strengthened, and 121 comments were received (see Appendix B, Table B-9). The following were the most common suggestions: requiring

parties to attend a first session of mediation to learn about the process and to explore possibilities for involvement, mandatory mediation before the case goes to court, lawyers distributing a pamphlet/handout describing mediation services, and clients signing an acknowledgement that mediation services have been discussed and that they fully understand how/if mediation could be helpful to them.

Respondents’ views on this question are captured nicely in the following comments:

Make mediation mandatory—the Courts really can’t deal with the emotional side of divorce—so at least mediation should have a shot at getting the parties to express these matters prior to finalizing the order and making decisions.

The petition for divorce or statement of claim should contain a section that has to be signed by the client confirming she/he has been advised: (1) that mediation is an option; (2) that she/he has considered the option; and (3) that she/he has decided for the time being to reject the option but understands it is available in the future.

Respondents were asked to indicate what mechanisms or services they thought would help parents resolve disputes about their children, and also whether the service should be voluntary or mandatory. Table 2.3 shows that the vast majority of respondents were supportive of each mechanism or service listed. For example, 96 percent supported mediation services, 94 percent supported parenting education programs, 85 percent supported marriage/family counselling, and 84 percent supported parenting plans. Respondents differed, however, on whether they thought the mechanism or service should be voluntary or mandatory. The majority of respondents thought that marriage/family counselling and mediation services should be voluntary. More than two thirds of the respondents (71 percent) thought that parenting education programs should be mandatory, and one half (50 percent) thought parenting plans should be mandatory. One respondent commented, “It is hard to make mandatory systems work—education is the key.” Another said, “Initial assessment (separate sessions) could be mandated, but it would be impossible to make people mediate or do counselling.”

Table 2.3: Mechanisms Respondents Thought Would Help Parents Resolve Disputes About Their Children and Whether They Should be Voluntary or Mandatory

| Mechanisms | Voluntary | | Mandatory | |
|------------------------------|-----------|------|-----------|------|
| | n | % | n | % |
| Marriage/family counselling | 105 | 66.9 | 28 | 17.8 |
| Mediation services | 80 | 51.0 | 70 | 44.6 |
| Access supervision services | 64 | 40.8 | 59 | 37.6 |
| Parenting plans | 54 | 34.4 | 78 | 49.7 |
| Parenting education programs | 37 | 23.6 | 111 | 70.7 |

Twenty-three other comments were received about mechanisms for helping parents resolve disputes about their children (see Appendix B, Table B-10). The most common response was to have assessment services.

Respondents overwhelmingly agreed with the following suggestions for how parents could be better informed of mechanisms or services that could help them resolve disputes about their children: ensure information is available early in the process (90 percent), multimedia advertising (e.g. television, newspapers and the Internet) (77 percent), printed materials (e.g. brochures and booklets) available at law offices (71 percent), and printed materials available through the courts (71 percent). When asked for other suggestions, respondents provided 65 comments (see Appendix B, Table B-11), the most common being mandatory information session before court, printed materials in community locations, and printed materials in medical offices (e.g. doctor and dentist's office and hospital). One respondent suggested that "an initial 'potent' information session in the early stages outlining the costs, financial and emotional, to the clients can help get them started in the right direction, with no illusions as to the consequences if they don't mediate. Too often parties start on the adversarial route and then they can't turn back."

2.6 Access and Compliance

More than three quarters of respondents (77 percent) agreed that legislative measures stronger than section 16(10) (the "friendly parent clause") or other measures were required to promote children's extensive and regular interaction with both their parents. A cautionary note was raised by one respondent, however, who said, "my worry is that this clause can cause great harm in situations where a parent is labelled as uncooperative or labelled with parental alienation when it is really the dynamics of family violence."

When asked what legislative or other measures were required, respondents were most supportive of education for parents on the benefits for children of contact with both parents; more than two thirds of respondents supported mediation services (see Table 2.4). Other suggestions are presented in Appendix B, Table B-12. The most common suggestion of the 22 received from 20 respondents was to provide case management services/parent coordinators to address unresolved conflict. As one respondent said, "What is needed is a parent coordinator or court counsellor with the authority to counsel, mediate, arbitrate, intervene in crises, temporarily suspend access or alter parenting plans as necessary." Another respondent disagreed that stronger measures were needed to promote children's extensive and regular interaction with both their parents: "You can't force a relationship that isn't there. This may end up harming the children even more. Children can develop similar relationships with other adults in their life in the place of an absent parent!"

Most respondents (85 percent) thought that parents should be encouraged to formalize in a written agreement or court order their custody and access arrangements. The majority of respondents favoured the following mechanisms or services: mediation (76 percent), parenting education programs (69 percent), parenting plans (58 percent), and better access to information (57 percent). Nineteen other suggestions were made, and are presented in Appendix B, Table B-13. The most common response was to have aids to help parents develop their own agreement (e.g. computer software program or self-help kit). One respondent said, "Parents need assistance with their grief and anger over separation before they can make reasonable decisions

about their children. Some also need to understand much better what their children’s needs are—each child is unique.” Another respondent suggested that “a significant majority of separating parents would welcome mediation in ‘setting out in writing’ the understandings and agreements between them. Such a service can and should be promoted at the local level.”

Table 2.4: Respondents’ Views on Which Legislative or Other Measures are Required to Promote Children’s Interaction with Both Parents

| Measures | n | % |
|---|-----|------|
| Education for parents on the benefits for children of contact with both parents | 116 | 73.9 |
| Mediation services | 106 | 67.5 |
| Counselling services | 89 | 56.7 |
| Requiring lawyers and judges to explain to each party the obligations created by a parenting order and the consequences of non-compliance with orders | 81 | 51.6 |
| Supervised access services | 78 | 49.7 |
| Presumption of shared parenting | 65 | 41.4 |
| Punishing and sanctioning the parent who breaches an access order | 62 | 39.5 |
| Court-connected office to enforce access orders | 61 | 38.9 |
| Stronger legislative measures dealing with the non-exercise of access | 54 | 34.4 |
| Other | 20 | 12.7 |

Respondents were asked how costs should be dealt with when extensive and regular access arrangements involved financial costs. More than two thirds of respondents (68 percent) thought that costs should be specifically included in the access order. Almost two thirds (62 percent) thought that the Federal Child Support Guidelines should reflect an adjustment for these costs. Half (50 percent) thought costs should be shared in proportion to income. Respondents were not in favour of the other options given. Only one third (32 percent) agreed that “extensive and regular interaction” should be specifically defined (e.g. a threshold amount of time), and only five percent agreed that all costs should be borne by the access parent (i.e. the current model).

Respondents made 16 other comments (see Appendix B, Table B-14). The most common was that parents should be encouraged to formulate their own plan, with the assistance of a mediator if necessary. The comment was made by one respondent that, “the Guidelines seem to be encouraging contests over ‘shared’ custody to avoid the Guideline amount—concerned if shared custody is the reality in all instances and whether the residential parent still bears most of the costs even if the child is with the other parent 40 percent of the time.”

Respondents were also asked how to handle a situation in which a custodial parent wishes to move to a location that would affect the current access arrangements. As shown in Table 2.5, respondents agreed that decisions should be based on the best interests of the child: there should be a statutory notice period (e.g. 90 days) to allow time for altering access schedules; negotiation or litigation when necessary;² and financial arrangements should be adjusted to allow regular visits by the non-custodial parent. More respondents thought there should not be a presumption in favour of the custodial parent (42 percent) than those who did (8 percent). There were 23 other comments made by respondents (see Appendix B, Table B-15). A mediator commented that there should be “*definitely a 90-day written notice of relocation.... Most clients are more ‘comfortable’ and ‘reassured’ when this is included in a mediation report.*”

Table 2.5: Respondents’ Views on Ways to Deal with Situations Where a Custodial Parent Wishes to Move and this Would Affect Access Arrangements

| Options | n | % |
|---|----------|----------|
| Decisions should be based on the best interests of the child | 126 | 80.3 |
| There should be a statutory notice period (e.g. 90 days) to allow time for altering access schedules, negotiation or litigation if necessary | 115 | 73.2 |
| Financial arrangements should be adjusted to allow regular visits by the non-custodial parent | 113 | 72.0 |
| The custodial parent should have to show that the reason for the move is something other than to frustrate access by the non-custodial parent | 103 | 65.6 |
| There should not be a presumption in favour of the custodial parent | 66 | 42.0 |
| There should be a presumption in favour of the custodial parent | 13 | 8.3 |
| Other | 23 | 14.6 |

The opinions of respondents on what legal approaches or program supports could address the problem of enforcing access orders are presented in Table 2.6. The options receiving the support of the majority of respondents were as follows: use of mediation, special education for parents on the problem, provincial legislation or court rules to facilitate quick reaction by courts, use of counselling, and legislation authorizing courts to order compensatory access and compensation for expenses incurred as a result of access denial. Respondents were least supportive of agency enforcement to address the problem of enforcing access orders. Fifteen other comments were received and are presented in Appendix B, Table B-16. The most common of the suggestions was some form of case management through the courts.

² It should be noted that subsection 16(7) of the *Divorce Act* (R.S., 1985, c.3 (2nd Supp.)) already allows the court to include in an order that 30 days’ notice or “such other period before the change as the court may specify” be given.

More than one half of respondents (58 percent) thought that stronger legislative or other measures were required to promote children’s extensive and regular interaction with their grandparents. When asked what legislative or other measures were required, almost half (48 percent) favoured including provisions in parenting plans for access by grandparents, and 39 percent of respondents said there should be more specific statutory references to the importance of grandparents in “best interests of the child” criteria. Approximately one third of respondents favoured special education on the problem (34 percent), better counselling and support for parties in this situation (31 percent), and specifying grandparents in legislation (26 percent). There were 13 other comments made by respondents (see Appendix B, Table B-17). When commenting on whether stronger measures are necessary to promote access by grandparents, one respondent stated: “No. Very strongly. Parties have enough to cope with without grandparents.” Another said, “Only where the grandparents’ adult child is unavailable by death, incapacity or jail should access rights be granted to a grandparent. In all other instances the grandparent should gain access in negotiation with their adult child and if that adult child refuses them access they need to resolve the adult problem.”

Table 2.6: Respondents’ Views on Legal Approaches or Program Supports that Could Address the Enforcement of Access Orders

| Options | n | % |
|---|----------|----------|
| Use of mediation | 119 | 75.8 |
| Special education for parents on the problem | 101 | 64.3 |
| Provincial legislation or court rules to facilitate quick reaction by courts | 95 | 60.5 |
| Use of counselling | 88 | 56.1 |
| Legislation should provide a statutory definition of wrongful access denial and provide remedies for access denial only when it is wrongful | 87 | 55.4 |
| Legislation should authorize courts to order compensatory access and compensation for expenses incurred as a result of access denial | 84 | 53.5 |
| More access supervision services | 77 | 49.0 |
| Create offences for wrongful denial of access | 62 | 39.5 |
| Agency enforcement | 44 | 28.0 |
| Other | 15 | 9.6 |

2.7 Clarifying Terminology and Parental Responsibilities

The survey distributed to respondents included an outline of four options that the Department of Justice Canada is considering for legislative changes to terminology in the *Divorce Act*. The four options as presented by the Department of Justice are as follows:

Option 1: Status Quo

- Maintain existing terminology in legislation. Leave the current “custody” and “access” terms and their meanings alone.
- Focus on services, rather than a change in terminology to better serve the interests of children and reduce conflict between parents.

Option 2: Clarify the Meaning of “Custody”

- Maintain terminology of custody, but introduce the terminology of “parental responsibility.”
- The meaning of the current term “custody” would be re-defined and clarified. Parental responsibility would be the wider term relating to all of the duties, responsibilities and authority that a parent of a child has in relation to his or her child. “Custody” would refer more specifically to the residential caregiving duties and the authority that goes along with them.
- A general definition of “parental responsibility” would be adopted, such as “all the duties, powers, responsibilities and authority that a parent of a child has in relation to the child.” In keeping with the Quebec “parental authority” approach, while both parents would maintain “parental responsibility,” the practical exercise of this responsibility would need to be described. An agreement or court order would therefore set out how custody (residence), access, and decision-making authority would be exercised between the parents.

Option 3: Allocating Parental Responsibility

- This option involves eliminating the terms “custody” and “access” from family law legislation respecting private parenting disputes. The new concept and terminology of “parental responsibility” would be introduced and would emphasize the allocation of specific aspects of parental responsibility between the parents based on the best interests of the child.
- As noted in Option 2, a general definition of “parental responsibility” could be adopted, such as “all the duties, powers, responsibilities and authority that a parent of a child has in relation to the child.”
- The legislation would indicate that both parents would have “parental responsibility” and would also include an additional statutory provision that would more specifically identify the responsibilities and duties of parents in relation to their children, such as the following:
 - maintaining a loving, nurturing and supportive relationship with the child;
 - seeing to the daily needs of the child, which include housing, feeding, clothing, physical care and grooming, health care, daycare and supervision;
 - decision making concerning the child’s welfare, health care, education and religion;
 - providing emotional support for the child; and
 - providing financial support for the child.

Option 4: Shared Parenting (the Recommendation of the Special Joint Committee)³

- Eliminate the terms “custody” and “access” from both the *Divorce Act* and provincial family law legislation and replace them with the term “shared parenting.”
- The Special Joint Committee’s report, *For the Sake of the Children*, recommended that the term “shared parenting” be adopted so that all the meanings, rights, obligations and common law and statutory interpretations previously embodied in the terms custody and access would be exercised jointly by both parents.
- While the Joint Committee does not recommend a presumption of equal time sharing as being in the best interests of children, the key feature would be a presumptive starting point that the rights and responsibilities of child rearing be shared in an equal or near equal division, and that children have extensive and regular interaction with both parents.

Respondents were asked which option they would like to see implemented. The most popular response was Option 4: Shared Parenting (41 percent), followed closely by Option 3: Allocating Parental Responsibility (39 percent). Only 1 percent supported Option 1: Status Quo, and only 10 percent favoured Option 2: Clarify the Meaning of “Custody.” Four percent of the respondents chose “None of the Above.” Some respondents, however, raised concerns about Option 4: Shared Parenting. For example, one respondent said, “Based on experience, Option 4 in isolation seems hopelessly idealistic. Option 4 as a starting point, with default to Option 3 makes more practical sense to me.” Another said, “I am very concerned about shared parenting in regards to families in severe pathology. Power and control is a major issue for many of the parents I am seeing when completing child custody reports.” Still another said, “Option 4 is better but not for litigating parents. The presumption for shared parenting should not be used as an economic weapon by fathers against mothers doing the lion’s share of the parenting.” Lastly, one respondent said the following:

I don’t like Option 1 or 2 because ‘custody’ is still being used. Even though legislation knows that the definition has changed, the average person on the street still has a preconceived notion about ‘custody’ and ‘access.’ Custody connotes *ownership* of the child. Children are not owned, they have a right to both parents in their life. I don’t like Option 4, because it is too presumptuous. Shared parenting is not always the best option (in the case of very short marriages, where parenting values/beliefs have not been established). Or absent parent marriages, when one parent has really done very little hands on. Also when there are infants or very young children, i.e., infants who are still nursing, etc.

Respondents were asked which option best promotes child-centred decision making. Option 3: Allocating Parental Responsibility was favoured by 43 percent of the respondents, and 38 percent chose Option 4: Shared Parenting. Only 10 percent chose Option 2: Clarify the Meaning of “Custody,” and 2 percent thought Option 1: Status Quo best promotes child-centred decision making. Two percent of respondents chose “None of the Above.” When commenting on this question, one respondent stated: “Option 4 is effective only where parents have a

³ *For the Sake of the Children*. Report of the Special Joint Committee on Child Custody and Access. Parliament of Canada. Ottawa, 1998.

respectful relationship with each other. For those who do not and cannot, Option 3 is preferable.” Another respondent expressed concern about each proposed option:

Depending on the maturity of the parents, geographical distance, the level of hostility/abuse existent in the parental relationship, etc., none of these options will always be in the best interests of the child. While Option 4 is ideal, it won't always work in the real world. Sometimes we need Option 1 to give the power to a parent who needs to protect the well being of children from an abusive parent.

Almost all respondents (97 percent) agreed that emphasizing parental responsibilities rather than parental rights was an appropriate reform objective. When asked which option best emphasizes parental responsibilities rather than parental rights, respondents favoured Option 3: Allocating Parental Responsibility (50 percent) and Option 4: Shared Parenting (38 percent) over Option 2: Clarify the Meaning of “Custody” (5 percent) and Option 1: Status Quo (2 percent).

Respondents were asked a general question on how else legislation could provide guidance in determining parents' responsibility for their children on separation and divorce. The suggestions are contained in Appendix B, Table B-18.

The most common responses of the 79 received were as follows: parenting education programs should be mandatory, legislation should define in general terms the responsibilities of parents after separation and divorce, and there is nothing more legislation can do. Specific comments by participants included the following:

There needs to be a moratorium on any legal proceedings that place the parents in the position of having to make major long-term decisions regarding their children for at least two to three years after the separation. While couples wait this time period, various services need to be available to the parents to help them make decisions in the best interests of their children when the time for a formal divorce occurs (2-3 years later). This includes parent education; mediation; counselling; crisis intervention; assessment. It borders on the unethical to put parents in a situation where they have to make major long-term decisions regarding their personal and their children's lives during a period that is understood to be emotionally difficult and when many are acting and thinking 'out of character,' and are emotionally vulnerable. Parents need to be given an appropriate time period to deal with the many consequences of the separation. Child support can be put into place on an interim basis until the Court is assured that the parents have taken advantage of all the relevant services related to their case and have spent an appropriate period of time to consider all the implications of their separation on their children.

To be blunt, it is the writer's experience and the experience shared by numerous family lawyers that there is a strong perception (dare we say certainty) that there has developed in the Courts over the last 10 years a significant bias in the system in favour of women. The writer has recently forwarded correspondence to the Federal Minister of Justice and the Alberta Minister of Justice raising some of these concerns. The response I received back from the Honourable Federal Minister of Justice essentially indicated that the *Divorce Act* was very clearly gender neutral. The concern of the writer was simply that notwithstanding that the legislation is neutral, our Courts, including the Supreme Court of

Canada, have exhibited what could charitably be described as a benevolent attitude towards women in family breakdowns and a hostile attitude towards men in family breakdowns.

You can't legislate good parenting.

I think we need to recognize that legal remedies/legislation can only do so much to assist families in this transition. Families would be better served with a range of services made available to them, i.e., prevention, education, supportive counselling post separation/divorce, mediation, access assistance and when needed, legal assistance. Separation and divorce is a social/emotional issue. Overfocusing on legislation (and especially if it's punitive) I think is misguided/misses the mark.

3.0 CHILD SUPPORT GUIDELINES ISSUES

3.1 Child Support Paid Directly to Children

The Federal Child Support Guidelines recognize that judges may treat older children who are still dependent on their parents differently from minor children when it comes to determining child support amounts. Older children may have part-time jobs or be living away from home while going to school. Parents and other people have questioned whether it is best for the paying parent to continue to pay the child support for older children to the receiving parent (who provides a home for them) or to pay it directly to the children.

Respondents were asked their opinion on direct child support payments to children at the age of majority or older. No clear consensus emerged, with approximately equal numbers of respondents agreeing with the following statements: in all cases, one parent should be able to argue in front of a judge that child support be paid directly to children at the age of majority or older and the other parent should be able to present arguments opposing that position (22 percent); direct payment of child support to children at the age of majority or older should be permitted in every situation, provided that the receiving parent and the children agree (27 percent); direct payment to children at the age of majority or older should be allowed only when the children are living away from home for most of the year, provided that the receiving parent and the children agree to this (27 percent); and direct payment of child support to children at the age of majority or older should be allowed only when the children are living away from home for most of the year, provided the children agree, but regardless of whether the receiving parent agrees (17 percent). Only one respondent selected the alternative “direct payment of child support to children at the age of majority or older should never be allowed” (1 percent).

Of the 10 other comments made by respondents, the most common was that each case should be assessed individually (see Appendix B, Table B-19). In commenting on this question, one respondent noted “Children’s expenses don’t necessarily vanish because they are not in school.”

3.2 Disclosure of Information

The Federal Child Support Guidelines could be changed so that either the receiving parent or the children at the age of majority or older (whoever actually receives the child support payment) must provide the paying parent with information about the status of the children (for example, proof that they are still enrolled in post-secondary studies) and/or information about the children’s finances. This would apply in all cases when support is to be paid to children at the age of majority or older, not just in those that include special expenses.

Respondents were asked whether they agreed with these changes. The vast majority of respondents (92 percent) felt that information about the status of the children should be provided to the paying parent. As well, a substantial proportion of respondents (78 percent) said that disclosure of financial information should be required.

3.3 Child Support Obligations of a Spouse Who Stands in Place of a Parent

The Federal Child Support Guidelines currently state that when spouses stand in the place of children's parents, judges may order a child support amount they consider appropriate, taking into account the amount set out in the child support tables in the Guidelines and the legal duty of any other parent to support the children.

When asked how the Guidelines should set out the procedure for calculating the amount of child support a step-parent pays, almost two thirds of respondents (61 percent) indicated that the step-parent should pay the child support table amount minus the amount any other paying parent pays. Considerably fewer respondents (16 percent) thought that each paying parent should pay the child support table amount. Of the 29 other suggestions received, the most common were that each case needs to be assessed individually, and that step-parents should not be responsible for paying child support (see Appendix B, Table B-20). One respondent commented, "the recipient should have to satisfy the court that all reasonable efforts to obtain or enforce an order against the biological parent have been made prior to any order being made against the step-parent." A respondent who did not agree that the step-parent has a duty to pay child support said the following:

Without adoption, clearly a step-parent is not the parent. Otherwise why else have the concept of 'adoption'—a formal procedure to become a parent—not an unintentional legal trap, i.e., marriage involves vows and legal document = spousal support potential. How can a person be expected to take on parental responsibility without express consent?

3.4 Defining Shared Custody

Currently, section 9 of the Federal Child Support Guidelines states that shared custody exists when a parent has custody of or exercises access to a child for not less than 40 percent of the time over the course of a year. Respondents were asked how they would prefer to define shared custody. Only eight percent of the respondents thought that the definition should be based only on the amount of time each parent spends with the children. In contrast, 86 percent thought that time should not be the only criterion, and that judges should also be allowed to consider other factors based on the level of parental responsibility. Ten other responses were received and are presented in Appendix B, Table B-21. As one respondent put it, "Your department has failed to understand that custody relates to responsibilities, not time. This has caused endless confusion." Another respondent said definitions needed to be clarified. "Is 'quality of time' equivalent to 'quantity of time' spent with either parent? Also, shared custody tends to be confused with primary residence."

Respondents were asked which factors should be included in a definition of shared custody. Respondents were very supportive of all the factors listed: the decision-making process (76 percent), the living accommodations for the children in each parent's home (70 percent), the existence and content of a parenting plan (68 percent), how parents share the children's expenses (65 percent), and the proximity of the parents' residences and the feasibility of the arrangement (61 percent). Fourteen other comments were made by respondents (Appendix B, Table B-22). Respondents were also asked to rank the factors they selected. The top ranked factor was the decision-making process, followed by the existence and content of a parenting plan, and the

living accommodations for the children in each parent's home. One respondent added the following factors:

The stage of the child's development; temperament; and level of adaptability to a shared parenting arrangement. Shared parenting should be something considered within these aspects as well as something that can occur at different times in a child's developing life. It may not be appropriate for a two-year-old, but may work quite flawlessly with an older, adaptable child. Type of conflict and effect on child must be assessed before consideration can be given to a shared parenting regimen.

When respondents were asked for their opinion on how the time element of shared custody should be defined, two thirds (67 percent) indicated that the parents should share their children on a "substantially equal" basis, while only 14 percent indicated that each parent should have the children at least 40 percent of the time. Of the 32 other comments received, more than one half of the respondents said that time was not an important factor, and that the definition should be developed within each family situation (see Appendix, B, Table B-23). Comments from respondents echoed these opinions. One respondent said, "Parents who agree to shared parenting don't have to also share the time. Sometimes a parent can be very involved but does not have more than 'regular' access, i.e., every second weekend, etc. This should still be 'shared' parenting if both parents agree and participate in the child's life." Another said, "I believe making time the decisive factor is very hard on children and limits beneficial flexibility. It is most important to assess how the parents share responsibility for the work needed in caring for children, how they help each other out, and how they meet the children's financial needs."

There was no clear consensus on what term should be used to capture the concept of shared custody in the Guidelines for the strict purposes of determining child support. Interestingly, 21 percent of respondents indicated that the current term "shared custody" should be kept. One fifth (20 percent) preferred the term "shared residency", while 14 percent preferred the term "dual residency". Equal proportions (13 percent) of respondents preferred the terms "shared residence" and "dual residence". Of the 32 other suggestions received, the preferred term mentioned by one third of the respondents was "shared parenting" (see Appendix B, Table B-24). It should be noted that several respondents were unclear on the distinction between the terms "residence" and "residency."

3.5 Determining the Child Support Amount in Shared Custody Arrangements

Respondents were asked how child support should be determined in shared custody arrangements. As indicated in Table 3.1, almost half of respondents (49 percent) thought that formulas should be used when determining child support in shared custody arrangements, although respondents differed in the amount of discretion they thought judges should have in deviating from formulas or tables.

When asked which formula they thought would be most appropriate, almost half of respondents who favoured formulas or tables indicated that separate child support tables should be created for shared custody arrangements. More than one third of respondents (34 percent) thought that the table amounts of both parents should be multiplied by 50 percent to recognize the increased costs of shared custody and then the amounts offset. Only 10 percent of respondents thought that the formula should simply offset the table amounts of both parents.

Table 3.1: Respondents’ Views on How Child Support Should be Determined in Shared Custody Arrangements

| Options | n | % |
|--|----------|----------|
| The judge could use various formulas to help determine the child support amount. | 30 | 23.1 |
| The Guidelines should include a set formula or tables developed for the calculation of child support in all shared custody arrangements. However, the formula or tables should be provided only as guidance. The judge should still have some discretion to set the amount of child support. | 24 | 18.5 |
| Parents and the judge should rely on budgets the parents prepare to calculate child support in shared custody arrangements. The judge should still have discretion to set the amount of child support. | 20 | 15.4 |
| The standard of living in each parent’s household should be equalized. The judge should use a test, such as the Comparison of Household Standards of Living Test in Schedule II of the Guidelines, to determine the appropriate amount of child support. He or she should have little discretion to set the amount of child support. | 20 | 15.4 |
| The current shared custody section in the Guidelines should continue to apply. The judge should have a high level of discretion when setting the amount of child support. | 13 | 10.0 |
| The Guidelines should include a set formula or tables developed for the calculation of child support in all shared custody arrangements. The judge should have little discretion to set the amount of child support. | 8 | 6.2 |
| Neither parent should pay child support in shared custody arrangements. | 4 | 3.1 |
| Other | 11 | 8.5 |

Respondents also had the opportunity to suggest other ways that child support should be determined in shared custody arrangements. These responses are presented in Appendix B, Table B-25).

4.0 SUMMARY AND POLICY IMPLICATIONS

This chapter presents the overall findings from the survey on custody, access and child support issues. In addition, suggestions about what legislative reforms or other reforms, services or mechanisms were needed to address a variety of custody, access and child support issues that were supported by at least one half of respondents are presented according to whether they are legislative reforms, or other types of reforms or mechanisms. Based on the results of this survey, it is clear that some of the issues regarding custody, access and child support could be addressed with legislative changes, while others need different approaches. Recommended legislative and other reforms as suggested by the respondents to this survey are presented below.

4.1 Custody and Access Issues

Overall Findings

The overall findings from the survey on custody and access issues are presented below.

- Almost all respondents agreed (94 percent) that the *Divorce Act* should continue to include the “best interests of the child” test.
- The majority of respondents (85 percent) thought that the *Divorce Act* should include more specific criteria respecting the best interests of the child.
- Most respondents (79 percent) agreed that legislative reforms or service improvements were necessary to better enable children to voice their views when parenting decisions affecting them were being made. Respondents stated that more weight should be given to the preferences of older children regarding custody decisions than those of younger children.
- More than one half of respondents (59 percent) thought that legislation should define high conflict spousal relationships.
- Most respondents (80 percent) thought that there should be specialized legislative provisions or other procedures to deal with high conflict disputes.
- Three quarters of respondents (74 percent) thought that subsection 9(1)(b) of the *Divorce Act* (imposing a duty on lawyers to inform and discuss with their clients the availability of mediation facilities) should be strengthened.
- Respondents were very supportive of the following mechanisms or services to help parents resolve disputes about their children: mediation (96 percent), parenting education programs (94 percent), marriage/family counselling (85 percent) and parenting plans (84 percent).
- The majority of respondents thought that counselling and mediation services should be voluntary. The majority of respondents thought that parenting education programs and parenting plans should be mandatory.

- More than three quarters of respondents (77 percent) agreed that legislative measures stronger than section 16(10) (the “friendly parent clause”) or other measures were required to promote children’s extensive and regular interaction with both their parents.
- Most respondents (85 percent) thought that parents should be encouraged to formalize in a written agreement or court order their custody and access arrangements.
- More than two thirds of respondents (68 percent) thought that costs should be specifically included as part of an access order when extensive and regular access arrangements involved financial costs.
- Two thirds of the respondents (62 percent) thought that the Federal Child Support Guidelines should reflect an adjustment for access costs.
- More than one half of respondents (58 percent) thought that stronger legislative or other measures were required to promote children’s extensive and regular interaction with their grandparents.
- Respondents were asked which of four legislative options they would like to see implemented to clarify terminology and parental responsibilities. The majority of respondents favoured Option 4: Shared Parenting, followed closely by Option 3: Allocating Parental Responsibility.

Suggested Legislative Reforms

Suggested legislative reforms that were supported by a majority of the respondents are outlined below.

- Specific “best interests of the child” criteria that respondents thought were particularly important and should be included in the *Divorce Act* were the following: need to protect the child from physical or psychological harm caused by violence or exposure to violence (96 percent), opportunity for the child to maintain a strong and stable relationship with both parents (91 percent), arrangements that encourage the child’s emotional growth, health, stability, and physical care at every stage of the child’s development (80 percent), ability of parent(s) to provide guidance, education, basic needs, and other special needs of the child (74 percent), protecting the child from continued exposure to conflict between parents (73 percent), willingness of each parent to encourage a close relationship between the child and the other parent (71 percent), quality of the relationship that the child has with the parent(s) (58 percent), ability of the parents to cooperate and communicate with each other on important issues concerning the child (56 percent), personality, character, and emotional needs of the child (54 percent), opportunity for the child to maintain a strong and stable relationship with other members of his or her family (53 percent), and ensuring there is no preference in favour of either parent on the basis of that parent’s gender (51 percent).
- Respondents supported the following legislative changes that would recognize family violence as a factor in decision making about children after separation and divorce: history of family violence should be a factor considered in evaluating the “best interests of the child” test (89 percent), legislation should provide that domestic violence is a factor that negatively

affects children and should be considered when determining parenting arrangements (83 percent), legislation should clarify that shared parenting should not be ordered when this could cause abuse, serious harm or injury (69 percent), legislation should provide that supervised access be ordered when necessary to protect the child (68 percent), legislation should create an offence for false allegations of abuse or violence (66 percent), and legislation should provide a statutory definition of family violence (54 percent).

- More than one half of respondents (57 percent) thought that a legislative definition of high conflict spousal relationships should include long-term disputes involving high degrees of anger and distrust.
- One half of respondents (52 percent) thought that lawyers and judges should be required to explain to each party the obligations created by a parenting order and the consequence of non-compliance with orders.
- When extensive and regular access arrangements involve financial costs, respondents thought that costs should be specifically included in an access order (68 percent), that the Federal Child Support Guidelines should reflect an adjustment for access costs (62 percent), and that costs should be shared in proportion to income (50 percent).
- When asked how to handle a situation in which a custodial parent wishes to move to a location that would affect the current access arrangements, most respondents (80 percent) thought that decisions should be based on the “best interests of the child.” Three quarters of respondents (73 percent) said that there should be a statutory notice period (e.g. 90 days) to allow time for altering access schedules, negotiation or litigation when necessary. Almost three quarters of the respondents (72 percent) thought that financial arrangements should be adjusted to allow regular visits by the non-custodial parent, and two thirds (66 percent) thought that the custodial parent should have to show that the reason for the move is something other than to frustrate access by the non-custodial parent.
- Respondents were asked what legal approaches could address the problem of enforcing access orders, and 61 percent suggested that provincial legislation or court rules were needed to facilitate quick reaction by courts. One half of the respondents (55 percent) thought that legislation should provide a statutory definition of wrongful access denial and provide remedies for access denial only when that denial is wrongful, and one half (54 percent) thought that legislation authorizing courts to order compensatory access and compensation for expenses incurred as a result of access denial was needed.

Other Suggested Reforms, Services and Mechanisms

Other suggestions for reforms to address custody and access issues are outlined below, grouped the issue that respondents thought the reforms could be addressed.

Parenting Education Programs

Respondents were highly favourable toward parenting education programs to address a variety of issues. The vast majority of respondents (94 percent) thought parenting education programs would be useful to help parents resolve disputes about their children. Three quarters of

respondents (76 percent) thought education for parents on the effects of family violence on children would be useful, and 70 percent thought specialized education could help parents deal with high conflict disputes. Respondents thought that education for parents on the benefits for children of contact with both parents would promote children's interaction with both parents (74 percent). More than two thirds of respondents (69 percent) thought parenting education programs would encourage parents to formalize their custody and access arrangements, and 64 percent thought that parental education could address the problem of enforcing access orders.

Better Access to Counselling Services

Respondents were also in favour of counselling services to address custody and access issues. Most respondents (85 percent) thought that marriage/family counselling would help parents resolve disputes about their children. Two thirds of respondents (68 percent) thought that better counselling services would be useful to address family violence issues, and 65 percent thought that special counselling services would help parents in high conflict disputes. More than one half of respondents (57 percent) thought that counselling services would promote children's interaction with both parents, and more than one half (56 percent) also thought that the use of counselling could address the problem of enforcing access orders.

Better Access to Mediation Services

Almost all respondents (96 percent) thought mediation services would help parents resolve disputes about their children. Three quarters (76 percent) thought mediation services would encourage parents to formalize their custody and access arrangements, and 76 percent thought the use of mediation could address the problem of enforcing access orders. Two thirds of respondents (68 percent) thought that mediation services would promote children's interaction with both parents, and 60 percent thought that special mediation services would be useful in dealing with high conflict disputes.

Assessment Services

An independent assessment service was mentioned by 64 percent of the respondents as a useful improvement for dealing with situations involving family violence. Almost two thirds of respondents (61 percent) thought that special assessment services would be useful when dealing with high conflict disputes. More than one half of respondents (54 percent) thought that an assessment report would enable children to voice their views when parenting decisions affecting them are being made.

Better Access to Legal Aid

One half of the respondents (51 percent) thought better access to legal aid was a necessary improvement when dealing with cases involving family violence.

Parenting Plans

Most respondents (84 percent) thought the use of parenting plans would help parents resolve disputes about their children, and 58 percent thought parenting plans would be a useful mechanism to encourage parents to formalize their custody and access arrangements.

Improved Access Supervision Services

More than three quarters of respondents (78 percent) thought that access supervision would be a useful service to help parents resolve disputes about their children, and two thirds of respondents (69 percent) thought that better access supervision services were necessary when dealing with cases involving family violence. One half of respondents (50 percent) thought that supervised access services would promote children's interaction with both parents.

Education for Professionals

Almost two thirds of respondents (61 percent) thought that more education for professionals on the effects of family violence on children was a necessary service improvement.

Availability of Information

Respondents thought parents would be better informed about mechanisms or services to help them resolve disputes about their children if information was made available to them early in the process (90 percent), if multimedia advertising (e.g. television, newspapers and the Internet) were used (77 percent), and if printed materials (e.g. brochures and booklets) were available at law offices (71 percent) or through the courts (71 percent). More than one half of respondents (57 percent) thought that parents would be encouraged to formalize their custody and access arrangements if they had better access to information.

4.2 Child Support Issues

Respondents were asked a series of questions about potential changes to the Federal Child Support Guidelines. This section summarizes the legislative changes that respondents favoured.

Suggested Legislative Reforms

- All but two respondents thought that direct child support payments to children at the age of majority or older should be allowed in certain circumstances.
- Most respondents (87 percent) thought that information about the status of children at the age of majority or older should be provided to the parent paying child support.
- Almost three quarters of respondents (73 percent) thought that the Federal Child Support Guidelines should be changed so that the parent paying child support receives information about the finances of children at the age of majority or older.
- When asked what procedure the Guidelines should include for calculating the amount of child support a step-parent pays, 47 percent of respondents said that the child support amount should comprise the table amount minus the amount any other paying parent pays.
- The vast majority of respondents (80 percent) thought that time should not be the only criterion for defining shared custody. Respondents thought that judges should also be allowed to consider other factors based on the level of parental responsibility.

- Respondents thought that the following factors should be included in a definition of shared custody: the decision-making process (76 percent), the living accommodations for the children in each parent's home (70 percent), the existence and content of a parenting plan (68 percent), how parents share the children's expenses (65 percent), and the proximity of the parents' residences and the feasibility of the arrangement (61 percent).
- When asked their opinion on how the time element of shared custody should be defined, two thirds (62 percent) of respondents indicated that the parents should share their children on a "substantially equal" basis. Only 13 percent of respondents agreed that each parent should have the children at least 40 percent of the time.
- There was no clear consensus on what term should be used to capture the concept of shared custody in the Guidelines for the strict purposes of determining child support.
- Respondents were asked how child support should be determined in shared custody arrangements. One half (49 percent) thought that formulas should be used, although respondents differed in the amount of discretion they thought judges should have in deviating from formulas or tables.

APPENDIX A

**SURVEY ON CUSTODY, ACCESS
AND CHILD SUPPORT ISSUES**

SURVEY ON CUSTODY, ACCESS AND CHILD SUPPORT ISSUES

The Canadian Research Institute for Law and the Family is conducting this project to obtain feedback from delegates to the Family Mediation Canada—National Capital Region Conference 2000 concerning their experiences with custody, access and child support issues, and to solicit expert opinion concerning possible reforms in these areas. The project is funded by the Department of Justice Canada.

We would appreciate your assistance in completing this survey. Feel free to add additional pages for comments if desired. Please be assured that your anonymity will be maintained and that responses will not be attributed to individuals.

Please drop off the completed survey at the conference registration desk or at the Department of Justice booth any time during the conference.

Thank you for your co-operation in completing this survey.

If you attended the Federation of Law Societies of Canada's National Family Law Program in St. John's, Newfoundland in July and completed this survey there, please do not complete it again.

CONSULTATION ON CUSTODY, ACCESS, AND CHILD SUPPORT

Friday, October 20, 2000, 8:45 a.m.—10:15 a.m.

Presented by: Lise Lafrenière-Henrie and Marilyn Bongard

In conjunction with this survey on custody and access and child support issues, there will be a consultation on custody, access, and child support. The consultation is intended to gain more in-depth information from a smaller group of conference participants.

Many Canadians are concerned about the approach and adequacy of the current family law system. The Government of Canada is working with the provinces and territories to improve the framework within which child custody and access determination are made, as well as other family law issues. Justice Canada has undertaken to consult on child custody and access issues, as well as on some child support issues. This workshop will allow you to comment on what governments should do to help families going through separation or divorce. This is your opportunity to contribute to the development of policy addressing these two interesting and important topics.

SURVEY ON CUSTODY, ACCESS AND CHILD SUPPORT ISSUES

1.0 Best Interests of the Child

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

1.1 Should the *Divorce Act* continue to include the “best interests of the child” test?

- Yes (If yes, please go to Question 1.2)
 No (If no, what should replace the “best interests of the child” test?)

(If you do not think the *Divorce Act* should include the “best interests of the child” test, please go to Section 2.0)

1.2 Should the *Divorce Act* include more specific criteria respecting the best interests of the child?

- Yes
 No (If no, please go to Section 2.0)

1.3 Please rate the following criteria as high, medium, or low importance in terms of the best interests of the child. If you do not think the criterion is relevant, please check the “Not Relevant” box.

- | High | Medium | Low | Not
Relevant | |
|--------------------------|--------------------------|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Opportunity for the child to maintain a strong and stable relationship with both parents |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Opportunity for the child to maintain a strong and stable relationship with other members of his or her family |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Opinions and wishes expressed by the child |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Ability of parent(s) to provide guidance, education, basic needs, and other special needs of the child |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Child’s cultural, ethnic, and religious background |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Ability of the parents to co-operate and communicate with each other on important issues concerning the child |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Ability of the child to adjust to the new parenting arrangement |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Willingness of each parent to encourage a close relationship between the child and the other parent |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Need to protect the child from physical or psychological harm caused by violence or exposure to violence |

| | | | |
|------|--------|-----|--------------|
| High | Medium | Low | Not Relevant |
|------|--------|-----|--------------|

- | | | | | |
|--------------------------|--------------------------|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Ensuring there is no preference in favour of either parent on the basis of that parent's gender |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Quality of the relationship that the child has with the parent(s) |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Arrangements that encourage the child's emotional growth, health, stability, and physical care at every stage of the child's development |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Protecting the child from continued exposure to conflict between parents |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Personality, character, and emotional needs of the child |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Caregiving role assumed by each parent before the break-up |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Other (Please specify) _____ |
| | | | | _____ |
| | | | | _____ |

2.0 Voice of the Child

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

2.1 Do you think that legislative reforms or service improvements are necessary to better enable children to voice their views when parenting decisions affecting them are being made?

- Yes
- No (If no, please go to Section 3.0)

2.2 What legislative reforms or service improvements do you think are necessary to enable children to voice their views? (Please check all that apply)

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

2.3 What factors do you think should be considered when deciding what weight should be given to the child's views?
(Please check all that apply)

- Age of child
- Ability of child to communicate
- Ability of child to understand the situation
- Child's emotional state
- Child's reasons for views
- Indication of parental coaching
- Other (Please specify) _____

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

None Lightly Heavy

- | | | | |
|--------------------------|--------------------------|--------------------------|-----------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Under 6 years of age |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 6 to 9 years of age |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 10 to 13 years of age |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 14 years or older |

3.0 Family Violence

The Government of Canada strongly believes that it is important to send a message that all aspects of the family law system must take into account incidents of family violence involving the child or a member of the child's family.

3.1 How should legislation recognize family violence as a factor in decision-making respecting children post separation and divorce? (Please check all that apply)

- Legislation should provide that domestic violence is a factor that negatively affects children and should be considered in determining parenting arrangements
- Legislation should provide a statutory definition of family violence
- Legislation should preclude mandatory mediation where there is evidence of family violence
- Legislation should clarify that shared parenting should not be ordered where this could cause abuse, serious harm, or injury
- History of family violence should be a factor considered in evaluating the "best interests of the child" test
- Legislation should provide that supervised access should be ordered where necessary to protect the child
- Legislation should create an offence for false allegations of abuse or violence
- Other (Please specify) _____

3.2 What other reforms or service improvements would be useful? (Please check all that apply)

- Independent assessment services
 - Legal representation for children
 - Better accessibility to Legal Aid
 - Better access supervision services
 - Better counselling services
 - More education for parents on the effects of family violence on children
 - More education for professionals on the effects of family violence on children
 - Other (Please specify) _____
-

4.0 Managing High Conflict Situations

Experts agree that exposure to unresolved, high-conflict situations increases risk factors in children.

4.1 Should legislation define high conflict spousal relationships?

- Yes
- No (If no, please go to Question 4.3)

4.2 What factors should be included in a legislative definition of high conflict spousal relationships? (Please check all that apply)

- Long-term disputes involving high degrees of anger and distrust
- Chronic disagreements over parenting issues
- Unsubstantiated allegations of poor parenting
- History of misuse of the legal system
- Other (Please specify) _____

4.3 Should there be specialized legislative provisions or other procedures to deal with high conflict disputes?

- Yes
- No (If no, please go to Section 5.0)

4.4 What types of legislative provisions or other procedures would be workable and useful? (Please check all that apply)

- Legal representation for children
- Legislation clarifying that shared parenting should not be ordered where there are long-term, emotional, high conflict disputes
- Special provisions for access to the courts
- Special provisions for case management
- Special assessment services
- Special mediation services
- Special counselling services
- Specialized education for parents on high conflict cases
- Other (Please specify) _____

5.0 Promoting Non-adversarial Dispute Mechanisms

5.1 Should the current subsection 9(b) of the *Divorce Act* (the provision that imposes a duty on lawyers to inform and discuss with their clients the availability of mediation facilities) be strengthened?

- Yes
- No (If no, please go to Question 5.3)

5.2 How should subsection 9(1) b) be strengthened?

5.3 What mechanisms or services would be useful to support parents in resolving disputes about their children? (Please check all that apply and indicate whether the mechanism or service should be voluntary or mandatory)

- | Voluntary | Mandatory | |
|--------------------------|--------------------------|------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | Marriage/Family Counselling |
| <input type="checkbox"/> | <input type="checkbox"/> | Mediation Services |
| <input type="checkbox"/> | <input type="checkbox"/> | Parenting Plans |
| <input type="checkbox"/> | <input type="checkbox"/> | Parenting Education Programs |
| <input type="checkbox"/> | <input type="checkbox"/> | Access Supervision Services |
| <input type="checkbox"/> | <input type="checkbox"/> | Other (Please specify) _____ |
-

5.4 How can parents be better informed of mechanisms or services to support them in resolving disputes about their children? (Please check all that apply)

- Printed materials (e.g., brochures, booklets) available at law offices
 - Printed materials (e.g., brochures, booklets) available through the courts
 - Multimedia advertising (e.g., television, newspapers, Internet)
 - Ensure information is available early in the process
 - Other (Please specify) _____
-

6.0 Access and Compliance

6.1 Are stronger legislative measures than s. 16(10) (the “friendly parent clause”) or other measures required to promote children’s extensive and regular interaction with both their parents?

- Yes
- No (If no, please go to Question 6.3)

6.2 What legislative or other measures do you think are required to promote children’s interaction with both their parents? (Please check all that apply)

- Presumption of shared parenting
- Punishing and sanctioning the parent who breaches an access order
- Stronger legislative measures dealing with the non-exercise of access
- Education for parents on the benefits for children of contact with both parents
- Requiring lawyers and judges to explain to each party the obligations created by a parenting order and the consequences of non-compliance with orders
- Court-connected office to enforce access orders
- Supervised access services
- Mediation services
- Counselling services
- Other (Please specify) _____

6.3 Do you think parents should be encouraged to formalize in a written agreement or court order their custody and access arrangements?

- Yes
- No (Please go to Question 6.5)

6.4 What mechanisms or services would encourage parents to formalize their custody and access arrangements? (Please check all that apply)

- Better access to Legal Aid
- Better access to information
- Mediation services
- Counselling services
- Parenting education programs
- Parenting plans
- Other (Please specify) _____

6.5 When extensive and regular access arrangements involve financial costs, how should these costs be dealt with? (Please check all that apply)

- The issue of costs should be specifically included as part of the access order
- Child Support Guidelines should reflect an adjustment for these costs
- Costs should be shared in proportion to income
- All costs should be borne by access parent (i.e., the present model)
- "Extensive and regular interaction" should be specifically defined (e.g., a threshold amount of time)
- Other (Please specify) _____

6.6 When a custodial parent wishes to move to a location that would affect the current access arrangements, how should this be dealt with? (Please check all that apply)

- There should be a presumption in favour of the custodial parent
- There should not be a presumption in favour of the custodial parent
- Decisions should be based on the best interests of the child
- There should be a statutory notice period (e.g., 90 days) to allow time for altering access schedules, negotiation, or litigation if necessary
- The custodial parent should have to show that the reason for the move is something other than to frustrate access by the non-custodial parent
- Financial arrangements should be adjusted to allow regular visits by the non-custodial parent
- Other (Please specify) _____

6.7 What legal approaches or program supports could address the problem of enforcing access orders? (Please check all that apply)

- Create offences for wrongful denial of access
- Legislation should provide a statutory definition of wrongful access denial and provide remedies for access denial only if it is wrongful
- Legislation should authorize courts to order compensatory access and compensation for expenses incurred as a result of access denial
- Use of mediation
- Use of counselling
- More access supervision services
- Agency enforcement
- Special education for parents on the problem
- Provincial legislation or court rules to facilitate quick reaction by courts
- Other (Please specify) _____

6.8 Are stronger legislative or other measures required to promote children’s extensive and regular interaction with their grandparents?

- Yes
- No (If no, please go to Section 7.0)

6.9 What legislative or other measures do you think are required to promote children’s interaction with their grandparents? (Please check all that apply)

- More specific statutory references to the importance of grandparents in “best interests of the child” criteria
- Specifying grandparents in legislation
- Better counselling/support for parties in this situation
- Special education on the problem
- Including provisions in parenting plans for access by grandparents
- Other (Please specify) _____

7.0 Clarifying Terminology and Parental Responsibilities

Listed below are four options that the Department of Justice Canada is considering for legislative changes to terminology in the *Divorce Act*.

Option 1: Status Quo

- Maintain existing terminology in legislation. Leave the current “custody” and “access” terms and their meanings alone.
- Focus on services, rather than a change in terminology to better serve the interests of children and reduce conflict between parents.

Option 2: Clarify the Meaning of “Custody”

- Maintain terminology of custody, but introduce the terminology of “parental responsibility.”
- The meaning of the current term “custody” would be re-defined and clarified. Parental responsibility would be the wider term relating to all of the duties, responsibilities and authority which a parent of a child has in relation to his or her child. “Custody” would refer more specifically to the residential caregiving duties and the authority that goes along with that.
- A general definition of “parental responsibility” would be adopted such as, “all the duties, powers, responsibilities and authority that a parent of a child has in relation to the child.” In keeping with the Quebec “parental authority” approach, while both parents would maintain “parental responsibility,” the practical exercise of this responsibility would need to be described. An agreement or court order would therefore set out how custody (residence), access, and decision-making authority would be exercised between the parents.

Option 3: Allocating Parental Responsibility

- This option involves eliminating the terms “custody” and “access” from family law legislation respecting private parenting disputes. The new concept and terminology of “parental responsibility” would be introduced and would emphasize the allocation of specific aspects of parental responsibility between the parents based on the best interests of the child.
- As noted in Option 2, a general definition of “parental responsibility” could be adopted such as, “all the duties, powers, responsibilities and authority that a parent of a child has in relation to the child.”
- The legislation would indicate that both parents would have “parental responsibility” and would also include an additional statutory provision that would more specifically identify the specific responsibilities and duties of parents in relation to their children such as:
 - maintaining a loving, nurturing and supportive relationship with the child;
 - seeing to the daily needs of the child, which include housing, feeding, clothing, physical care and grooming, health care, daycare, and supervision;
 - decision-making concerning the child’s welfare, health care, education and religion;
 - providing emotional support for the child; and
 - providing financial support for the child.

Option 4: Shared Parenting (the Recommendation of the Special Joint Committee)

- Eliminate the terms “custody” and “access” from both the *Divorce Act* and provincial family law legislation and replace them with the term “shared parenting.”
- The Special Joint Committee’s report *For the Sake of the Children* recommended that the term “shared parenting” be adopted so that all the meanings, rights, obligations and common law and statutory interpretations previously embodied in the terms custody and access would be exercised jointly by both parents.
- While the Joint Committee does not recommend a presumption of equal time-sharing as being in the best interests of children, the key feature would be a presumptive starting point that the rights and responsibilities of child rearing be shared in an equal or near equal division, and that children would have extensive and regular interaction with both parents.

7.1 Which option would you like to see implemented?

- Option 1: Status Quo
- Option 2: Clarify the Meaning of “Custody”
- Option 3: Allocating Parental Responsibility
- Option 4: Shared Parenting (the Recommendation of the Special Joint Committee)
- None of the Above (Please explain) _____

7.2 Which option best promotes child-centred decision making?

- Option 1: Status Quo
- Option 2: Clarify the Meaning of “Custody”
- Option 3: Allocating Parental Responsibility
- Option 4: Shared Parenting (the Recommendation of the Special Joint Committee)
- None of the Above (Please explain) _____

7.3 Is emphasizing parental responsibilities rather than parental rights an appropriate reform objective?

- Yes
- No (If no, please go to Question 7.5)

7.4 Which option best emphasizes parental responsibilities rather than parental rights?

- Option 1: Status Quo
- Option 2: Clarify the Meaning of “Custody”
- Option 3: Allocating Parental Responsibility
- Option 4: Shared Parenting (the Recommendation of the Special Joint Committee)
- None of the Above (Please explain) _____

7.5 How else can legislation provide guidance in determining parents’ responsibility for their children on separation and divorce?

8.0 Child Support Issues

Child Support Paid Directly to Children

The Federal Child Support Guidelines recognize that judges may treat older children who are still dependent on their parents differently from minor children when it comes to determining child support amounts. Older children may have part-time jobs or be living away from home while going to school.

Parents and other people have questioned whether it is best for the paying parent to continue to pay the child support for older children to the receiving parent (who provides a home for them) or to pay it directly to the children.

8.1 Please indicate which of the following statements best reflects your opinion on direct child support payments to children at the age of majority or older:

- In all cases, one parent should be able to argue in front of a judge that child support be paid directly to children at the age of majority or older and the other parent should be able to present arguments opposing that position.
- Direct payment of child support to children at the age of majority or older should be permitted in every situation, provided that the receiving parent and the children agree.
- Direct payment to children at the age of majority or older should be allowed only when the children are living away from home for most of the year, provided that the receiving parent and the children agree to this.
- Direct payment of child support to children at the age of majority or older should be allowed only when the children are living away from home for most of the year, provided the children agree, but regardless of whether the receiving parent agrees.
- Direct payment of child support to children at the age of majority of older should never be allowed.
- Other (please specify) _____

Disclosure of Information

8.2 Do you think that the Federal Child Support Guidelines should be changed so that either the receiving parent or the children at the age of majority or older (whoever actually receives the child support payment) must provide the paying parent with **information about the status of the children** (for example, proof that they are still enrolled in post-secondary studies)? This would apply in all cases when support is to be paid to children at or over the age of majority, not just those that include special expenses.

- Yes
- No
- Other (please specify) _____

8.3 Do you think that the Federal Child Support Guidelines should be changed so that either the receiving parent or the children at the age of majority or older (whoever actually receives the child support payment) must provide the paying parent with **information about the children's finances**? This would apply in all cases when support is to be paid to children at or over the age of majority, not just those that include special expenses.

- Yes
- No
- Other (please specify) _____

Child Support Obligations of a Spouse Who Stands in Place of a Parent

The Federal Child Support Guidelines currently state that when spouses stand in the place of children's parents, judges may order a child support amount they consider appropriate, taking into account the amount set out in the child support tables in the Guidelines and the legal duty of any other parent to support the children.

8.4 Which of the following procedures should the Guidelines set out for calculating the amount of child support the stepparent pays?

- Child support table amount *minus* the amount any other paying parent pays
- Child support table amount for each paying parent (i.e. the biological parent and the stepparent)
- Other (please specify) _____

Defining Shared Custody

Currently, section 9 of the Federal Child Support Guidelines states that shared custody exists if a parent has custody of or exercises access to a child for not less than 40 percent of the time over the course of a year.

8.5 Which of the following options do you prefer for defining shared custody?

- The definition should be based only on the amount of time each parent spends with the children.
- Time should not be the only criterion. Judges may also consider other factors based on the level of parental responsibility.
- Other (please specify) _____

8.6 Which of the following factors should be included in a definition of shared custody? You may check more than one box. If you do, please rank your choices by numbering them (1 for your first choice, 2 for your second, etc.)

- how parents share the children's expenses (Who pays what?)
- the living accommodations for the children in each parent's home (Does the child have two principal residences?)
- the proximity of the parents' residences and the feasibility of the arrangement (Does the arrangement really lend itself to shared custody?)
- the existence and content of a parenting plan (What does the parenting plan say?)
- the decision-making process (Do both parents have high levels of responsibility and do they make decisions together?)
- Other (please specify) _____

8.7 Please indicate which one of the following statements best reflects your opinion on how the *time* element of the shared custody should be defined:

- Each parent should have the children at least 40 percent of the time.
- The parents should share their children on a "substantially equal" basis.
- Other (please specify) _____

8.8 What term do you prefer to capture the concept of shared custody in the Guidelines for the strict purposes of determining child support? Please check only one box.

- Shared custody (keep the current term regardless of whether the terms *custody* and *access* are dropped from the *Divorce Act*)
- Shared residence
- Dual residence
- Shared residency
- Dual residency
- Other (please specify) _____

Determining the Child Support Amount

8.9 Please indicate which one of the following statements best reflects your opinion of how child support should be determined in shared custody arrangements.

- The current shared custody section in the Guidelines should continue to apply. The judge should have a high level of discretion when setting the amount of child support.
- Parents and the judge should rely on budgets the parents prepare to calculate child support in shared custody arrangements. The judge should still have discretion to set the amount of child support.
- The judge could use various formulas to help determine the child support amount:

Which formula would be most appropriate?

- simply offset the table amounts of both parents
 - multiply the table amounts of both parents by 50 percent to recognize the increased costs of shared custody and then offset the amounts (this formula is used in many American states)
 - gross up the table amounts by the amount of time each parent spends with the children and then offset the amounts
 - create separate child support tables for shared custody arrangements
- The Guidelines should include a set formula or tables developed for the calculation of child support in all shared custody arrangements. The judge should have little discretion to set the amount of child support.
 - The Guidelines should include a set formula or tables developed for the calculation of child support in all shared custody arrangements. However, the formula or tables should be provided only as guidance. The judge should still have some discretion to set the amount of child support.
 - The standard of living in each parent's household should be equalized. The judge should use a test, such as the Comparison of Household Standards of Living Test in Schedule II of the Guidelines, to determine the appropriate amount of child support. He or she should have little discretion to set the amount of child support.
 - Neither parent should pay child support in shared custody arrangements.
 - Other (please specify) _____

9.0 Professional Information

9.1 In what province(s)/territory do you work? _____

9.2 What is your profession? _____

9.3 Do you practice mediation?

Yes

No

9.4 Approximately how many custody and access cases have you handled in the past year?

9.5 How often do you refer your clients to a lawyer?

Never

Occasionally

Frequently

Always

9.6 How often do your cases proceed to litigation?

Never

Occasionally

Frequently

Always

9.7 How often do you settle cases that involve custody and access issues?

Never

Occasionally

Frequently

Always

9.8 How often do you settle cases that involve child support issues?

Never

Occasionally

Frequently

Always

Thank you for completing this survey.

APPENDIX B

SUPPORTING TABLES:

RESPONDENTS' WRITE-IN COMMENTS

Table B-1: Respondents’ Suggestions for What Should Replace the “Best Interests of the Child” Test

| Options | n |
|---|----------|
| Best interests of child could be better served by focussing on best interests of family | 5 |
| There should be criteria established as to what is the best interests of the child | 3 |
| Only the rule of law and the best interests of the child | 1 |
| Best interests of the child from the perspective of the child | 1 |

Table B-2: Respondents’ Suggestions for What Other Criteria Should be Considered in Best Interests of the Child

| Options | n |
|---|----------|
| Attachment behaviour between child and family | 3 |
| Willingness/ability of each parent to place parent role and responsibilities prior to other adult priorities and activities | 2 |
| Age of child (the older the child, the more important their view) | 2 |
| Support from external family | 1 |
| Work schedule of parent | 1 |
| Cultural family values with respect to raising children | 1 |
| Geographical distance between the parents | 1 |
| Parenting ability, capability and availability | 1 |
| Parenting arrangements must match child’s developmental and emotional needs | 1 |
| That parents have some early educational opportunity regarding how conflict will harm their children and how children react to divorce/separation | 1 |
| Suspension on no fault analysis in cases of domestic violence including verbal and psychological violence | 1 |
| Future plans and opportunities for child | 1 |
| Presumption in favour of joint custody and joint parenting as framework for all custody orders | 1 |
| It is all important—need to look at each situation as unique | 1 |
| Ability of parents to adjust to the child’s needs as the child grows | 1 |
| Developmental stage of child | 1 |
| Status of parents’ significant other | 1 |
| Any special needs of the child | 1 |
| Degree of variation from status quo | 1 |
| Advantages of keeping the child in jurisdiction where he/she normally resides | 1 |

Table B-2: Respondents’ Suggestions on What Other Criteria Should be Considered in Best Interests of the Child (cont’d)

| Options | n |
|--|----------|
| Any findings or recommendations of a child advocate or credible third party | 1 |
| Age appropriate education | 1 |
| Child’s ability to cope with change, i.e., temperament | 1 |
| Which parent is most ready to give in to the other parent rather than tear the child apart | 1 |
| Attitude towards financial responsibilities for the child | 1 |

Table B-3: Respondents’ Suggestions for Other Legislative Reforms or Service Improvements Would be Helpful to Enable Children to Voice Their Views

| Options | n |
|---|----------|
| Neutral/impartial trained mental health professional with expertise in interviewing children | 9 |
| Mandatory parent education | 4 |
| Family group mediation | 2 |
| Financial subsidies for families who need these supports | 2 |
| Being very careful to not drag the children into the conflict | 2 |
| Opportunity for child’s voice to be put forward without any form of intimidation | 1 |
| Counselling | 1 |
| Impact statements by children (not testimony where child could be cross-examined) | 1 |
| Timeliness—framework is available but process is often very drawn out and stressful | 1 |
| Legal rights to maintain contact with grandparents | 1 |
| Safe haven for children who claim they are abused from other jurisdictions | 1 |
| Child inclusion in mediation, as a function of age and issues | 1 |
| Important that child’s voice be heard in context of family dynamics/conflict between parents | 1 |
| Clause giving some expression to “...the reasonable preference of the child if the court deems the child to be of sufficient age to express an informed preference” | 1 |
| Teachers are hamstrung from talking about children except to an assessor or children’s lawyer—often they see a lot | 1 |
| Non-legal representation for child older than 10, assessment report for children younger than 10 | 1 |
| Advertising to explain the rationale and importance of informing and listening to children | 1 |

Table B-4: Respondents' Suggestions for Other Factors that Should be Considered When Deciding What Weight to Give to the Child's Views

| Options | n |
|---|----------|
| Attachment/quality of relationship with each parent | 4 |
| Child's maturity | 4 |
| Ability/training of those interpreting the child's views | 4 |
| Indicators of spousal or substance abuse in the family | 3 |
| Child's personality/willingness to please/pacify both parents | 2 |
| Context of parental relationships/level of conflict | 2 |
| Length of no access | 1 |
| Any other individual factors that arise | 1 |
| Whether child is an only child or has siblings | 1 |
| Report by expert to analyze and comment on child's views in domestic violence cases | 1 |
| Parents' ability | 1 |
| Level of safety for the child when their views are offered | 1 |
| Issue in question | 1 |
| Number of interviews | 1 |
| Fear of the legal system | 1 |
| Child must never be responsible for the decision | 1 |
| Child's desire to communicate | 1 |

Table B-5: Respondents’ Suggestions for Other Legislation that Should be Considered to Recognize Family Violence as a Factor in Decision Making About Children After Separation and Divorce

| Options | n |
|---|----------|
| On a case-by-case basis. There are different types of domestic violence and they need to be identified or considered rather than using a “catch-all” phrase | 4 |
| Extent to which child has witnessed or been involved with the abuse | 2 |
| There should be no legislation recognizing family violence. Present provisions are adequate | 1 |
| Legislation should provide that supervised access be provided and paid for where necessary | 1 |
| Legislation should have options available re. assessment, therapy, parenting education | 1 |
| Current zero tolerance as exercised by the police in reported cases should continue | 1 |
| Mediation cannot be requested by perpetrator but can be requested by victim | 1 |
| Mandatory parenting education when evidence of abuse or violence | 1 |
| Opportunity for funded counselling for the family to break the pattern of violence | 1 |
| Recognize that women can be abusers as well | 1 |
| Mandatory risk assessments in all cases of domestic violence | 1 |
| Legislation should provide that a qualified assessor/other professional make a determination when there are questionable allegations | 1 |
| Further assessment of children’s relationship with each parent | 1 |
| Legislation should create an offence for professional services not working in cooperation with one another for the purposes of limiting excess interference with the family | 1 |
| Legislation that also recognized the children can be used by the abusive parent to undermine parenting and continue cycle of control | 1 |
| Supervised access and clinical treatment plan | 1 |
| Legislation should provide clear criteria to be considered for supervised access | 1 |
| Restraining orders | 1 |
| Legislation cannot be the tool for ensuring good parenting arrangements. We need well-trained and competent mediators to ensure well-crafted customized arrangements | 1 |
| Legislation should include mandatory mediation only when specific screening is included | 1 |
| Need full system behind the legislation to provide support for all members of the family | 1 |
| Legislation should not preclude mandatory mediation but maybe shuttle mediation, facilitation or limited mediation | 1 |
| Assessment of the violence and appropriate mediation intervention protocol is essential | 1 |
| Provide for conciliation by a family mediator, in cases of violence, without the parents being with the mediator together, but one after the other | 1 |
| Provide for the right to withdraw from mediation | 1 |
| Support for the creation of non-profit housing units for supervised visits | 1 |
| Parental estrangement situation | 1 |
| Often in the separation of the parties, the risk of domestic violence is diminished to nothing in certain cases—violence is not automatically continued | 1 |

Table B-6: Respondents' Suggestions for Other Reforms or Service Improvements That Would be Useful When Dealing with Family Violence

| Options | n |
|--|----------|
| Better access to low-cost/no-cost counselling services for victims, children and abusers | 4 |
| Mandatory parenting education for separating parents | 4 |
| Accessible and professional mediation should be available and offered to all families considering separation prior to legal interventions | 3 |
| More education for parents on the effects of separation and divorce on children | 3 |
| More education for lawyers and judges on family violence | 3 |
| More training for all in listening to the voices of children and youth | 2 |
| More education in schools for children to recognize abusive behaviour | 2 |
| Discussion group for children | 2 |
| Parent coordinator/family court counsellor with specific role to work with parents in conflict regarding parenting plans, communication, crisis intervention | 1 |
| Better access to counselling for offenders | 1 |
| <i>Guardian ad litem</i> function in law | 1 |
| Service improvements/reforms should be offered across disciplines and in a holistic fashion | 1 |
| Mandatory certification process | 1 |
| More money from legal aid for child custody reports | 1 |
| Assessment of parents' needs for assessment or counselling | 1 |
| More education for front-line services on the effective use of mediation | 1 |
| Harsher penalties for abuse that is witnessed by children or involves children as victims | 1 |
| Individual counselling for parents prior to making decisions re. separation (preferably with same counsellor) | 1 |
| Parenting group services should be suggested or ordered in certain cases | 1 |
| Monitor the family to ensure compliance with the agreements made after the case is completed | 1 |
| Assistance to the parents before the breakdown | 1 |
| One sessions (1-2 hours) of mediation mandatory for all cases | 1 |

Table B-7: Respondents’ Suggestions for Other Factors That Should be Included in a Legislative Definition of High Conflict Spousal Relationships

| Options | n |
|---|----------|
| Substance abuse | 3 |
| Violence/history of violence | 3 |
| Return to courts for disputes | 2 |
| Emotional abuse | 2 |
| Financial controls | 2 |
| Harassment | 2 |
| Denial of access/access sabotage | 2 |
| Extent to which parents involve children in their disagreements | 2 |
| Poor parenting | 1 |
| High conflict spousal relationship that arises as a result of one of the parties deciding to end the marriage | 1 |
| Law should be flexible enough to provide for input of professional assessment information | 1 |
| Persistent and repeated refusal to seek and/or accept help | 1 |
| Voice of the child | 1 |
| Effect of conflict on children | 1 |
| Inability of one parent to be flexible or to respect orders of the court | 1 |
| History of frequent mental health counselling requests | 1 |
| Vandalism | 1 |
| Religious affiliation (cults) | 1 |
| All other serious causes that create extreme conflict in the spouses’ relationship | 1 |

Table B-8: Respondents’ Suggestions for Other Types of Legislative Provisions or Other Procedures That Would be Useful in Managing High Conflict Situations

| Options | n |
|---|----------|
| Parent coordinators/child advocate/other representative to assist high conflict families | 7 |
| Mandatory parenting education on impact of conflict on children | 3 |
| Much more involvement of mental health professionals—not lawyers | 2 |
| Mandatory counselling for abusers | 2 |
| Quicker access to courts or to motions/panels of experts at court to quickly hear matters | 2 |
| Enforcement section (similar to maintenance) that would ensure that conflicting parents could not use the children as a weapon to heighten conflict | 1 |
| Prohibition using legal system | 1 |
| Zero tolerance by police should continue | 1 |
| Mediation cannot be requested by perpetrator, but can be requested by victim | 1 |
| Education for lawyers and judges on family violence | 1 |
| Mandated referral to a grand master/manager who has backing of court and power to enforce | 1 |
| Model exists in U.S.: collaborative appointment with therapist/assessor in combination with mediation and legal representative | 1 |
| Place conditions (therapeutic and automatic reviews) on division of responsibilities | 1 |

Table B-9: Respondents' Suggestions for How Subsection 9(1)(b) Could be Strengthened

| Options | n |
|--|----------|
| Parties should be required to attend first session to be advised of process and explore possibilities for involvement | 26 |
| Mediation should be mandatory before case goes to court (unless domestic violence case) | 16 |
| Pamphlet/information booklet specifying particular services available/local roster | 15 |
| Clients to sign acknowledgement that mediation services have been discussed and that they fully understand how/if mediation could be helpful to them | 14 |
| Mandatory parenting education | 9 |
| Mandatory provision compelling lawyers to advise parties of government or privately available mediation and/or counselling services prior to initiating formal legal proceedings | 7 |
| Education of lawyers as to its benefits | 5 |
| Free or subsidized mediation should be available in all disputes | 3 |
| Lawyers must be educated on the developmental needs of children | 3 |
| Sanctions for not following/fine | 2 |
| Require lawyer to show the client a video about mediation | 2 |
| Make it responsibility of lawyer to ensure all disputes possible are mediated, enforced by a review or governing board | 1 |
| Government should publicize non-adversarial dispute resolution to the public | 1 |
| Prevent counsel from giving advice as to whether clients should use mediation | 1 |
| Fund court projects | 1 |
| Require judge (or clerk) at start of conflict to explore mediation option | 1 |
| Each court-defined community should have well-promoted and accessible family mediation centres staffed by professionally qualified mediators | 1 |
| Predetermined level of training and code of practice for mediation | 1 |
| Presumption of consensual decision making unless court orders otherwise | 1 |
| Parents should be required to go through automatic process of education, mediation, counselling, agreement, assessment | 1 |
| Should mention ADR as well | 1 |
| Duty to explore reconciliation | 1 |
| Lawyers must question clients | 1 |
| Lawyers must advise appropriately regardless of client's financial status | 1 |
| Lawyers must be tested on their interpretation of mediation | 1 |
| Lawyers should be including the best interests of the child in their representation of clients | 1 |
| Canadian bar and bench should be involved in imposing this duty on lawyers | 1 |
| Obligation to read information on how the court process is likely to affect parental relationship and how those effects are likely to impact children | 1 |
| Require a matrimonial consultation before court proceedings are initiated | 1 |
| Must be assurance that exemption for serious reasons is not automatic | 1 |

Table B-10: Respondents' Suggestions for Other Mechanisms or Services That Would Help Parents Resolve Disputes About Their Children

| Options | n |
|---|----------|
| Parenting assessments | 3 |
| Mandatory involvement of parenting coordinator/court counsellor in high conflict cases | 3 |
| More services for non-English speaking families | 2 |
| Timely court decisions and assessment processes | 2 |
| Teaching of good parenting practices in school/early childhood initiatives for prevention of family violence | 2 |
| Children's lawyer | 1 |
| Most services should be mandatory except for families with history of abuse | 1 |
| Legal aid to assist in making good decisions | 1 |
| Mandatory parenting education in high conflict situations or abuse matters | 1 |
| Parent/adolescent family therapy | 1 |
| Increased addictions services | 1 |
| Dispute resolution services paid by government and accessible to all | 1 |
| Extended family/community involvement | 1 |
| Payor's assistance/education programs | 1 |
| Divorce counselling (which is different from marriage/family counselling) | 1 |
| Service to provide for monitored access transitions for children when parents are unable to meet without problems arising, by court order | 1 |

Table B-11: Respondents' Suggestions for Other Ways that Parents Can be Better Informed of Mechanisms or Services to Help Them Resolve Disputes About Their Children

| Options | n |
|--|----------|
| Information sessions on mediation to general public/before court | 10 |
| Materials in community centres/organizations | 7 |
| Materials in hospitals/doctors' offices | 6 |
| Mandatory parenting education | 5 |
| Materials in libraries | 4 |
| Videos available early on through the courts | 4 |
| Materials in schools | 3 |
| Materials in supermarkets/stores | 3 |
| Instructions from lawyer and court | 3 |
| Multilingual materials | 2 |
| Materials in churches | 2 |
| Information about parenting workshops offered through the Department of Justice Canada should be given to mental health and private counselling services | 2 |
| Public service announcements | 1 |
| Dissemination of information should not be left to lawyers | 1 |
| Social services | 1 |
| Acceptance and public support of mediation by Law Society of Upper Canada | 1 |
| Materials in daycares | 1 |
| Important for society to destigmatize a parent who does not have full custody | 1 |
| Unified Family Court System | 1 |
| Inclusion in all new applications at family court | 1 |
| Early judicial inquiry (informal) | 1 |
| Standardized information | 1 |
| Family law clinics | 1 |
| Education about dispute resolution in general, e.g., at school, court | 1 |
| Have all materials available on tape for those who cannot read | 1 |
| Printed materials distributed and read aloud and commented on at initial mediation session | 1 |

Table B-12: Respondents’ Suggestions for Other Legislative or Other Measures That are Required to Promote Children’s Interaction with Both Parents

| Options | n |
|---|----------|
| Parent coordinators/Special Masters/case management services to sort out what is best for children | 5 |
| Mandatory parenting education | 3 |
| Court-connected office to facilitate or troubleshoot access orders | 3 |
| Focussed social work assessments through Office of Children’s Lawyer should be used to assess and facilitate resolution of access disputes | 1 |
| Service where parents could call and get information on particular questions concerning them | 1 |
| More open and organized constructive “societal debate” needs to be conducted in the media—public pressure is needed to change traditional adversarial and combative approach | 1 |
| Rebuttable presumption of joint legal custody (not necessarily shared residence) | 1 |
| Need to recognize enmeshment and role reversal prior to automatic shared parenting | 1 |
| Follow-up services | 1 |
| Tie child support directly to amount of access exercised, i.e., less support when more access | 1 |
| Access assistance programs with built-in counselling, support and supervision services | 1 |
| Special (therapeutic) groups that teach parents the skills to deal with each other | 1 |
| Requiring judges and lawyers to take a course regarding their obligations with respect to divorcing parties and children (non-adversarial means, child-focussed, facilitate the development of parenting plans) | 1 |
| Do not believe compelling a parent to look after his/her child is good for the child, but if a parent decides to do it and that is contrary to child’s best interests, then measures should be taken to protect child | 1 |

Table B-13: Respondents’ Suggestions for Other Mechanisms or Services That Would Encourage Parents to Formalize Their Custody and Access Arrangements

| Options | n |
|--|----------|
| Aids for parents to assist them to develop their own agreement (e.g. computer software program, self-help kit) | 5 |
| Multimedia efforts about advantages of good plans | 2 |
| Any means outside of court, e.g., non-profit organizations that offer education, mediation, counselling | 2 |
| Parent coordinator/court counsellor who can help parents follow plans and stay on track as well as help adjust to children’s developmental and other needs | 1 |
| “Mediation aid” funding for couples to access mediation as they would legal aid | 1 |
| Mandatory education for parents on effects of conflict on children | 1 |
| Support services for unrepresented parties | 1 |
| Trained mediators or arbitrators at court house for urgent cases | 1 |
| Auto order clauses (as per Manitoba) | 1 |
| Required in filing | 1 |
| Intervention services for parents for non-social assistance families | 1 |
| More specific or emphatic statutory reference to the importance of considering this option | 1 |
| Community lectures freely available on issues | 1 |

Table B-14: Respondents’ Suggestions for Ways to Deal with Situations Involving Access Arrangements with Financial Cost

| Options | n |
|---|----------|
| Should be based on individual circumstances/negotiated by parties when able or with mediator | 7 |
| Should be included in parenting plan, with legislative guidelines providing framework for fairness | 2 |
| Cost sharing based on case history—who moved and why? | 2 |
| Need to look at who created the distance; that person needs to take greater responsibility for costs | 1 |
| Issue of costs should be included as part or separation agreement/parenting agreement | 1 |
| Define times specifically—stay away from language such as “access as mutually agreed upon” or “reasonable access” | 1 |
| Eliminate the concept of access and replace with shared parenting | 1 |
| Cost of supervision should be paid by parent who has access, based on a scale prorated to income and subsidized | 1 |

Table B-15: Respondents’ Suggestions for Other Options in Cases in Which a Custodial Parent Wishes to Move to a Location That Would Affect Access

| Options | n |
|---|----------|
| Depends on circumstances of each case, e.g., best interests, locales, age of child, relationship with parent | 3 |
| Views of the child | 2 |
| Current and past access arrangement should be a major factor | 2 |
| Mediation | 2 |
| Parenting plans must be amended/renegotiated before a move is allowed | 2 |
| Not a presumption but a favour or increased weight for custodial parent | 1 |
| Limited reasons: significant improvement of employment, remarriage, abusive conduct by access parent, failure to exercise access regularly and reliably, and suitable access arrangements to maintain the relationship and presumption versus move when child is less than 10 and access parent has been involved | 1 |
| Only if there is no agreement between the parents should reasons be required as to why the parent believes a move is necessary | 1 |
| If move is required, should only be made following full discussion leading to agreement by both parties—when required, with the help of a mediator. When no agreement, court should be required to decide in best interests of child | 1 |
| Should amend child support payments when money is an issue for access and custodial parent should carry the majority of the burden | 1 |
| Complicated because cases of spousal abuse often involve relocating for safety and fear reasons | 1 |
| Present cost/benefit review | 1 |
| Variation of any court order or agreement restricting such a move must be obtained in advance; otherwise treated as a sanctionable contempt, i.e., no unilateral moves that undermine agreements or court orders and thus the perception of administration of justice | 1 |
| 90-day written notice of relocation | 1 |
| Eliminate the concept of custody and replace with shared parenting | 1 |
| All arrangements should be covered to ensure that parents have access to children | 1 |
| “Permission to move” motions—reasons for move more important at distance increases | 1 |

Table B-16: Respondents’ Suggestions for Other Legal Approaches or Program Supports That Could Address the Problem of Enforcing Access Orders

| Options | n |
|---|----------|
| Counsellors in court/case managers/family court program | 4 |
| Access denial should be not viewed as offence—multiple possible causes must be identified through counselling/mediation | 3 |
| Something that parents can access quickly, cheaply, mandatorily, and without having to use either lawyer or judge time | 1 |
| Suspension of child support for period of denial, prorating monthly amount, by court order or agreement only | 1 |
| Intervention of mediation should be made available in all cases | 1 |
| Repeated denial of access should result in custody changes when non-custodial parent can pass a test as a “reasonable parent” | 1 |
| Parents should be fined when they wrongfully deny access | 1 |
| None—this should be dealt with outside the legal arena | 1 |
| Judges should continue to have jurisdiction over problem cases | 1 |
| Sufficient in Quebec | 1 |

Table B-17: Respondents’ Suggestions for Other Legislative or Other Measures That are Required to Promote Children’s Interaction with Their Grandparents

| Options | n |
|--|----------|
| Specifying “important others” to include grandparents and other relatives | 2 |
| Grandparents’ involvement in perpetuating conflict between family members must be assessed | 2 |
| Must be determined to be in best interests of child and supportive of both parents | 2 |
| It is the responsibility of parents to encourage contact with grandparents | 2 |
| Need for governments to promote a public awareness campaign | 1 |
| When including grandparents in “parenting plans,” this must include all parties, especially the children | 1 |
| Only when the grandparents’ adult child is unavailable by death, incapacity or jail should access rights be granted to a grandparent | 1 |
| Need to predict impact of such contact on children in situations involving conflict | 1 |
| Through mediation | 1 |

Table B-18: Respondents’ Suggestions for How Legislation Can Provide Guidance in Determining Parents’ Responsibility for Their Children on Separation and Divorce

| Options | n |
|---|----------|
| Mandatory parenting education | 13 |
| Strong statement in legislation regarding responsibilities of parents and effect of conflict on children | 6 |
| There is only so much legislation can do | 6 |
| Mandatory mediation | 5 |
| Include statement of rights of child | 5 |
| Require parenting plan with important items clarified | 3 |
| Moratorium on application to court for divorce for period of three years to allow parents to emotionally adjust and encourage parents to allow for adjustment prior to making final decisions | 3 |
| Implementation of preventative measures, such as education in schools and pre-marriage counselling | 3 |
| By “promoting” non-adversarial approaches and parenting difficulties, i.e., parenting courses, mediation, counselling, and/or post separation/divorce education for parents | 3 |
| Mandatory counselling for parents and children in high conflict situations | 2 |
| Agency supervision for high conflict cases | 2 |
| Requires more money than legislation, i.e., funded counselling, parenting education, mediation services | 2 |
| Include “signing authority” as part of list of parenting responsibilities (i.e., passports, consent for medical treatment) | 1 |
| Replace “loaded” words with neutral terminology, e.g., change custody to residence | 1 |
| Court should accede to parenting proposal of primary caregiver unless there is a professional opinion that such proposals are contrary to child’s best interests or court is convinced beyond reasonable doubt that parent is wrong | 1 |
| The small handbook <i>Life Goes On</i> (Health Canada) has proved to be very helpful and most welcomed—more of the same and wider availability would be helpful | 1 |
| Legislative language emphasizing shared parenting and parental responsibility focus | 1 |
| Encouraging dialogue between parents | 1 |
| Court should be careful about promoting shared parenting when in many cases children’s best interests would be better served by having one primary caregiver | 1 |
| Let the pendulum swing more to the middle between the parents. The question is “what will best facilitate a good relationship between parents and child?” | 1 |
| Need flexibility in system to meet all ranges of parenting styles and situations | 1 |
| Statutory direction that in domestic violence cases abusers have limited or no parental responsibilities | 1 |
| Legislate failure to comply with orders and their consequences | 1 |
| It already does it | 1 |

Table B-18: Respondents’ Suggestions for How Legislation Can Provide Guidance in Determining Parents’ Responsibility for Their Children on Separation and Divorce (Cont’d)

| Options | n |
|---|---|
| Some assessment of the extent of conflict or violence needs to be determined at the outset. The law needs to be able to help kids in high conflict situations | 1 |
| Best interests test should still be ultimate yardstick | 1 |
| Panels of arbitrators or custody evaluators at the courthouse to assist in making expedient decisions regarding risk to families if shared parenting were to be put in place | 1 |
| Once parties have been to court and received umbrella ruling, mandatory meeting with mediator to finetune arrangements. When mediation is not applicable, get detailed plan approved by court | 1 |
| Legislation through <i>Income Tax Act</i> to enforce financial responsibilities to children | 1 |
| Binding final arbitration regarding property issues and also interim custody/access/support binding mediation with right to appeal to court | 1 |
| It can delineate major aspects that need to be allocated to one or both parents, which clarifies the relationship that both parents will have with each other | 1 |
| Emphasize and detail the requirement for justice system professionals to carefully review prior existing parental “responsibility” patterns | 1 |
| Mechanism to monitor effects of breach of parenting plan on children | 1 |
| “Time spent” issue needs to be resolved. It appears legal system has made the problem worse. Please define the “on duty parent” as a term of reference | 1 |
| Update Federal Child Support Guidelines | 1 |
| Major difficulty is that one set of rules is better for children whose parents are cooperative and respectful, and quite a different set of rules is needed where parents are not, or when a parent is abusive of spouse and/or child, or is a substance abuser | 1 |
| By requiring that the judge be satisfied that the mother and father have in fact received the legal information in this regard | 1 |
| Children’s court | 1 |

Table B-19: Respondents’ Opinions on Direct Child Support Payments to Children at the Age of Majority or Older

| Options | n |
|--|----------|
| Each case should be assessed individually; arrangement with parents and children over the age of majority | 3 |
| Direct payment to children at the age of majority or older should be mandatory. If the child for health reasons cannot take care of his/her affairs, then the payments should be made to the caretaker | 2 |
| Presumption in favour of direct payment to child after high school completed and child continuing education when paying parent has honoured support arrangements in the past, plus some direct contribution to the other parent when child is still living most of the time with that parent | 1 |
| A parent paying child support should have the option of paying a child at the age of majority the portion of child support regardless of the opinion of the receiving parent and should not have to go before a judge to argue the fact | 1 |
| Child support should stop at the age of majority as it does when family intact | 1 |
| Direct payment to child at the age of majority or older on consent of both parents and child agrees | 1 |
| Parenting arrangements should determine child support, not the other way around | 1 |

Table B-20: Respondents’ Suggestions for How the Guidelines Should Calculate the Amount of Child Support the Step-parent Pays

| Options | n |
|---|----------|
| Should be determined on a case-by-case basis/individual needs of the child | 9 |
| There should be no responsibility on the part of step-parents. Financial support of children is the responsibility of the biological parent | 9 |
| Start with presumption of no obligation, unless biological parent is not involved as a parent, in which case #1 | 2 |
| Allocate payment based on higher of the two incomes proportionally based on each parent’s income | 2 |
| Child support table amount for each and accounting for payments made by either parent or step-parent to any other children | 1 |
| Table amount and add-ons minus amount other parent ought to be paying | 1 |
| <i>Prima facie</i> table amount from each parent subject to discretion when result is unfair to payor who has other childcare obligations | 1 |
| Something in between the two above, e.g., each could pay 65 percent of the table amount | 1 |
| Whole matter of child support should be reconsidered as the current approach does not work | 1 |
| Delicate situation—compelling a substitute spouse to play the role of paying parent might scare some of them | 1 |
| Should be left to the complete discretion of the parent <i>in loco parentis</i> | 1 |

Table B-21: Respondents' Suggestions for How to Define Shared Custody

| Options | n |
|--|----------|
| Courts should look at costs experienced by both homes for the child and use discretion. Time should trigger but not determine the outcome | 2 |
| Parenting responsibility, temperament and needs of the children, level of conflict in the family as well as actual time spent | 1 |
| Need to consider child development issues, type of conflict that exists and the range of parental responsibility | 1 |
| When both parents accept and understand 40/60 conditions, and have it clearly expressed in a written agreement, definition should prevail | 1 |
| Complete discretion to judge—even over requirement for certain percentage of time | 1 |
| Parental responsibility should be the sole criteria | 1 |
| Caution because sometimes custody dispute develops to opt out of Guidelines and fight is really about money. Allow discretion to consider impact of children's budget and who is spending money | 1 |
| Shared custody should only be defined as shared responsibility and when money is concerned; it is essential that custody only exist if parents are providing financial support to the child in the ratio of their relative means | 1 |
| California model: child support is on a sliding scale according to time spent with child. It creates an incentive for access and is more acceptable to each party than an artificial 40 percent | 1 |

Table B-22: Respondents' Suggestions on Factors That Should be Included in a Definition of Shared Custody

| Options | n |
|---|----------|
| Who is responsible for various day-to-day occurrences, e.g., school calls, appointments? | 3 |
| Age and stage of development of the child as well as temperament of the child | 2 |
| Motivation and desire of the parents to have such arrangement | 2 |
| None of the above—scrap shared parenting, joint custody, sole custody—simply define parenting and responsibility | 1 |
| How parents tend to all the needs of the children | 1 |
| Involvement of each parent's extended family | 1 |
| California model: child support is on a sliding scale according to time spent with the child; creates incentive for access and is more acceptable to each party than an artificial 40 percent | 1 |
| As many relevant factors as are applicable | 1 |
| Parental values and communication skills need to be shared and evident for this to work | 1 |
| Shared custody should not be an excuse for eliminating child maintenance when the parents have widely different financial means and assets | 1 |

Table B-23: Respondents’ Suggestions for How the Time Element of Shared Custody Should be Defined

| Options | n |
|---|----------|
| Time is not an important factor; should be developed within the realms of each particular family situation | 18 |
| Wide open based on who pays for what during time with kids | 2 |
| Child should spend at least 30 percent of time with each parent | 2 |
| Parents’ consent and written agreement of 40/60 conditions should prevail | 1 |
| Count the overnights to determine the 40 percent | 1 |
| “Shared custody” is a statement about control and financial responsibility. “Parenting plan” is a statement about residency and schedules as well as all other responsibilities | 1 |
| Neither one | 1 |
| Children should have equal access to parents—it is parents’ duty to accommodate this | 1 |
| Sliding scale according to time spent with child | 1 |
| Ideally 50/50 with each parent. However, percentage is not the important factor. A good workable “parenting plan” would be more effective with the best interests of the child | 1 |
| Should depend on emotional maturity of parents—when they can’t agree, concern about impact of conflict on children | 1 |
| Parents jointly define: when they disagree and both want “custody” to some degree, examine the degree of time spent with children prior to separation; otherwise 50/50 | 1 |
| Should be clarification as to how to calculate the time, e.g., nights, when child is in daycare or school, etc. | 1 |

Table B-24: Respondents’ Other Suggestions for the Term That Should be Used to Capture the Concept of Shared Custody in the Guidelines for the Strict Purposes of Determining Child Support

| Options | n |
|--|----------|
| Shared parenting | 11 |
| What is the distinction between the previous four choices? | 3 |
| Shared responsibility | 3 |
| Equal care or equal residency | 2 |
| Shared financial responsibility | 2 |
| None of the above—eliminate time | 1 |
| Abolish shared custody—for calculating support it is shared time | 1 |
| Dual residence or dual residency—distinction not clear | 1 |
| Alternate residency | 1 |
| Shared decision making | 1 |
| Shared care and control | 1 |
| Shared expenses | 1 |
| Substantially shared parenting | 1 |
| Sharing of children | 1 |
| Two household family with arrangement for residential care | 1 |
| Shared-time custody | 1 |

Table B-25: Respondents’ Suggestions for Other Ways That Child Support Should be Determined in Shared Custody Arrangements

| Options | n |
|--|----------|
| Should pay child support only when incomes are vastly different | 2 |
| It all depends on individual circumstances | 2 |
| Use split custody calculation to cover differences in incomes and recognize differences in standard of living (use all incomes in both households), then divide certain listed items proportionate to parents’ incomes | 1 |
| When the residential “share” is equal and both are subjected to equal expense of both the basics and the extras, then any differential payment is eliminated. Mediation can/does encourage “extraneous” payments as and when identified by the need of either parent | 1 |
| Guidelines are needed with judges’ discretion: must cover “self-employed” and include comparison of standard of living | 1 |
| Current Guidelines section with a little discretion | 1 |
| Parents could negotiate alternate arrangements, provide information to the court, and have the judge rule | 1 |
| Neither parent paying child support would be the “ideal” and would probably reinforce the child’s best interests. Therefore, both parents give the child a 100 percent participation in child rearing | 1 |
| Pre-established tables to be used as a guide with increases in costs providing for a minimum | 1 |
| Total access to family allowance and tax benefits for children, 100 percent for each parent based on their respective incomes | 1 |
| This calculation already exists in the Quebec scale | 1 |