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RESEARCH REPORT

THE CHILD-CENTRED FAMILY JUSTICE STRATEGY: SURVEY ON THE PRACTICE OF FAMILY LAW IN CANADA, 2004-2006

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The Child-centred Family Justice Strategy: Survey on the Practice of Family Law in Canada, 2004-2006

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EXECUTIVE SUMMARY

Purpose of the Project

In December 2002, the Department of Justice Canada announced its plan to proceed with the Child-centred Family Justice Strategy (CCFJS). The CCFJS is intended to ensure that family law, the court system, and the legal and social services that support the implementation of the law meet the needs of families undergoing relationship breakdown.

The Canadian Research Institute for Law and the Family (CRILF) conducted this research project on the current state of the practice of family law in Canada with funding from the Department of Justice Canada. The project replicates a study conducted by CRILF in 2004 during which baseline information of the practice of family law in Canada was obtained. The purpose of the current project was threefold: (1) to obtain current information on the characteristics of cases handled by family law lawyers; (2) to obtain feedback from both lawyers and judges concerning family law issues based on their knowledge and experience; and (3) to examine trends in family law cases and practice over a two-year period from 2004 to 2006.

Methodology

Data collection for this project was held in conjunction with the National Family Law Program of the Federation of Law Societies of Canada in Kananaskis, Alberta July 10-13, 2006. Data collection consisted of two components: (1) a survey completed by conference participants; and (2) two workshops conducted with smaller groups of conference participants on specific topics. A project advisory committee was established at the beginning of the project to identify issues to be addressed in the survey and workshops, review the draft survey, and decide on the format and content of the workshops in Kananaskis.

Highlights of Survey and Workshop Findings

Demographics of Survey Respondents

- The response rate in 2006 was 42 percent; in 2004, the response rate was 34 percent.
- In 2006, the largest proportion of respondents were from Alberta, Ontario and British Columbia. In 2004, the largest proportion of respondents were from Ontario, Alberta, and Nova Scotia.
- Of the 164 surveys returned, 90 percent were completed by lawyers, 7 percent were completed by judges, and 1 percent was completed by other professionals.
- Lawyers had been practising family law an average of 16 years, and on average 82 percent of their practice involved family law cases.
- A substantial proportion of respondents had attended continuing education and training programs in the following areas: spousal support, custody/access, child support guidelines, and property division.

Case Characteristics

- Survey respondents handled an average of 78 family law cases in the past year; an average of 75 percent of those involved children.

- Survey respondents reported that cases were resolved most frequently in the following manners: settled by negotiation before trial (43 percent) and settlement conference (21 percent), with only a minority (13 percent) being decided by a judge.

- Issues that survey respondents identified as most likely to require a trial and judicial decision to be resolved in divorce cases were: spousal support (69 percent); custody (52 percent); and property division (35 percent).

- Issues that survey respondents identified as most likely to require a trial and judicial decision to be resolved in variation cases were parental relocation (65 percent) and spousal support (50 percent).

Services

- Survey respondents said they keep informed about family justice services through the following mechanisms: colleagues; provincial/territorial continuing legal education courses; national or international conferences; local professional seminars; professional associations and meetings; and professional publications.

- Lawyers who responded to the survey reported that most of their clients are either only somewhat informed or not at all informed about family justice services and issues at the outset of their case. Clients are most likely to be informed about individual counselling, child support issues, and marriage or relationship counseling. Clients are least likely to be informed about child assessment services, parenting plans, and supervised exchange.

- Survey respondents said that their cases are somewhat more likely (46 percent) or much more likely (17 percent) to be settled out of court because of the family justice services that are available.

- Survey respondents reported that the following services would be helpful to their clients, but are not available in their community: parent information/education services or programs; mediation/affordable mediation; supervised access/affordable supervised access; and assessments/assessors/assessment centers.

- Almost half of the survey respondents (48 percent) indicated that there is a Unified Family Court in their province/territory. In general, less than half of the respondents agreed or strongly agreed that Unified Family Courts have positive consequences, while about one-quarter disagreed or strongly disagreed.

- Almost three-quarters of the survey respondents (72 percent) who do not have Unified Family Courts in their jurisdiction said they would like to see them established.

Best Interest Criteria

- A somewhat surprising 35 percent of survey respondents said that even when parents are aware of the negative effects of separation/divorce on their children, this awareness does not affect their behaviour. The most common reasons given for this were: even when parents are aware, they have difficulties changing their behaviour; and the emotional and/or financial repercussions of the separation interfere, and parents can't get past their anger.

- Three quarters of individuals responding to the survey (75 percent) thought that parenting plans are a good mechanism for ensuring that the best interests of the child are met in most cases, 13 percent thought they were a good mechanism in high conflict cases, and 5 percent thought they were a good mechanism in all cases. Only 7 percent did not think parenting plans are a good mechanism for ensuring that the best interests of the child are met.

- Survey respondents said that parenting plans were used in just under one-third of their cases (31 percent) involving children. Over one-third of the lawyers (35 percent) said they have a form they use as a guide for parenting plans, and 84 percent who said they did not have a form said they would find a form useful.

- The vast majority of lawyers responding to the survey reported that they found parenting plans were somewhat or very helpful to their clients. A few respondents said parenting plans are still very new and are unfamiliar to clients, and parenting plans are not very helpful because each situation has its own unique twists and the plans tend to be too general.

Child Representation

- Survey respondents thought that the best mechanisms to enable children to voice their views were legal representation for the child (71 percent) and assessment reports (70 percent).

- Survey respondents thought the following factors were important when deciding what weight should be given to the child's views: age of child; child's reason for views; ability of child to understand the situation; indication of parental coaching/manipulation; the child's emotional state; and ability of child to communicate.

Custody and Access

- Almost two-thirds of survey respondents said that they often or almost always use terminology other than "custody" and "access" in their *agreements*. Almost half reported that they often or almost always use alternate terminology in their *orders*.

- Three-quarters of survey respondents thought that legislative changes to the *Divorce Act* to replace the terms "custody" and "access" with "parenting order" would promote a less adversarial process.

- When parents do not comply with their custody/access orders, survey respondents reported that the most frequent problem is that the child refuses the visit with the access parent.

- Almost all of the workshop participants reported that when access is denied, it is a reflection of underlying conflict between the parents. The vast majority said it is often a manipulative tactic on the part of the custodial parent, and about half said it is often due to the presence of a new partner.

- About three-quarters of the workshop participants said that they had used the police to enforce access orders, but they also reported that they had experienced difficulties in doing so.

- None of the workshop participants thought that provincial access enforcement legislation was adequate.

- In terms of other remedies for dealing with access enforcement, about 90 percent of workshop participants said that family therapy was the most effective solution, but the resources aren't adequate.

- All workshop participants thought that parenting education was helpful in addressing access enforcement problems, although most said current services were not adequate.

- Three-quarters of the workshop participants said that non-exercise of access was a significant problem. About one-half of the group thought that parenting education was an effective mechanism for dealing with the problem.

- Lawyers who responded to the survey reported that very few of their cases involved supervised access (8 percent) or supervised exchange (6 percent). Supervised access was most likely to be recommended in cases of child abuse allegations, substance abuse, and mental health concerns. Supervised exchange was most likely to be recommended in cases of high conflict and spousal violence.

Child Support Guidelines

- Survey respondents overwhelmingly agreed that the Guidelines are meeting their objectives. Almost all respondents agreed or strongly agreed that the Child Support Guidelines have resulted in a better system of determining child support than the pre-1997 system (90 percent). Similarly, the vast majority of respondents agreed or strongly agreed that cases are settled more quickly since the implementation of the Guidelines (89 percent), most cases are resolved simply by relying on the tables to establish amounts of support (85 percent), and, in cases involving litigation, the issues to be resolved are more defined and focused than prior to implementation of the Guidelines (86 percent).

- Almost one-half of survey respondents said that income disclosure is often or almost always a problem. The most frequent reasons for this were income from self-employment, unwillingness to disclose or provide supporting documentation, and lack of complete disclosure.

- Over one-third of survey respondents said that second families are often an issue in child support cases, and over one-half said they are an issue occasionally. The most common reasons were: child support payors with second families often refuse to acknowledge first family obligations; access problems are more common when there are second families; and children's relationship with new partner and siblings.

- Survey respondents identified the most problematic areas of the Guidelines as: section 9—shared custody and the 40 percent rule; section 7—special or extraordinary expenses; and imputing income.

Spousal Support

- Survey respondents reported that spousal support was an issue in almost one-half of their cases.

- When asked how often they use the Spousal Support Advisory Guidelines (SSAG), over half of the respondents said that they use them often or almost always (55 percent). Only 10 percent of respondents said that they never use the SSAG.

- Almost all of the workshop participants said that they had used the SSAG, and 80 percent of the group said that the SSAG helped in resolution of the case.

- Fewer than half of the survey respondents agreed that the SSAG have made the handling of spousal support applications: more consistent (42 percent); fairer (39 percent); less conflictual (37 percent); and generally easier to resolve (44 percent).

- Less than one-third of the workshop participants thought that the SSAG resulted in more consistency and predictability for spousal support outcomes.

- In terms of regional differences, the data allowed for comparison of four provinces: Alberta, Ontario, British Columbia, and Nova Scotia. Each province reported similar usage of the SSAG; however, respondents from British Columbia were most likely to be positive about the objectives of the SSAG, while respondents from Alberta were least positive.

- Survey respondents reported making reference to the SSAG often in a variety of situations. Reference to the SSAG was most likely to be made in discussions with clients (84 percent) and in cases settled by negotiation (77 percent).

- The majority of workshop participants said that the outcomes for the *without child support* formula ranges were higher than the amounts that they were expecting before the SSAG were introduced, and about one-quarter thought that the *with child support* formula resulted in higher amounts than before. None reported that the SSAG were lower than previously awarded amounts.

- About one-half of the participants said that the duration limits for the *without child support* formula were appropriate, and agreed that 20 years was the right threshold for indefinite support.

Family Violence

- Almost three-quarters of lawyers who responded to the survey indicated that they always make enquiries to attempt to identify cases of family violence. However, almost all respondents said that they do not use a screening tool to identify cases of family violence.

- In cases involving spousal violence, respondents were asked how the court addressed this issue. The most likely response was to deny custody to the abusive parent. The least likely response was to give the child legal representation. Access denial occurred rarely.

- In cases involving child abuse, respondents were asked how the court addressed this issue. The most likely responses were to deny custody to the abusive parent, and to order access supervision. The least likely response was to give the child legal representation.

- Almost two-thirds of survey respondents said that training sessions on spousal violence issues are available to family justice professionals in their jurisdiction.

- Almost two-thirds of survey respondents said that training sessions on child abuse issues are available to family justice professionals in their jurisdiction.

- Two-thirds of the respondents thought that the training sessions on spousal violence issues and child abuse issues were adequate.

Comparison of 2006 and 2004 Survey Results

As expected, most of the survey findings in 2006 paralleled those in 2004. Notable differences are summarized in this section. It should be borne in mind, however, that some variance may be due to the demographic differences in the two samples, e.g., in 2006 there were more respondents from Alberta and British Columbia, while in 2004 there were more respondents from Ontario. The response rate in 2006 (42 percent) was greater than the response rate in 2004 (34 percent), thus providing a more representative sample of the conference attendees in 2006.

- Survey respondents were asked about any training that they have taken on family law issues in the past five years. While 2006 results were similar to those in 2004, 2006 respondents reported taking more training in spousal support, which probably reflects the introduction of the SSAG.

- Respondents were asked which issues in divorce cases are most likely to require a trial and judicial decision to be resolved. Spousal support, property division and child support were less likely to be issues in 2006 than in 2004, while spousal support arrears was more likely to be an issue.

- Issues in variation cases most likely to require a trial and judicial decision to be resolved also differed between the two surveys. In 2006, the proportion of respondents indicating spousal support and child support arrears showed the largest decrease, while the proportion indicating custody issues increased the most.

- Survey respondents were asked how well informed their clients are at the outset of their case. The areas in which respondents indicated that a greater proportion of their clients were informed about in 2006 than in 2004 included collaborative family law and mediation services. The areas in which respondents rated their clients as less informed in 2006 included spousal support issues and support variation or recalculation services.

- Survey respondents were asked if parents' awareness of the negative effects of separation/divorce on their children affects their behaviour. A greater proportion of the 2006 respondents (64 percent) indicated that this awareness does affect parents' behaviour than the 2004 respondents (56 percent).

- While, in general, respondents to both the 2006 and 2004 surveys found parenting plans helpful, a smaller proportion of lawyers stated in 2006 that parenting plans were very helpful (38 percent vs. 45 percent in 2004), and a larger proportion indicated that they were not helpful (14 percent vs. 9 percent in 2004).

- Respondents were asked how often they use terminology other than "custody" and "access" in their agreements. While the overall pattern was similar for the two surveys and showed support for alternative terminology, fewer respondents in 2006 stated that they often use other terminology (36 percent in 2006 vs. 50 percent in 2004), and a greater proportion of respondents stated that they rarely use other terminology (13 percent in 2006 vs. 10 percent in 2004).

- Different results were also obtained when respondents were asked if they use terminology other than "custody" and "access" in their orders. A greater proportion of respondents in 2006 said that they often or almost always use alternative terminology (48 percent) in court orders than in respondents to the 2004 survey (35 percent).

- When respondents were asked if training sessions on spousal violence issues are available to family justice professionals in their jurisdiction, a considerably larger proportion of 2006 respondents indicated that training sessions were available (62 percent) than 2004 respondents (42 percent). Respondents to the 2006 survey were also more likely to indicate that the available training was adequate (64 percent) than 2004 respondents (53 percent).

- Similarly, when respondents were asked if training sessions on child abuse issues are available to family justice professionals in their jurisdiction, a substantially greater proportion of the 2006 sample said yes (60 percent) than the 2004 sample (36 percent).

Conclusions

This project was undertaken in accordance with the Results-based Management and Accountability Framework for the Child-centred Family Justice Strategy of the Department of Justice Canada. The purpose of this project was threefold: (1) to obtain current information on the characteristics of cases handled by family law lawyers in Canada; (2) to obtain feedback from both lawyers and judges concerning family law issues based on their knowledge and experience; and (3) to examine trends in family law cases and practice over a two-year period from 2004 to 2006.

Overall, data from the survey and the workshops indicate that there are many positive aspects of the current family law system in Canada. As was the case in 2004, the 2006 survey found that one of the most positive components identified by survey respondents is the Federal Child Support Guidelines. It is clear from the responses received that the Guidelines are meeting their stated objectives and that they have resulted in a much fairer determination of child support than the former regime. The vast majority of respondents agreed or strongly agreed that the Child Support Guidelines have resulted in a better system of determining child support than the pre-1997 system.

Participants in both surveys indicated strong support for case resolution mechanisms other than the traditional judicial resolution of cases. The proportion of cases that required resolution after a hearing or trial was slighter lower in 2006 than in 2004. Mechanisms that respondents indicated as most effective were negotiation between lawyers before trial and settlement conferences.

While project participants were very supportive of out-of-court mechanisms for settling family law disputes in both surveys, they also reported that their clients are generally not well informed about family justice services and issues at the outset of their case, which suggests the need for enhanced public legal education initiatives. In fact, when respondents were asked if there are services that are not available in their community that would be helpful to them and their clients, the most popular response was parent information/education services or programs.

Survey participants continued to show strong support for using terminology other than “custody” and “access” in 2006. Almost two-thirds of respondents stated that they often or almost always use terminology other than “custody” and “access” in their agreements, and almost half stated that they often or almost always use alternate terminology in their orders. Three-quarters of survey respondents agreed that replacing the terms “custody” and “access” with “parenting order” terminology would promote a less adversarial process.

Workshop participants agreed that access enforcement is a problem. None of the participants thought that provincial access enforcement legislation was adequate. In terms of other remedies for dealing with access enforcement, almost all workshop participants said that family therapy and parenting education were the most effective solutions, but that the current resources aren’t adequate.

When asked about the new Spousal Support Advisory Guidelines (SSAG), opinions were mixed. The majority of survey respondents and workshop participants stated that they use the SSAG, particularly in discussions with clients and in cases settled by negotiation or case conference. While the vast majority of workshop participants thought that the SSAG helped in the resolution of cases, survey participants were not as positive, with one-third to one-half agreeing that the SSAG made the handling of spousal support applications more consistent, fairer, less conflictual, and generally easier to resolve. The SSAG are still relatively new however, and some respondents stated that it’s too early to assess the success of the SSAG.

Respondents’ opinions on Unified Family Courts also continued to be somewhat mixed in the 2006 survey. Less than half of the respondents agreed that Unified Family Courts have positive consequences, while about one-quarter disagreed. Regardless, almost three-quarters of the survey respondents who do not have Unified Family Courts in their jurisdiction said they would like to

see them established. Concerns regarding Unified Family Courts were lack of funding and appropriate services.

A problematic area that was identified by project participants in 2004 was family violence. A positive development in the 2006 survey was that a considerably larger proportion of respondents stated that training sessions on both spousal violence issues and child abuse issues are available to family justice professionals in their jurisdiction. Further, larger proportions of respondents reported that the training in both these areas was adequate compared to the 2004 survey.

Even though 2006 survey respondents continued to be very positive about the Child Support Guidelines, they also reiterated the same problematic areas identified by survey respondents in 2004. Almost one-half of survey respondents said that income disclosure is often or almost always a problem, and over one-third stated that second families are an issue often. Survey respondents identified the most problematic areas of the Guidelines as: section 9—shared custody and the 40 percent rule; section 7—special or extraordinary expenses; and imputing income.

In conclusion, this project has provided information on the characteristics of cases handled by family law lawyers in Canada, as well as legal professionals' opinions on the current family law system. It has also allowed an examination of trends in family law cases and practice from 2004 to 2006, and has identified areas of change. This project has also identified aspects of the family law system that are working well, and has highlighted areas where improvement is desired. This information will be useful to the Department of Justice as it further develops its Child-centred Family Law Strategy, and interesting for policy makers and others who want to better understand the functioning of Canada's family law justice system.

ACKNOWLEDGEMENTS

This project could not have been conducted without the assistance and support of many individuals and organizations. First, we would like to acknowledge the financial support of Justice Canada. The Federation of Law Societies of Canada supported the project by arranging for the consultation to take place in conjunction with the National Family Law Program in Kananaskis, Alberta.

We appreciate the guidance provided by the project advisory committee, namely: Ms Cathy Thomson and Ms Lise Lafrenière Henrie (representing the Department of Justice Canada); Ms Marie Gordon, Gordon Zwaenepoel (representing the Canadian Research Institute for Law and the Family); and The Honourable R. James Williams, Supreme Court of Nova Scotia, Family Division (representing the Federation of Law Societies of Canada). We also thank Dr. Joseph Hornick, Executive Director of the Canadian Research Institute for Law and the Family for his consultation throughout the project, as well as his assistance with the workshops at the National Family Law Program.

We thank the following people who facilitated the workshops: Nicholas Bala, Faculty of Law, Queen's University; and Marie Gordon, Gordon Zwaenepoel.

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

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

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1.0 INTRODUCTION

1.1 PURPOSE OF THE PROJECT

In December 2002, the Department of Justice Canada announced its plan to proceed with the Child-centred Family Justice Strategy (CCFJS). The CCFJS is intended to ensure that family law, the court system, and the legal and social services that support the implementation of the law meet the needs of families undergoing relationship breakdown. As stated by the Minister of Justice at the time, the objectives of the CCFJS were to:

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

The performance of the CCFJS is being monitored by the Department of Justice Canada using the Results-based Management and Accountability Framework. In order to accomplish this, a series of initiatives is being undertaken to assess the different components of the Strategy. In some areas it is necessary to collect baseline data against which future progress can be measured.

The Canadian Research Institute for Law and the Family (CRILF) conducted this research project on the current state of the practice of family law in Canada with funding from the Department of Justice Canada. The project replicates a study conducted by CRILF in 2004 during which baseline information of the practice of family law in Canada was obtained. The purpose of the current project was threefold: (1) to obtain current information on the characteristics of cases handled by family law lawyers; (2) to obtain feedback from both lawyers and judges concerning family law issues based on their knowledge and experience; and (3) to examine trends in family law cases and practice over a two-year period from 2004 to 2006.

1.2 METHODOLOGY

Data collection for this project was held in conjunction with the National Family Law Program of the Federation of Law Societies of Canada in Kananaskis, Alberta July 10-13, 2006. Data collection consisted of two components: (1) a survey completed by conference participants; and (2) two workshops conducted with smaller groups of conference participants on specific topics. A project advisory committee was established at the beginning of the project to identify issues to be addressed in the survey and workshops, review the draft survey, and decide on the format and content of the workshops in Kananaskis (please see Appendix A for a list of the project advisory committee members).

1.2.1 Survey

The survey was distributed to participants at the conference in Kananaskis with the conference materials given during registration (please see Appendix B for a copy of the survey). The draft

survey was reviewed by members of the Department of Justice Canada and the project advisory committee prior to being finalized. The survey was translated into French by the Department of Justice Canada, and was available to conference participants in either English or French. Respondents were asked to return completed surveys to the Registration Desk anytime during the conference. As an incentive to complete the survey and increase the response rate, respondents were also given an entry form for a draw. The draw prizes were donated by the Federation of Law Societies of Canada and the Canadian Research Institute for Law and the Family and included one waiver of the registration fees for the year 2008 National Family Law Program, 10 copies of the book entitled, *Canadian Child Welfare Law: Children, Families and the State* (Thompson Educational Publishing, 2004), as well as other miscellaneous prizes. The draw was held during the final conference dinner on Wednesday, July 12th.

Surveys were distributed at the time of registration to 395 conference attendees. Completed surveys were returned by 164 participants, including 3 of the French surveys, resulting in a response rate of 42 percent. The response rate in 2006 was higher than the response rate obtained in 2004 (34 percent), thus providing a more representative sample of the conference attendees in 2006. Qualitative data were coded and both quantitative and qualitative data were entered into an SPSS data analysis program.

1.2.2 Workshops

The workshops were intended to gain more in-depth information from a smaller group of lawyers and judges concerning specific family law issues. Workshops were filled by a sign-up on a first-come-first-enrolled basis on two topics: (1) access enforcement and related issues; and (2) the Spousal Support Advisory Guidelines. Workshops were held on Monday, July 10th from 12:15-1:30 p.m. and Wednesday, July 12th from 11:45 a.m.-1:15 p.m. A box lunch was provided to each participant. Each workshop had two facilitators and two recorders. The facilitators for both workshops were Marie Gordon (private practitioner in Edmonton) and Nick Bala (law professor, Queen's University). CRILF staff members Joanne Paetsch and Lorne Bertrand were recorders for both workshops. The workshops began with a brief introduction of the issue by the facilitators, and the balance of the workshop was spent discussing the issue and participants' professional experiences. A list of questions was prepared by CRILF to assist the facilitators in guiding the discussion. The first workshop, on access enforcement, generated more interest than available places; approximately 52 participants attended that workshop. Approximately 40 participants attended the workshop on the Spousal Support Advisory Guidelines.

1.3 LIMITATIONS

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

In addition, the sample is not geographically representative of lawyers and judges across Canada. For example, there was a higher proportion of respondents from Alberta, likely due to the location of the conference in Kananaskis. For this reason, comparisons between the 2006 and 2004 surveys should be interpreted with caution since some of the differences may be due to the different demographics of the two samples.

2.0 SURVEY ON THE PRACTICE OF FAMILY LAW IN CANADA

2.1 DEMOGRAPHICS OF SURVEY RESPONDENTS

A total of 164 surveys were completed and returned to CRILF, representing a response rate of 42 percent. This is higher than the response rate from 2004 of 34 percent. In 2006, 90 percent of the surveys were completed by lawyers (79 percent private practice, 9 percent government/ agency, and 2 percent legal aid clinic), 7 percent were completed by judges, and 1 percent was completed by others (i.e., law professor, court administrator)[1]. The lawyers were asked how long they have been practicing family law, and the responses ranged from 1 to 39 years, with an average of 16 years. The vast majority of the lawyer respondents also practice predominantly family law. When asked what proportion of their practice involves family law cases, the average response was 82 percent, with a range of 25 percent to 100 percent.

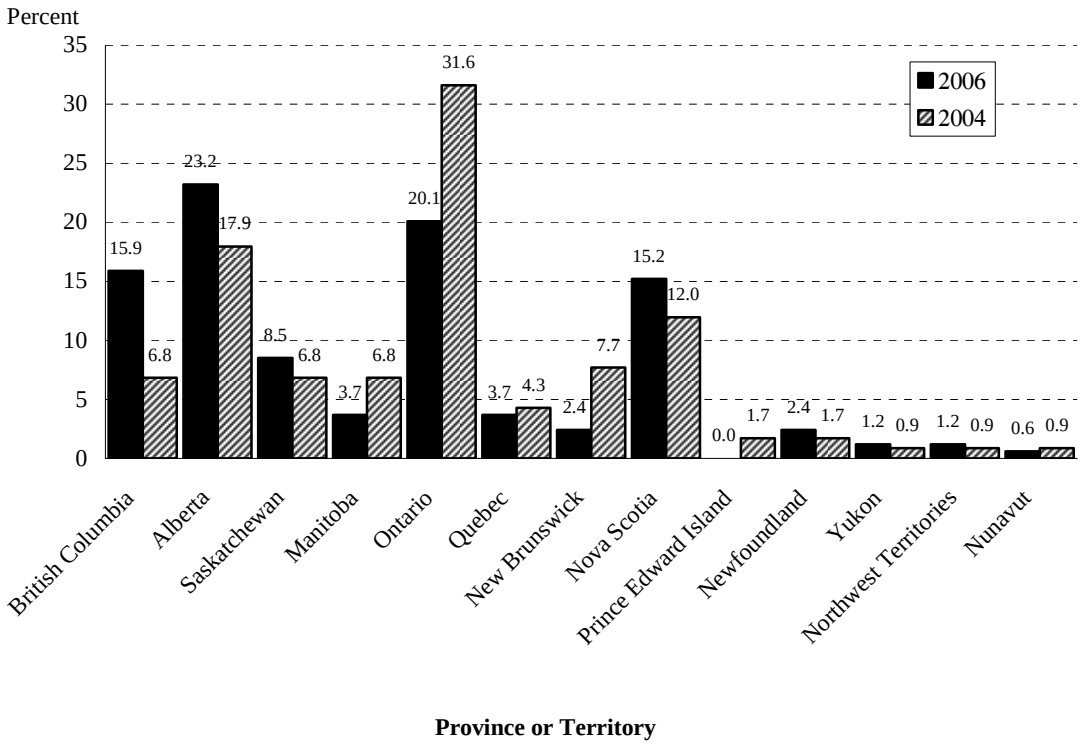
The largest proportion of respondents were from Alberta (23 percent), Ontario (20 percent), British Columbia (16 percent), and Nova Scotia (15 percent) (see Figure 2.1). Almost two-thirds of the respondents (excluding judges) (65 percent) who answered this question (n=148) have a client base that is mostly large urban (>100,000 population), one-fifth (20 percent) have a client base that is mostly small urban (10,000 – 100,000 population), 9 percent have a client base that is mostly rural (<10,000 population), and 7 percent of the respondents reported a fairly equal mix of urban and rural clients.

Almost one-third (29 percent) of the lawyers said they are registered with a lawyer referral service. These lawyers reported that the proportion of their cases that come from the service range from 0 to 60 percent, with an average response of 6 percent. Lawyers were also asked if they conduct mediation sessions, and over one-third (36 percent) said they did.

All respondents were asked about any continuing education or training that they have taken on family law issues in the past five years. The group was very supportive of continuing education, and most had participated in several programs. The most common subjects of the programs attended were: spousal support (84 percent); custody/access (76 percent); child support guidelines (75 percent); and property division (73 percent) (see Appendix C, Table C1). These percentages are quite similar to those reported in 2004 with the exception that attendance at programs on spousal support increased from 72 percent in 2004. This change probably reflects the introduction of the Spousal Support Advisory Guidelines in the intervening period between the two surveys.

[1] Respondents' profession was missing in 2 percent of cases (n=3).

Figure 2.1 Percentage of Respondents from Each Province or Territory, 2006 and 2004



Sources of data: Survey on the Practice of Family Law in Canada, 2006 and 2004.
2006 Total N = 164 (Missing Cases = 3); 2004 Total N = 117.

2.2 CASE CHARACTERISTICS

One of the purposes of this project was to obtain current information on the characteristics of cases handled by family law lawyers in Canada. In the 2006 survey, respondents (excluding judges) reported that they handled an average of 78 family law cases in the past year, ranging from 0 to 300 (see Appendix C, Table C2). This was somewhat lower than the average number of cases respondents had handled in the 2004 survey (93). When asked what proportion of these cases involved children, responses in the 2006 survey ranged from 5 percent to 100 percent, with an average of 75 percent. Over one-quarter (26 percent) of respondents' family law cases with children involved were variations of previous orders/agreements.

Lawyers were asked in what proportion of the family law cases that they have handled in the past year was either party funded by legal aid. While the average in the 2006 survey was 18 percent, there was a wide range of responses. Almost one-half (46 percent) of the 130 respondents said that none of their family law cases involved legal aid funding and 8 percent of respondents reported that they dealt exclusively with legal aid clients. The average number of legal aid cases dealt with by respondents was down slightly from the 2004 survey (25 percent).

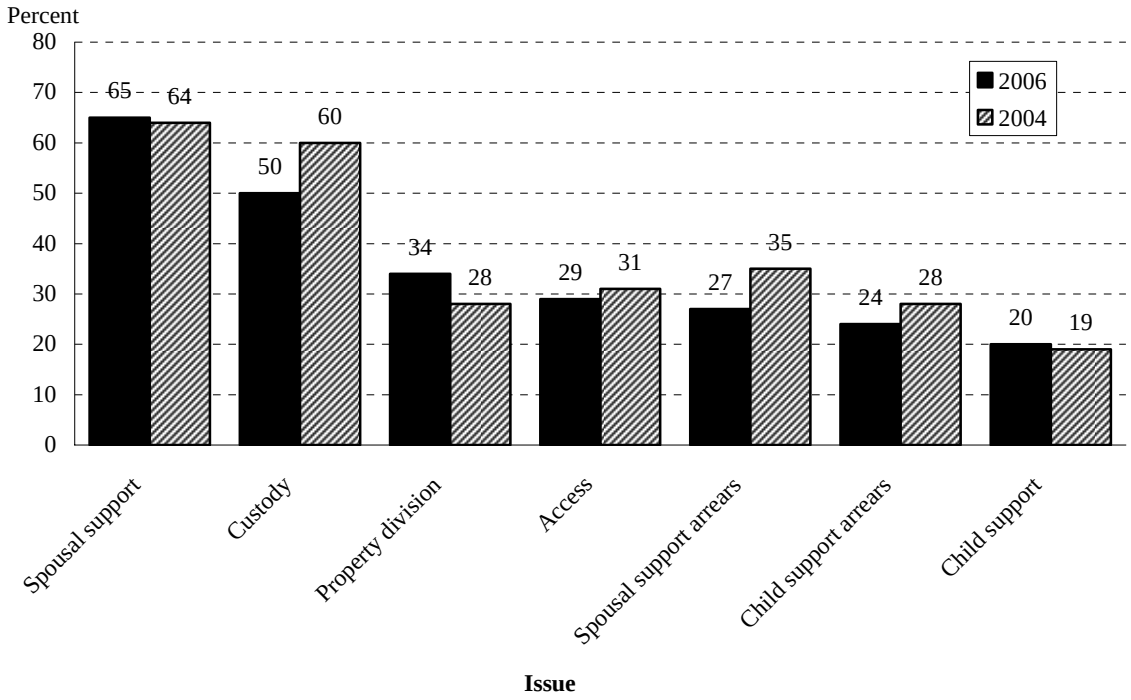
Over three-quarters of respondents to the 2006 survey (76 percent) classified the majority of their clients as comprising approximately equal proportions of custodial and non-custodial parents. Much smaller proportions reported that their clients were primarily custodial (or primary care) parents (19 percent) or primarily non-custodial parents (5 percent). This pattern was very similar to that obtained in the 2004 survey.

Respondents were asked in what proportion of their cases in the past year was the final resolution accomplished in different ways. The most common response in both the 2006 and 2004 survey was "settled by negotiation before trial"; respondents reported an average of 43 percent (2006) and 48 percent (2004) of their cases were resolved in this manner (see Appendix C, Table C3). One-fifth of respondents' cases in the 2006 survey (an average of 21 percent) were resolved by settlement conference. Smaller proportions were settled by parents (17 percent in 2006), decided by a judge after a hearing or trial (13 percent in 2006), settled by mediation (13 percent in 2006), or resolved by collaborative family law (9 percent in 2006). These proportions were quite similar to those obtained in the 2004 survey; the largest change was in the proportion of cases settled by parents, which increased from 13 percent in 2004.

Respondents to the 2006 survey were asked how frequently they encourage their clients to seek resolution outside of court. Three-quarters of respondents (75 percent) indicated that they almost always do this and 16 percent stated that they often do so. Only 1 percent of respondents reported that they rarely encourage their clients to seek resolution outside of court. Respondents were also asked in what percent of their family law cases is there an interim order that is, in effect, the final judicial disposition, because the case is thereafter resolved without a trial. Responses in the 2006 survey ranged from 0 to 100 percent, with an average response of 54 percent (n=136). This pattern is quite similar to that obtained in the 2004 survey.

Respondents were asked which issues are most likely to require a trial and judicial decision to be resolved in both divorce and variation cases, and the results are presented in Appendix C, Table C4). Respondents were given a variety of issues, and were asked to select all that apply. According to the 2006 survey, in divorce cases, the most common responses were spousal support, custody, and property division (see Figure 2.2). Child support was reported least as being an issue most likely to require a trial and judicial decision to be resolved in a divorce case. While the overall pattern of responses was similar to that observed in the 2004 survey, it is notable that spousal support, property division, and child support were less likely to be selected as issues most likely to require a trial and judicial decision in 2006 than in 2004, while spousal support arrears was more likely to be selected in 2006.

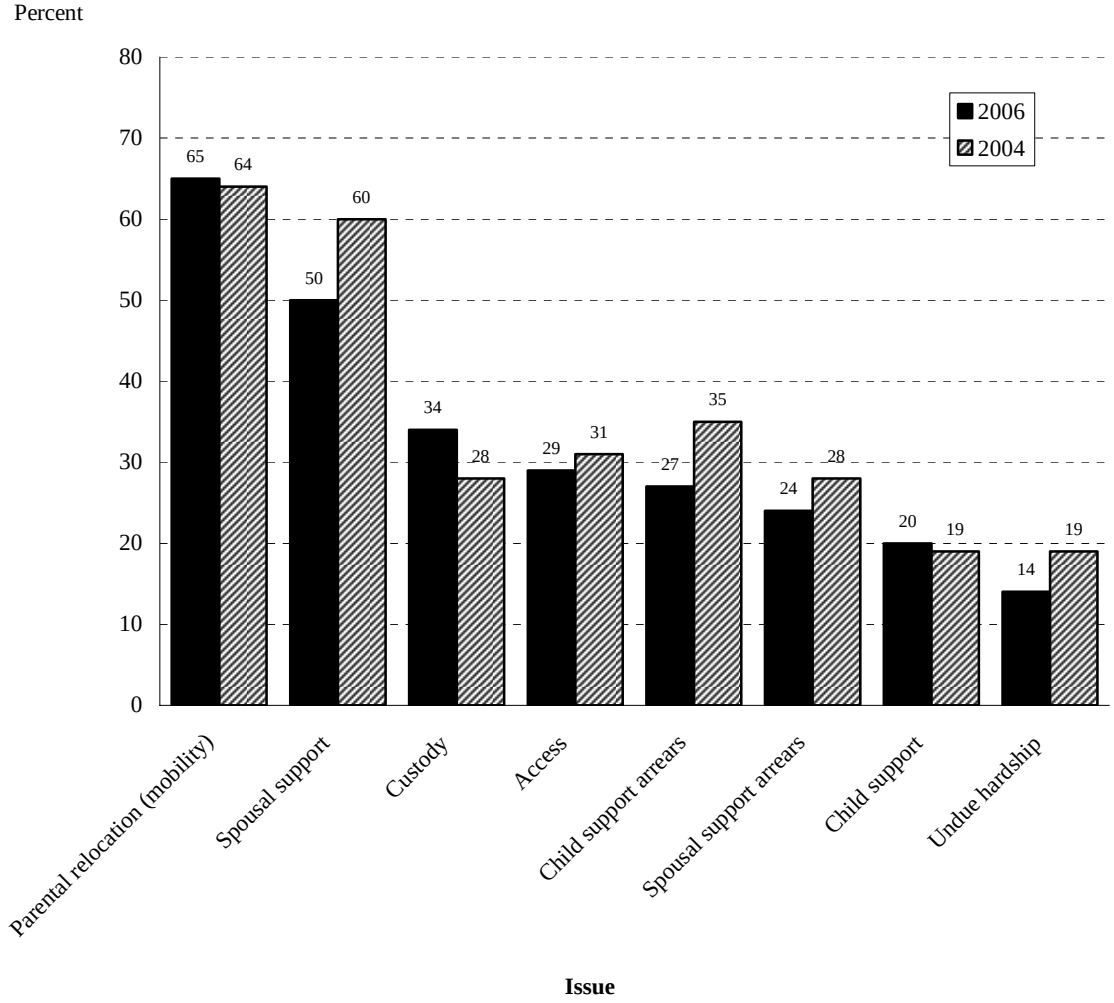
Figure 2.2 Respondents' Reports as to Which Issues in Divorce Cases are Most Likely to Require a Trial and Judicial Decision to be Resolved, 2006 and 2004



Sources of data: Survey on the Practice of Family Law in Canada, 2006 and 2004.
2006 Total N = 164; 2004 Total N = 117.

As shown in Figure 2.3, in variation cases, the issue most likely to require a judicial decision in the 2006 survey was parental relocation (mobility), followed by spousal support. The issues least likely to require a judicial decision in variation cases in respondents' experience were child support and undue hardship. Once again, the overall pattern was quite similar in the 2006 and 2004 surveys; however, the proportion of respondents selecting spousal support and child support arrears showed the largest decrease from 2004 to 2006, while the proportion selecting custody increased the most.

Figure 2.3 Respondents' Reports as to Which Issues in Variation Cases are Most Likely to Require a Trial and Judicial Decision to be Resolved, 2006 and 2004



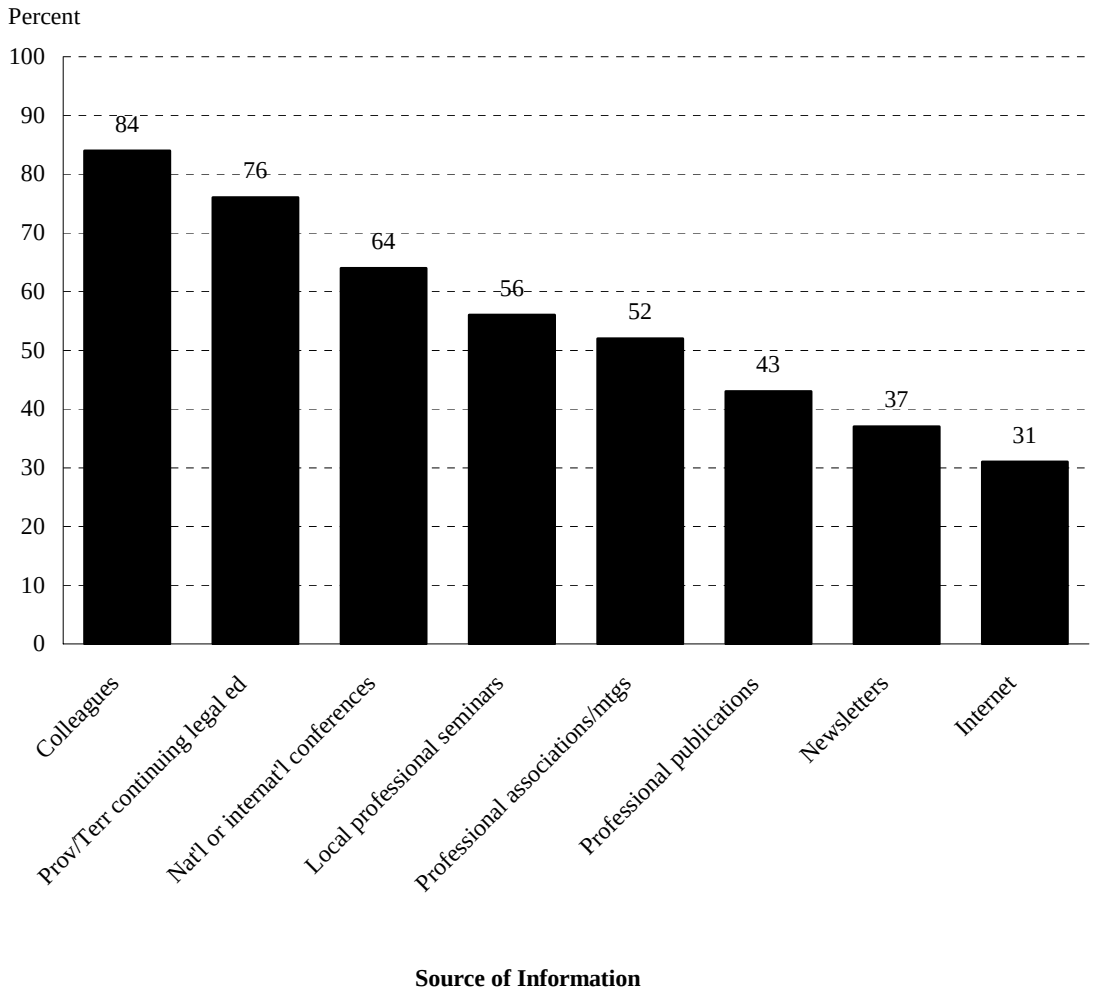
Sources of data: Survey on the Practice of Family Law in Canada, 2006 and 2004.
2006 Total N = 164; 2004 Total N = 117.

2.3 SERVICES

The survey asked respondents how they keep informed about family justice services (i.e., services available to clients to assist them in family law matters, e.g., counselling, education, mediation, etc.). As shown in Figure 2.4, the most common source of information in 2006 was colleagues. According to the 2006 survey, other helpful sources of information were: provincial/territorial continuing legal education courses; national or international conferences; local professional seminars; professional associations and meetings; and professional

publications (reporting services, journals, etc.). Sources of information that were mentioned by fewer respondents included newsletters and the Internet. This pattern was very similar to that obtained in the 2004 survey. When asked which of these sources is most helpful to them in keeping informed about family justice services, 22 percent of the 119 respondents said colleagues, 21 percent said provincial/territorial continuing legal education courses, 21 percent said professional associations and meetings, and 19 percent said local professional seminars.

Figure 2.4 Respondents' Reports of How They Keep Informed About Family Justice Services, 2006



Source of data: Survey on the Practice of Family Law in Canada, 2006.
2006 Total N = 164

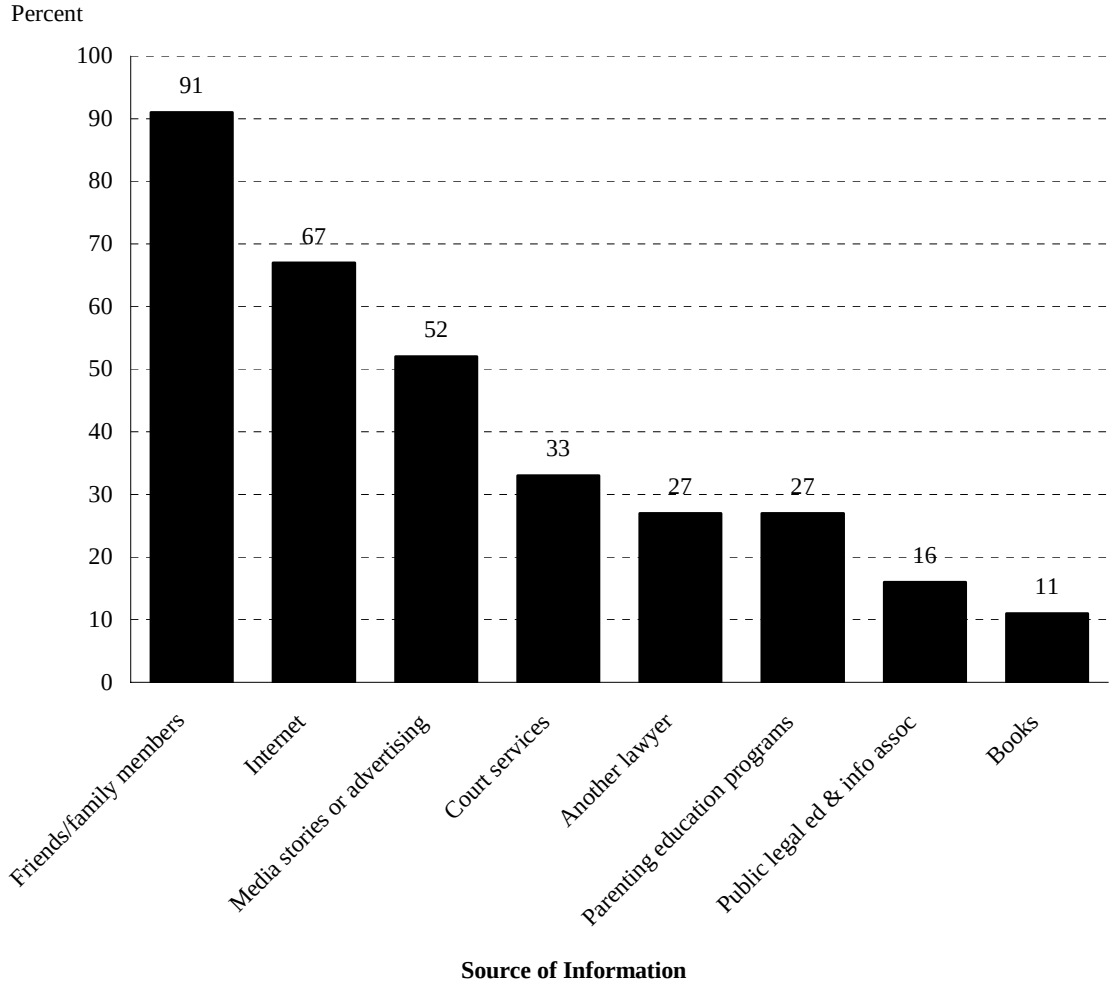
Respondents (excluding judges) were asked, in general, how well informed their clients are about a number of family justice services/issues at the outset of their case. The results are presented in Appendix C, Table C5. Overall, in both the 2006 and 2004 surveys, lawyers reported that their clients are either somewhat informed or not at all informed about family justice services/issues at the outset of their case. According to the 2006 survey, clients are most likely to be informed about individual counselling; 85 percent of respondents reported that their clients are either very well informed or somewhat informed about this service. Clients are also very well or somewhat informed about child support issues (83 percent) and marriage or relationship counselling (82 percent). Over one-half of the 2006 respondents also reported that their clients were very well or somewhat informed about the following services/issues: maintenance enforcement programs (63 percent); mediation services (60 percent); Legal Aid services/duty counsel (58 percent); and domestic violence services (53 percent).

According to the 2006 survey respondents, clients are least likely to be informed about child assessment services; 70 percent of respondents reported that their clients are not at all informed about these services. Other services/issues that respondents report clients are not informed at all about include: parenting plans (63 percent); supervised exchange services (60 percent); Family Law Information Centres (60 percent); collaborative family law (60 percent) and variation or recalculation services (57 percent).

The areas in which respondents indicated that a greater proportion of their clients were informed about in 2006 than in 2004 included collaborative family law and mediation services. The areas in which respondents rated their clients as less informed in 2006 than 2004 included spousal support issues and variation or recalculation services.

Survey respondents (excluding judges) were then asked where their clients get their information about family justice services and issues. Figure 2.5 shows that almost all 2006 respondents said their clients get their information from friends and family members. Over two-thirds said the Internet was a resource, and over half said their clients get information from media stories or advertising (e.g., television, radio, newspaper). Resources that were less commonly used were: court services; another lawyer; parenting education programs; public legal education and information association; and books. This pattern of findings is very similar to those obtained in the 2004 survey.

Figure 2.5 Respondents' Reports of Where Their Clients Get Their Information About Family Justice Services, 2006



Source of data: Survey on the Practice of Family Law in Canada, 2006.
2006 Total N = 164

Recognizing that the lawyers themselves are valuable sources of information for their clients, survey respondents were asked how often they inform clients about, or refer clients to, various family justice services. According to the 2006 survey, over half of the respondents will often or almost always inform their clients about, or refer their clients to, the following services: maintenance enforcement programs (77 percent); individual counselling (65 percent); mediation services (62 percent); parenting education programs (60 percent); and marriage or relationship counselling (54 percent) (see Appendix C, Table C6). The services that respondents report they are most likely to rarely inform their clients about are: supervised exchange (46 percent);

variation or recalculation services (44 percent); and supervised access (36 percent). The overall pattern of results was very similar for the 2006 and 2004 surveys.

Over two-thirds of the lawyers who responded to the 2006 survey (67 percent) reported that their clients are somewhat willing to use family justice services. Almost one-quarter (23 percent) said their clients are very willing, and one-tenth (9 percent) said their clients are not willing at all to use family justice services. These proportions are virtually identical to those obtained in the 2004 survey. In the 2006 survey, lawyers were asked if their clients who are willing to use family justice services experienced any difficulties doing so and 56 percent responded that they did. The most common reason given for this difficulty was time delay (34 percent), followed by location of service (12 percent) and cost (12 percent).

For clients who are not willing to access family justice services, respondents to both the 2006 and 2004 surveys were asked what they thought was the biggest obstacle. The most common response in 2006 was lack of trust in service (30 percent), followed by time delay (29 percent), cost (13 percent), and location of service (10 percent). Twenty-seven respondents reported other reasons, the most common being lack of availability of the service in the community and lack of interest. This pattern of results was quite similar to that observed in the 2004 survey, although the overall percentages were somewhat lower in 2006.

Lawyers were asked to what extent they think their cases are more likely to be settled out of court because of the family justice services that are available. In both the 2006 and 2004 surveys, approximately one-half said somewhat more likely (46 percent in 2006; 51 percent in 2004). A smaller proportion of respondents reported that because of the availability of these services their cases are much more likely to be settled out of court (17 percent in 2006; 18 percent in 2004). Approximately one-third of the respondents (37 percent in 2006; 31 percent in 2004) did not think their cases are more likely to be settled out of court because of family justice services.

The survey asked lawyers if there are services not available in their community that they think would be helpful to them or their clients, and in the 2006 survey 60 respondents made 80 suggestions. The services that were suggested the most were: parent information/education services or programs (23 percent of respondents); mediation/affordable mediation (15 percent); supervised access/affordable supervised access (8 percent); and assessments/assessors/ assessment centres (8 percent).

Lawyers were also asked if family justice services were available to their clients in their official language of choice, and almost three-quarters in the 2006 survey (74 percent) said yes and over one-quarter (26 percent) said no. These proportions were virtually identical to those obtained in the 2004 survey.

All survey respondents were asked if there is a Unified Family Court in their province/territory. Almost half of the 2006 respondents (48 percent) said yes and 52 percent said no. The proportion of respondents indicating the availability of a Unified Family Court decreased somewhat from the 2004 proportion (57 percent), likely reflecting the greater proportion of respondents from Alberta and British Columbia in 2006, as those provinces do not have any Unified Family Courts. Respondents to both the 2006 and 2004 surveys were then asked to what extent they agreed that Unified Family Courts accomplish specific objectives. These objectives were

simplifying procedures, providing easy access to various family justice services, providing timely resolution to family law matters, and producing outcomes tailored to individual needs. In general, about half of the 2004 respondents agreed or strongly agreed that Unified Family Courts accomplished these objectives, while about one-quarter disagreed or strongly disagreed (see Appendix C, Table C7). Overall, the proportion of 2006 respondents who agreed or strongly agreed that Unified Family Courts have achieved these objectives was lower, while the proportion who disagreed was approximately the same.

In terms of simplifying procedures, 48 percent of 2006 respondents (57 percent in 2004) agreed or strongly agreed that Unified Family Courts accomplish this objective, while 27 percent (23 percent in 2004) disagreed or strongly disagreed. Likewise, over half of the respondents agreed or strongly agreed that Unified Family Courts provide easy access to various family justice services (53 percent; 55 percent in 2004) and produce outcomes tailored to individual needs (45 percent; 53 percent in 2004). Over one-third of the respondents agreed or strongly agreed that Unified Family Courts provide timely resolution to family law matters (38 percent; 45 percent in 2004), while over one-third (35 percent; 35 percent in 2004) disagreed or strongly disagreed that Unified Family Courts meet this objective. The higher number of missing responses in 2006 most likely reflects the increased proportion of respondents from provinces without Unified Family Courts, most notably Alberta and British Columbia.

Respondents who do not have Unified Family Courts in their province/territory were asked if they would like to see them implemented. Of the 88 respondents to the 2006 survey who answered this question, 72 percent said yes and 28 percent said no. The proportion responding positively to this question was considerably higher in 2006 than in 2004 (59 percent). Respondents were asked to explain their answers, and 58 reasons were given in the 2006 survey. For individuals who would like to see Unified Family Courts implemented, the most common explanation was that there is too much redundancy in a two-court system and that a "one-stop shopping" approach makes more sense (n=9). Other explanations in support of Unified Family Courts were that there was a Unified Family Court in their province/territory, but it was not jurisdiction-wide (n=5) and judges with an interest or extensive background in family law were needed (n=4). As one respondent put it, *"judges familiar with family law issues are simply best suited to family law cases."*

For individuals who did not want to see Unified Family Courts implemented in their jurisdiction, the most common reasons given were: the current system works well (n=7) and Unified Family Courts were of no benefit without the services to back them up (n=2). An example of a comment made by a respondent who did not want to see them implemented in their jurisdiction was: "*In order to be effective, they have to be properly funded and include services (e.g., mediation, etc.).*"

2.4 BEST INTEREST CRITERIA

Currently, subsection 16(8) of the *Divorce Act* provides that in making a custody order, the court shall take into consideration only the best interests of the child of the marriage as determined by reference to the condition, means, needs, and other circumstances of the child. All respondents to the 2006 and 2004 surveys were asked whether, in their experience, most parenting arrangements that are made through specific processes are consistent with the best interests of the child. The

results are presented in Appendix C, Table C8. According to the 2006 respondents, the processes most likely to be consistent with the best interests of the child are arrangements negotiated by lawyers (82 percent), and arrangements made as a result of mediation (82 percent). The process respondents thought was least likely to be consistent with the best interests of the child was an arrangement made by a judge after a trial or hearing (60 percent) and arrangements resulting from collaborative family law (60 percent). Main differences between the 2006 and 2004 results indicated that respondents to the 2006 survey were more likely to state that arrangements made by parents themselves and arrangements made by a judge are consistent with the best interests of the child. Also, in 2006, respondents were less likely to state that arrangements resulting from collaborative family law are consistent with the best interests of the child.

Respondents were asked if the provincial/territorial legislation in their jurisdiction included specific criteria for determining the best interests of the child. Of the 155 individuals who responded to this question, 74 percent said yes and 26 percent said no. The proportion responding affirmatively in 2006 was higher than in 2004 (63 percent). Respondents who answered yes were also asked if they use those criteria in cases under the *Divorce Act*, and the vast majority (91 percent) of the 114 respondents to the 2006 survey said they did.

All survey respondents were asked, in their experience, when parents are aware of the negative effects of separation/divorce on their children, does this awareness affect parental behaviour. While the majority of the 145 respondents to the 2006 survey said it did (64 percent), a somewhat surprising 35 percent of the respondents said no. However, a greater proportion of the 2006 respondents said that this awareness affects parents' behaviour than did the 2004 respondents (56 percent). When asked to explain their responses, 105 respondents to the 2006 survey offered 118 reasons. The most common responses were: even when parents are aware, they have difficulties changing their behaviour (n=20) and the emotional and/or financial repercussions of the separation interfere, and parents can't get past their anger (n=16). As one respondent put it, "*Usually parents are too close to their own pain."* Another stated, "*Parents who are determined to have control will continue to cause conflict even though they recognize that this hurts the child."* A respondent who believes that awareness changed parents' behaviour commented, "*I have seen clients fundamentally change their behaviour after receiving information regarding the effects of separation/divorce.*"

Respondents were asked if, in their opinion, parenting plans (i.e., a detailed written plan jointly developed by parents to address their child's care and needs) are a good mechanism for ensuring that the best interests of the child are met. Three-quarters (75 percent) of the 2006 respondents said in most cases yes, 13 percent said yes in high conflict cases, and 5 percent said yes in all cases. Ten respondents (7 percent) did not think parenting plans are a good mechanism for ensuring that the best interests of the child are met.

Survey respondents were asked in what proportion of their cases with children involved are parenting plans used, and the responses in the 2006 survey varied widely (n=144). The mean response was 31 percent, and the median was 20 percent. These figures were the same in the 2004 survey. When asked if they have a form that they use as a guide for parenting plans, over one-third (35 percent) of the 141 lawyers who responded in the 2006 survey said they did. Lawyers who reported that they didn't have a form were asked if they thought a guide would be useful, and 84 percent of the 88 respondents said it would.

The use of parenting plans was further explored when the survey asked respondents (excluding judges) how helpful parenting plans were to their clients. In general, respondents to the 2006 survey found parenting plans helpful: 48 percent said they were somewhat helpful; 38 percent said they were very helpful; and 14 percent said parenting plans were not very helpful. In comparison to the 2004 data, a smaller proportion of lawyers stated in 2006 that parenting plans were very helpful (45 percent in 2004) and a larger proportion indicated that they were not helpful (9 percent in 2004).

When asked to explain their answers, 70 respondents to the 2006 survey made 72 comments. The most frequent comments provided included: parenting plans are still very new and are unfamiliar to clients (13 percent) and parenting plans are not very helpful because each situation has its own unique twists and the plans tend to be too general (6 percent). Examples of comments from respondents who thought parenting plans were not very helpful were: "*They can be too rigid—not enough flexibility as the needs of the children and family change*," and "*They are only useful for high conflict cases*." A respondent who answered that parenting plans were somewhat helpful said, "*If parents are having trouble getting along, a parenting plan provides some structure and guidance*." A respondent who thought parenting plans were very helpful commented, "*It helps* [parents] *focus on what are truly issues related to children—not parents' issues which they are trying to project on children*."

2.5 CHILD REPRESENTATION

The *United Nations Convention on the Rights of the Child* provides for the right of the child to participate in decisions that affect his or her life. Respondents to both the 2006 and 2004 surveys were asked what they thought are the best mechanisms to enable children to voice their views. The two mechanisms that were chosen by most respondents in both surveys were legal representation for the child (71 percent in 2006; 65 percent in 2004) and assessment report (70 percent in 2006; 74 percent in 2004). About one-third of respondents (37 percent in 2006; 34 percent in 2004) chose non-legal representation for the child, and about one-fifth (21 percent in 2006 and 2004) chose judicial interview. Very few respondents chose the alternatives of testimony of the child (4 percent in 2006; 3 percent in 2004) and legislative provision that parents should consult their children respectfully when making parenting arrangements upon separation (5 percent in 2006; 3 percent in 2004).

Interestingly, even though comments on these mechanisms were not solicited, some survey respondents felt very strongly about two of the mechanisms. Regarding a judicial interview with the child, respondents' comments were definite, including: "*No, no, no, no, no, no*" and "*Absolutely not.*" Likewise, regarding testimony by child, some respondents commented: "*NO, NO, NO! A thousand times NO*," and "*Never*."

One respondent made the following comment regarding the voice of the child:

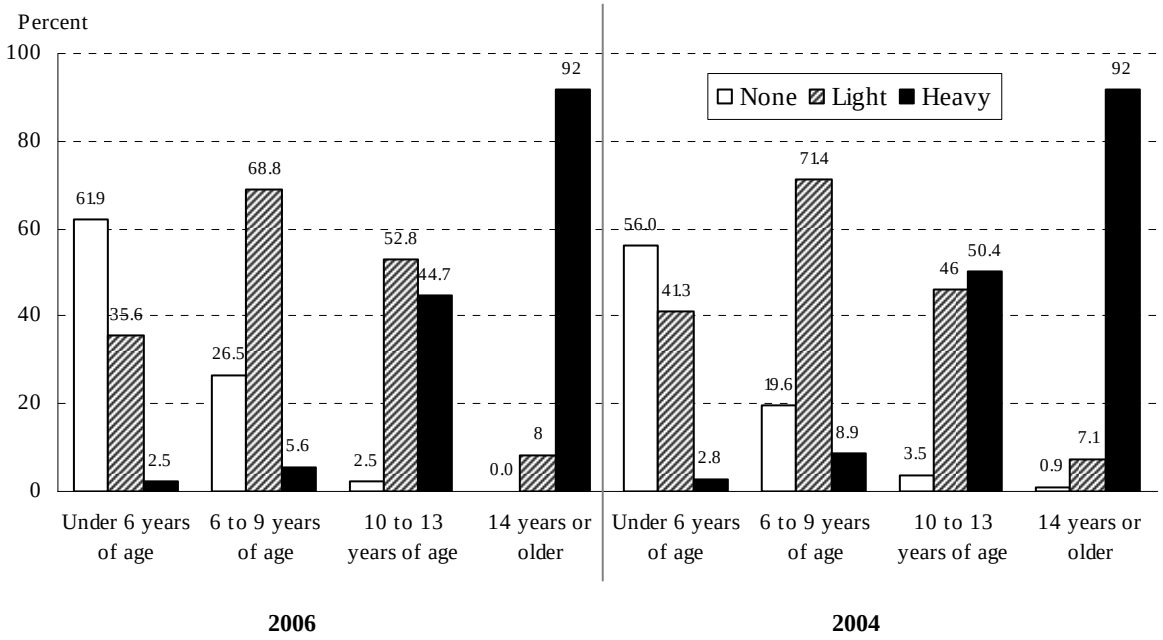
> Children's voice is not heard. Judges are very hesitant to order no/limited access even when children are begging for it…If Children's Aid is not involved, presumption is parents should always have contact, but CAS doesn't intervene if at least one parent is protecting [the child], so it doesn't therefore make sense that the other parent always deserves access…Just because CAS doesn't see fit to get involved doesn't mean both parents are fit to be involved.

When respondents to the surveys were asked which factors are most important when deciding what weight should be given to the child's views, they were very supportive of all the factors listed in both the 2006 and 2004 surveys. Specifically, respondents to the 2006 survey thought the following factors were important: age of child (88 percent); child's reasons for views (87 percent); ability of child to understand the situation (85 percent); indication of parental coaching/manipulation (84 percent); the child's emotional state (81 percent); and ability of child to communicate (76 percent).

Respondents were asked how much weight should be given to the preferences of a child regarding custody decisions at specified ages. The patterns were similar in the 2006 and 2004 surveys and indicated that, predictably, the older the child, the more weight respondents thought should be given to their preferences (see Figure 2.6).

While 62 percent of respondents to the 2006 survey thought no weight should be given to children under the age of 6 years, 69 percent thought the preferences of 6- to 9-year-old children should be weighed lightly, and 92 percent thought the preferences of children 14 years or over should be weighed heavily. For the age group of 10 to 13 years, 53 percent of the respondents thought their preferences should be weighed lightly, and 45 percent thought they should be weighed heavily. Several respondents commented that "*it depends on the circumstances*."

Figure 2.6 Respondents' Views on How Much Weight Should be Given to the Preference of Children at Specified Age Ranges, 2006 and 2004



Sources of data: Survey on the Practice of Family Law in Canada, 2006 and 2004.
2006 Total N = 164; Under 6 years of age - n=160, 6-9 years of age - n=160, 10-13 years of age - n=161, 14 years or older - n=163.
2004 Total N = 117; Under 6 years of age - n=109, 6-9 years of age - n=112, 10-13 years of age - n=113, 14 years or older - n=113.

2.6 CUSTODY AND ACCESS

The issue of terminology for post-separation parenting arrangements has generated a lot of interest in recent years. Respondents were asked how often they use terminology other than "custody" and "access" in their agreements. The majority of respondents to the 2006 survey said that they do use other terminology with 36 percent stating that they often use other terminology, and 25 percent stating that they almost always use other terminology. Only 13 percent stated that they rarely use other terminology in their agreements, and 26 percent said they occasionally use other terminology. This pattern was similar to that observed in the 2004 survey, with the exception that fewer respondents in 2006 stated that they often use other terminology (50 percent in 2004) and a greater proportion of respondents stated that they rarely use other terminology (10 percent in 2004), suggesting somewhat less use of alternate terminology in agreements by the respondents to the 2006 survey.

As revealed in both the 2004 and 2006 surveys, there was clearly less use of alternate terminology in orders than in agreements. The majority of respondents stated that they rarely (24 percent in 2006; 26 percent in 2004) or occasionally (28 percent in 2006; 38 percent in 2004) use alternate terminology in their orders. Over one-quarter of respondents (31 percent in 2006;

27 percent in 2004) said that they often use alternate terminology in orders, and fewer (17 percent in 2006; 8 percent in 2004) said that they almost always use alternate terminology in their orders.

The survey asked respondents if legislative amendments to the *Divorce Act* were to be introduced to replace the terms "custody" and "access" with "parenting order," which includes decision making responsibilities and parenting time, to what extent they thought this would promote a less adversarial process. Three-quarters of respondents to both the 2006 and 2004 surveys thought that legislative changes would have an effect, with 42 percent of the 2006 respondents indicating it would have somewhat of an effect (50 percent in 2004), and 32 percent indicating that it would affect the process to a great extent (26 percent in 2004). One-quarter (26 percent in 2006; 24 percent in 2004) stated that they thought changing the terminology would have no effect on the adversarial process.

Many respondents commented on the terminology issue. Examples of comments from respondents who thought changing the terminology would promote a less adversarial process included: "*I believe it is about time we get away from the words 'custody' and 'access.' I believe such words treat children as commodities*," and "*This is critical and this terminology needs to disappear from legislation*." A respondent who thought that changing the terminology would only somewhat promote a less adversarial process said, "*It may confuse third parties, e.g., doctors, hospitals, border authorities, and officials in other countries*." Examples of comments from respondents who did not think changing the terminology would promote a less adversarial process were:

> Changing the terms "custody" and "access" will not change attitudes. Any new phrases will quickly become charged in the conflict. Example—"spousal support" payors are not more eager to pay it than "alimony." The terms custody and access are entrenched in provincial, federal and international laws. Changing the terms in the Divorce Act will cause a lot of confusion, and potentially lack of enforcement under the Hague Convention. No obvious benefit to changing the terms.
>
> There has been a lot of talk in Canada about changing the Divorce Act and other provincial legislation to reflect more "parenting" language and do away with the terms "custody" and "access." In my opinion, the change of these terms will do very little to change the post divorce reality for most families. It has been my experience that many "joint" parents demand joint parenting for ego reasons and thereafter largely fail to be involved in joint decision making or even joint parenting at all.

Respondents were asked, based on their experience, how often parents are sharing decision making in specific areas. The majority of respondents said that parents shared decision making often or almost always in the areas of education (59 percent in 2006; 58 percent in 2004) and health (54 percent in 2006 and 61 percent in 2004) (see Appendix C, Table C9). The majority of respondents indicated that parents shared decision making occasionally or often in the areas of culture (67 percent in 2006 and 62 percent in 2004) and religion (66 percent in 2006 and 63 percent in 2004). Of respondents who indicated an "other" area, the majority said that parents were sharing decision making regarding extracurricular activities/recreation (74 percent in 2006; 65 percent in 2004).

Parents may not comply with their custody/access orders for a variety of reasons. Respondents were asked, in their experience, when parents do not comply, what are the circumstances of the case and how frequently do they occur (see Appendix C, Table C10). The most frequent circumstance reported in the 2006 survey was that the child refuses the visit with the access parent, which 65 percent of respondents said happened occasionally or often (22 percent). The most frequent circumstance reported in the 2004 survey was that the access parent was late returning the child, which 41 percent of the respondents said occurred often or occasionally (39 percent). The circumstance that occurred least frequently in both surveys was family violence, which half of the respondents (51 percent in 2006; 49 percent in 2004) said occurred rarely, and one-third (38 percent in 2006; 35 percent in 2004) said occurred occasionally.

Lawyers were asked what proportion of their cases with children involved included supervised access or exchange. Both supervised access and supervised exchange were encountered relatively rarely in both the 2006 and 2004 surveys. In both years, respondents reported that an average of only 8 percent of their cases included supervised access (range of 0 to 75 percent in 2006 and 0 to 60 percent in 2004), and an average of 6 percent of their cases included supervised exchange (range of 0 to 50 percent in 2006 and 0 to 40 percent in 2004). Lawyers were then asked under what circumstances they recommend supervised access or exchange to their clients. The results are presented in Appendix C, Table C11. In both the 2006 and 2004 surveys, respondents were most likely to recommend supervised access in cases of: allegations of child abuse (85 percent in 2006 and 86 percent in 2004); substance abuse by parents (74 percent in 2006 and 80 percent in 2004); and mental health concerns (74 percent in 2006 and 80 percent in 2004). Respondents in both years were most likely to recommend supervised exchange in cases of high conflict (69 percent in 2006 and 77 percent in 2004) and spousal violence (63 percent in 2006 and 69 percent in 2004). Ten respondents to the 2006 survey stated an “other” circumstance in which they would recommend supervised access to their client. Of the 11 responses provided, the most common reasons were following a period of no contact between the parent and the child to allow for reestablishment of the relationship and when there is a flight risk. Only 1 percent of the respondents to the 2006 survey said that supervised access is not available in their jurisdiction, and only 6 percent reported that supervised exchange was not available.

The surveys asked respondents in what proportion of their cases with children involved was parental relocation (mobility) an issue. While the range was widespread (0 to 75 percent in 2006 and 0 to 65 percent in 2004), the average was relatively low (13 percent in 2006 and 12 percent in 2004). In cases where parental relocation was an issue, respondents were asked what reasons were given for the move, and how frequently they occurred. The most common reason in both surveys was to be with a new partner, which 58 percent of the respondents in the 2006 survey reported occurred often (57 percent in 2004) (see Appendix C, Table C12). Other reasons that respondents reported occurred often were employment opportunity (56 percent in 2006 and 49 percent in 2004) and to be closer to family/friends (52 percent in 2006 and 51 percent in 2004).

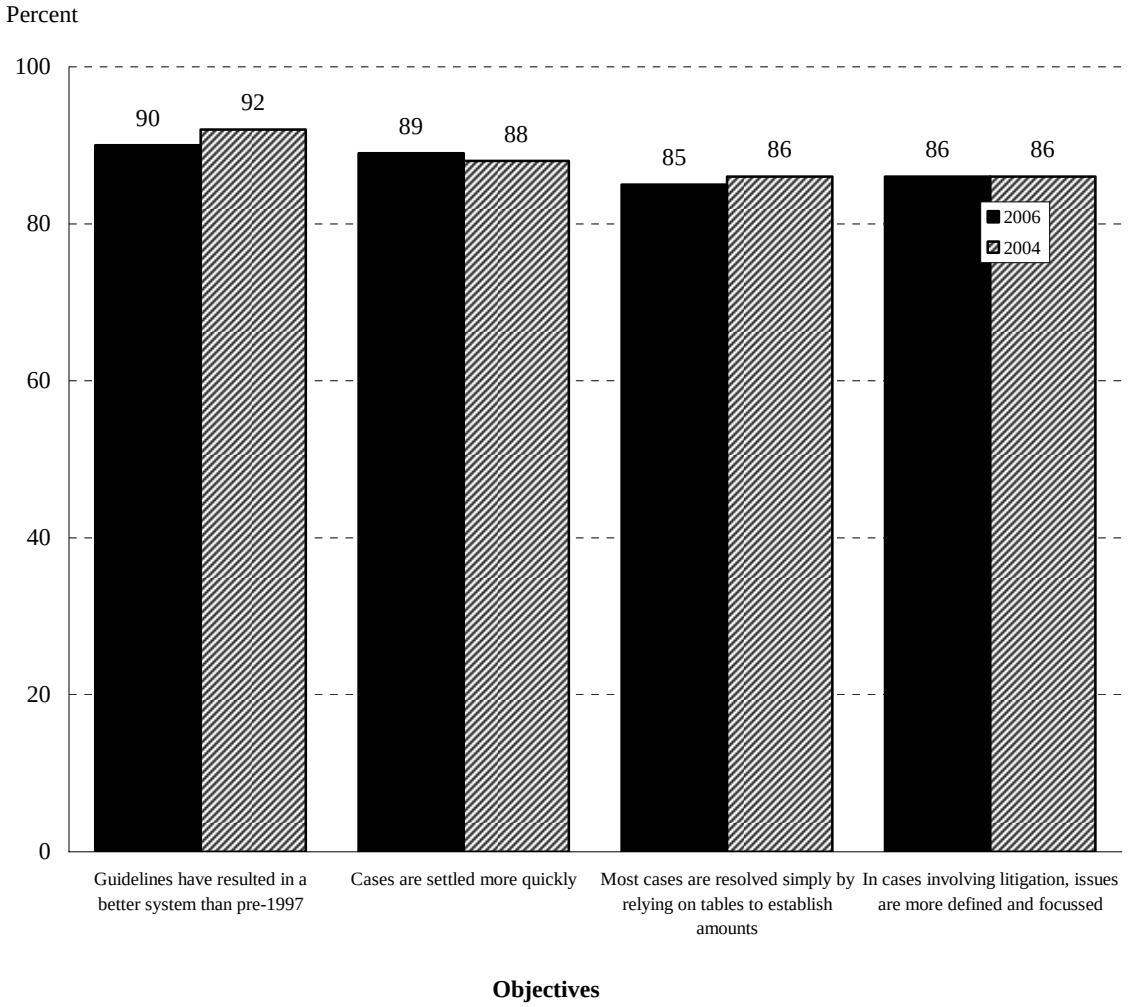
Respondents were then asked what the circumstances were in cases of parental relocation, and how frequently they occurred (see Appendix C, Table C13). The most common circumstances cited in both the 2006 and 2004 surveys were when the custodial parent wished to move within the province/territory (in the 2006 survey, 37 percent said this occurred often, and 42 percent said it occurred occasionally), and when the custodial parent wished to move to a different

province/territory (38 percent said this occurred often, and 38 percent said it occurred occasionally). Parental relocation was rarely an issue when the custodial parent wished to move within the city (54 percent in 2006) or outside the country (60 percent). Not surprisingly, parental relocation was rarely an issue when the access parent wished to move.

2.7 CHILD SUPPORT GUIDELINES

All respondents were asked the extent to which they thought the Federal Child Support Guidelines were meeting their stated objectives. Respondents to both the 2006 and 2004 surveys overwhelmingly agreed that the Guidelines are meeting their objectives (see Appendix C, Table C14). Figure 2.7 shows that almost all respondents in both surveys agreed or strongly agreed that the Child Support Guidelines have resulted in a better system of determining child support than the pre-1997 system. Similarly, almost all respondents agreed or strongly agreed that cases are settled more quickly since the implementation of the Guidelines, that since implementation of the Guidelines, most cases are resolved simply by relying on the tables to establish amounts of support, and that in cases involving litigation, the issues to be resolved are more defined and focused than prior to implementation of the Guidelines.

Figure 2.7 Proportion of Respondents Who Strongly Agreed or Agreed that the Federal Child Support Guidelines are Meeting their Objectives, 2006 and 2004



Sources of data: Survey on the Practice of Family Law in Canada, 2006 and 2004.
2006 Total N = 164; 2004 Total N = 117.

Respondents were asked what proportion of their child support cases involve undue hardship applications. Undue hardships applications were rare, with respondents in both the 2006 and 2004 surveys reporting that they occurred in only 6 percent of their cases (range of 0 to 50 percent in 2006 and 0 to 35 percent in 2004). Some respondents made unsolicited comments regarding undue hardship applications reflecting their frustration with this aspect of the Child Support Guidelines. Examples were: "*9 years and not one successful undue hardship case accepted in Court*," and "*no one wins these, so no one claims it anymore*."

When asked how often inadequate income disclosure is a problem in their experience, the majority of respondents in both the 2006 and 2004 surveys said that it was either often (41 percent in 2006; 49 percent in 2004) or almost always (6 percent in 2006; 7 percent in 2004) a problem. The proportion of respondents who said that income disclosure is occasionally a problem differed somewhat between the 2006 and 2004 surveys (47 percent in 2006; 37 percent in 2004). Few respondents in both surveys said that income disclosure is rarely a problem (6 percent in 2006; 7 percent in 2004).

When asked to explain what the problems are with income disclosure, 103 respondents to the 2006 survey made 156 comments. The most frequent comments were: self-employed income continues to be problematic (36 percent of respondents); unwillingness to disclose or provide supporting documentation (19 percent); and lack of complete disclosure (16 percent). One respondent said: "*Rules of disclosure are not adequate for the self-employed and corporations.*" Another offered the following suggestion:

> Payors can easily delay cases and increase costs by failing to provide complete tax returns and current income information. The … [provincial rules of procedure] … should be amended to require a reverse onus. In other words, if the documentation is not provided within 30 days of service, there should be an automatic penalty of fixed costs unless the payor can establish legitimate grounds for the delay.

Respondents to both the 2006 and 2004 surveys were asked how often second families are an issue in their experience. The majority indicated that second families are an issue occasionally (54 percent in 2006; 50 percent in 2004), and over one-third of respondents (36 percent in 2006; 36 percent in 2004) said that second families are an issue often. A relatively small proportion of respondents indicated that second families are an issue rarely (9 percent in 2006; 11 percent in 2004) or almost always (1 percent in 2006; 3 percent in 2004).

When asked to explain what the issues are with second families, 79 respondents to the 2006 survey made 102 comments. The most common comments were: child support payors with second families often refuse to acknowledge first family obligations (41 percent); second families create access problems (18 percent); and children's relationship with new partner and siblings (13 percent). Eight respondents commented that there is simply "*Not enough to go around*," and "*There is competition for limited financial resources.*"

All respondents were asked if there are any other areas of the Child Support Guidelines that they have found to be problematic. A total of 196 comments were made by 114 respondents in the 2006 survey. Respondents identified the most problematic areas of the Guidelines as: section 9—shared custody and the 40 percent rule (38 percent of respondents) (including comments referring to the Supreme Court of Canada's decision in Contino[2]), section 7—special or extraordinary expenses (28 percent); and imputing income (19 percent). Examples of comments that capture these issues are:

[2] *Contino v. Leonelli-Contino*, [2005] 3 S.C.R. 217, 2005 SCC 63.

> Things were okay until Contino—it will take child support back 15 years.
>
> Determining what is extraordinary for school and extracurricular. Suggestion—list out what qualifies for school expenses. Perhaps a formula relative to income for extraordinary expenses.
>
> Reliance on income only allows self-employed payors too much opportunity to under pay. There is much difficulty in getting income disclosure and convincing courts to deem income.

Respondents also touched on a number of other issues regarding the Child Support Guidelines, such as children over the age of majority, table amounts, and administrative procedures. Examples of comments made were:

> Post-secondary expenses—we need a general formula with enumerated exceptions or criteria to provide more guidance to litigants and judges.
>
> The Guidelines seem to fall short when dealing with 3 or more children. The amount is too high, especially for lower income earners. Adjustments should be considered.
>
> Easier system for recalculation of annual support—parties, in simple cases, should be able to register change in support through administrative process versus court.

2.8 SPOUSAL SUPPORT

All respondents to both the 2006 and 2004 surveys were asked in what percent of their cases is spousal support an issue. The 2006 average was 46 percent, ranging from 0 to 100 percent (2004 average was 48 percent; range 2 to 100 percent). Respondents to the 2006 survey were then asked how often they use the Spousal Support Advisory Guidelines (SSAG) in cases where spousal support is an issue.[3] Most respondents stated that they make use of the SSAG, with 36 percent of respondents indicating that they use them occasionally. A substantial number of respondents also said that they use the SSAG often (27 percent) or almost always (28 percent). Few participants stated that they never use the SSAG (10 percent).

Respondents were then asked if the SSAG have improved the handling of spousal support applications. Fewer than half of the participants who responded to this question agreed that the SSAG have made the handling of spousal support applications: more consistent (42 percent); fairer (39 percent); less conflictual (37 percent); or generally easier to resolve (44 percent). Some respondents said, "*It's too early to tell*." Others expressed concerns, such as:

> I'm worried that the quantum and duration of spousal support will be too onerous as we move into the use of guidelines—the expectation will be that spousal support is paid rather than expecting everyone capable to work. Entitlement in short term seems to lead to long term awards in longer marriages.

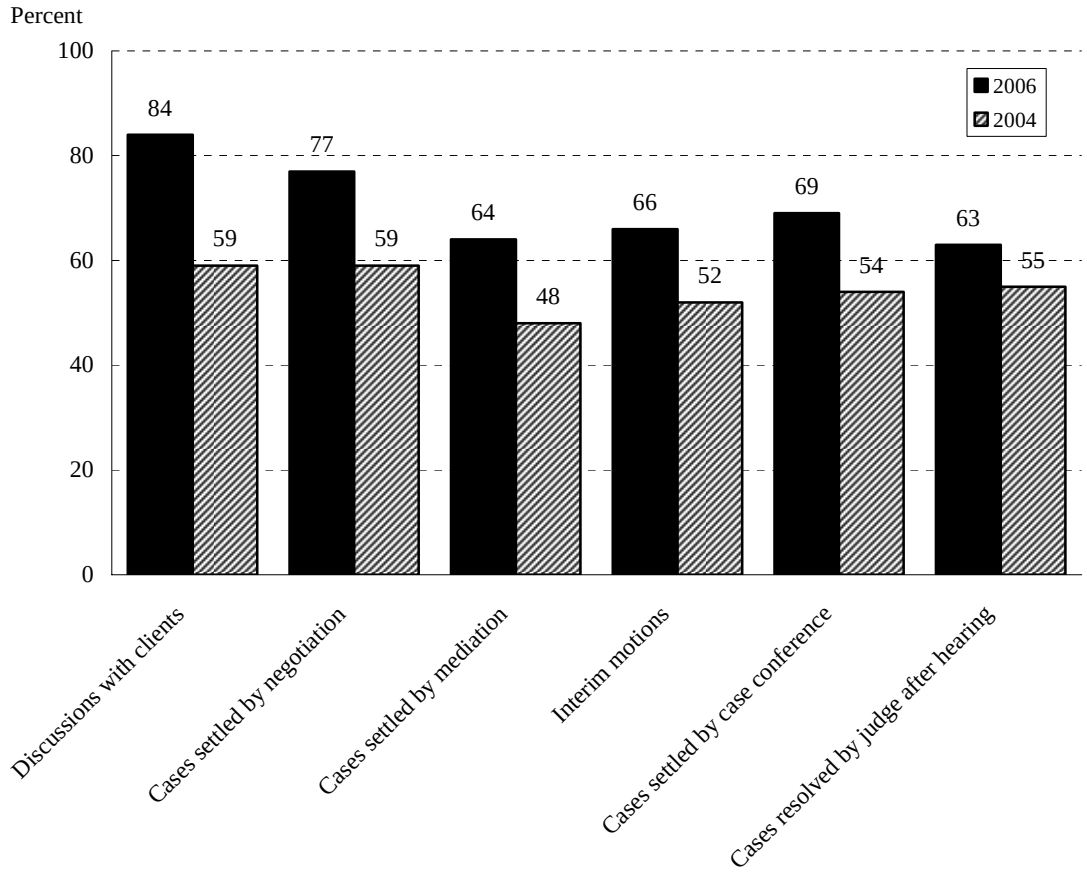
[3] The Spousal Support Advisory Guidelines were released in January 2005 and thus were not addressed in the 2004 survey.

Further data analysis was conducted to explore regional differences. Four provinces had sufficient respondents to allow for meaningful comparisons: Alberta, Ontario, British Columbia, and Nova Scotia. For each of these provinces, the percentages of cases in which respondents reported spousal support is an issue were: Alberta—49 percent; Ontario—52 percent; British Columbia—54 percent; and Nova Scotia—38 percent. Each of these provinces reported similar usage of the SSAG with more than half using the SSAG often or almost always.

Differences between jurisdictions were noted, however, when respondents were asked if the SSAG have improved the handling of spousal support applications. When asked if the SSAG have made the handling of spousal support applications more consistent, 65 percent of respondents from British Columbia said yes, compared to 46 percent in Nova Scotia, 41 percent in Ontario, and 24 percent in Alberta. When asked if the SSAG have made the handling of spousal support applications fairer, similar results were obtained; 61 percent of respondents in British Columbia said yes, compared to 50 percent in Ontario, 41 percent in Nova Scotia, and 21 percent in Alberta. When asked if the SSAG have made the handling of spousal support applications less conflictual, 55 percent of respondents from British Columbia said yes, compared to 40 percent from Ontario, 29 percent from Alberta, and 27 percent from Nova Scotia. Finally, when asked if the SSAG have made spousal support applications generally easier to resolve, respondents were more positive; 71 percent in British Columbia said yes, compared to 44 percent in Nova Scotia, 43 percent in Ontario, and 34 percent in Alberta.

Respondents were also asked if, in various situations, reference was made to the SSAG and if the resolution of the matter was within the range prescribed by the SSAG. Results are presented in Appendix C, Table C15. Figure 2.8 indicates that reference was most likely to be made to the SSAG in discussions with clients, in cases settled by negotiation, and in cases settled by case conference. Reference to the SSAG was least likely to be made in cases settled by mediation and cases resolved by a judge after a hearing. Case resolutions that are within the SSAG range were most likely to be reported in cases settled by negotiation and in discussions with clients. Resolutions within the SSAG range were least likely in interim motions and in cases settled by mediation. No regional differences were found with respect to this question.

Figure 2.8 Respondents' Reports as to Proportion of Cases using the Spousal Support Advisory Guidelines (SSAG) in Various Situations, 2006



Source of data: Survey on the Practice of Family Law in Canada, 2006.
2006 Total N = 164

Respondents to both the 2006 and 2004 surveys were asked, in cases where spousal support is an issue, what the circumstances are and how frequently they occur. The results are presented in Appendix C, Table C16. The circumstances that survey respondents reported occurred often were: payor's income is considerably higher than claimant spouse's income (54 percent in 2006; 57 percent in 2004) claimant spouse is a stay-at-home parent (50 percent in 2006; 56 percent in 2004); and claimant spouse was a stay-at-home parent to children now grown and is not in the labour force (49 percent in 2006; 56 percent in 2004). The circumstance that respondents

reported occurred rarely (47 percent in 2006; 44 percent in 2004) or occasionally (34 percent in 2006; 44 percent in 2004) was couple had no children and claimant spouse is not in labour force.

In cases where both child support and spousal support are issues, respondents to both the 2006 and 2004 surveys were asked which issue is typically dealt with first. Almost all respondents (95 percent in 2006; 94 percent in 2004) stated that child support is dealt with first. Only 5 percent in 2006 and 6 percent in 2004 said that both issues were resolved together, and no respondents said that spousal support was dealt with first.

2.9 FAMILY VIOLENCE

The Government of Canada strongly believes that it is important to send a message that all aspects of the family law system must take into account incidents of family violence involving the child or a member of the child's family. Lawyers in both 2006 and 2004 were asked if they always make enquiries to attempt to identify cases of family violence. Approximately three-quarters of respondents in both years (72 percent in 2006; 76 percent in 2004) said yes, while 28 percent in 2006 and 24 percent in 2004 said no. However, when asked if they use a screening tool (i.e., standardized questionnaire) to identify cases of family violence, almost all lawyers (87 percent in 2006; 90 percent in 2004) said no, while 13 percent in 2006 and 11 percent in 2004 said yes.

Lawyers who said they did use a screening tool were asked what tool they used, and most said they use their own (n=3) or they use a general intake questionnaire which includes a question on domestic violence (n=3).

When asked if they are familiar with the services available for their clients in cases where there is family violence, the vast majority of lawyers (95 percent in 2006; 89 percent in 2004) said that they are; 5 percent in 2006 and 6 percent in 2004 said that they are not, and 1 percent in 2006 and 6 percent in 2004 said that there are no services available in their area.

Respondents to both the 2006 and 2004 surveys were asked, in cases involving spousal violence, how the court addressed the issue, and how frequently it occurred. When the court did address the issue, the most likely response in 2006 was to make a civil order restraining harassment/spousal contact (61 percent indicated this occurred often or almost always), followed by denying custody to the abusive parent (45 percent of the 2006 respondents indicated that this occurred often or almost always; 40 percent of the 2004 respondents said this occurred often or almost always) (see Appendix C, Table C17). Court responses that respondents stated rarely were used included: child was given legal representation (52 percent in 2006 and 41 percent in 2004); access was denied to abusive parent (49 percent in 2006 and 48 percent in 2004); and parents were educated on the effects of family violence on children (38 percent in 2006 and 43 percent in 2004).

Respondents to both the 2006 and 2004 surveys were also asked, in cases involving child abuse, how the court addressed the issue, and how frequently it occurred. When the court did address the issue, the most likely responses were: to deny custody to the abusive parent (59 percent of 2006 respondents indicated that this occurred often or almost always; 63 percent of 2004 respondents said this occurred often or almost always); and access supervision was ordered

(59 percent of 2006 respondents stated that this occurred often or almost always; 61 percent of 2004 respondents said this occurred often or almost always) (see Appendix C, Table C18). Court responses that respondents stated rarely were used included: child was given legal representation (40 percent in 2006 and 32 percent in 2004); court made referral to child welfare agency (32 percent in 2006 and 29 percent in 2004); and parents were educated on the effects of family violence on children (30 percent in 2006 and 35 percent in 2004). Nearly half of the respondents indicated that the court only rarely did not address the issue.

There were interesting differences in respondents' reports on how the court addresses cases involving spousal violence and child abuse. The court is much more likely to deny custody and access to abusive parents in cases of child abuse than spousal violence. The court is also much more likely to order access supervision and use an assessment service in cases of child abuse.

All respondents were asked if training sessions on spousal violence issues are available to family justice professionals in their jurisdiction. A considerably larger proportion of 2006 respondents indicated that training sessions were available (62 percent) than 2004 respondents (42 percent). Respondents who indicated training was available were asked if they thought the training was adequate, and over one-half (64 percent in 2006; 53 percent in 2004) said yes.

When asked if training sessions on child abuse issues are available to family justice professionals in their jurisdiction, a substantially greater proportion of the 2006 sample said yes (60 percent) than the 2004 sample (36 percent). Respondents who said yes were asked if they thought the training was adequate, and 63 percent in 2006 and 59 percent in 2004 said yes.

Some respondents had critical comments regarding the issue of domestic violence in the Canadian family law system. For example:

> Canadian family law fails to keep pace with developments and evolution of the law in other countries such as the U.S. on domestic violence issues. The lack of political will to ensure that children are protected by legislative direction to judges in all federal and provincial statutes is nothing short of alarming. The statistical data and social science research cry out for a response….

2.10 GENERAL COMMENTS

The survey concluded by asking respondents if they had any other comments about the family law system in Canada and suggestions for future research. With regard to general comments about the family law system; 56 respondents made 129 responses. The most common responses in the 2006 survey were: the need for unified family courts with case management and specialized judges (23 percent); the need for parenting education (20 percent); and the need for more continuing education and discussion within the profession (14 percent). Comments made by respondents included the following:

> I believe we are all trying to do the best we can for our families who are separating or in crisis. We could do a better job of educating our young people prior to entering into conjugal relationships and having children about the realities of what happens when the relationship breaks down. We need, as a society, to remember it takes a village to raise a

> child and be more child/family friendly in our employment/child care/tax credit/benefit systems. My children are your future! Your children are my future!
>
> There needs to be a greater emphasis in the early stages of court intervention of the issue of other professionals such as mediators, counsellors, education. While there is some, there is not enough. Family law should be an interdisciplinary approach to address the family breakdown and reorganization of the family units. Children need a better form of representation as their voices are often lost despite considerations of their best interests.

Some respondents commented on the lack of family justice services:

> We are resource poor. We have the right philosophy, the best of intentions, the law available, but lack front-end and referral services to address up front the issues (child-parent) to successfully intervene and prevent revolving door. We have seen great positive changes in the last few years. We need more resources, particularly in rural areas to ensure every Canadian has access to the benefits of our changing philosophy.

Many respondents commented on the delays within the family justice system, and the need to have administrative procedures to streamline the process. Examples of these comments were:

> We need simpler initial interim application procedures—speed is critical to settle things down. Mediation/conciliation is not quick enough. Collaborative family law recognizes this—immediate needs must be met before we can effectively negotiate.
>
> More of the issues e.g., child support, spousal support, parental responsibility arrangements, could be delegated to standardized routines, processed through bureaucratic office (e.g., WCB, EI). Use SSAG to calculate presumptive spousal support, enforceable through MEP with reverse onus on party seeking to vary amount or duration, etc. Use a presumptive shared parenting model, unless the parties wish to opt out. More administrative; less adjudicative.
>
> …Giving both parents the presumption of equal responsibility and time on marriage breakdown would be the best thing that could happen for children of divorcing parents.

Some respondents used the opportunity to comment on the family law system in Canada to praise it. An example was:

> I'm proud of our system, the lawyers and judges who work within it. More than that, I'm reassured by parents' efforts to do their best in very trying circumstances…still, after 18 years of practice.

With respect to suggestions for future research, 48 respondents to the 2006 survey made 67 comments. The most frequent comments were: child protection (19 percent); long-term effects of different custody and access arrangements (15 percent); and long-term effects of different resolution methods such as mediation/negotiation; court imposed settlements, etc. (13 percent).

3.0 WORKSHOPS

The workshops were intended to obtain more in-depth information from a smaller group of lawyers and judges concerning family law issues. Participants were obtained via a sign-up list on a first-come-first-enrolled basis. There were two workshops: one on access enforcement and related issues; the other was on the Spousal Support Advisory Guidelines (SSAG). Each workshop had two facilitators and two recorders. Approximately 52 people attended the workshop on access enforcement, and approximately 40 people attended the workshop on the SSAG. Professors Thompson and Rogerson, the primary drafters of the SSAG, attended the SSAG workshop, though emphasizing at the start that they were only there to "listen and learn."

The workshops began with a brief introduction of the issue by the facilitators, and the balance of the workshop was spent discussing the issues and hearing participants' views. An effort was made by the facilitators to keep comments relatively brief in order to allow for as many people as possible to be involved. Participants were asked to identify their profession and province/territory when speaking. The facilitators asked for a number of questions to be answered by a show of hands. The following list of questions was prepared by the research team to assist the facilitators in guiding the discussion.

3.1 ACCESS ENFORCEMENT

3.1.1 Outline of Questions to be Posed to the Group

- Are you seeing more cases where access enforcement is a problem compared to a few years ago? If so, why? Do you believe that there are actually more cases, or are more cases being pursued through the legal system?

- Is access denial a problem? If yes, under what circumstances? Are there circumstances in which you think that access denial is warranted?

- Are there specific characteristics of families in which access denial is an issue?

- How do you ensure that non-custodial parents can exercise their access rights when access is denied by the custodial parent? Are there specific mechanisms that you regularly use? Are some mechanisms more effective than others?

- Do you use your province or territory's civil child custody enforcement legislation to deal with enforcement of access? How often have you used the legislation acting for either an applicant or respondent? If you don't use civil enforcement legislation, do you proceed with an application to have the non-compliant parent found in contempt?

- In your experience, what do judges tend to do on an application dealing with denial of access? Hold a parent in contempt? Order fines? Provide for "make-up" access? Make orders which empower police or authorities to enforce court-ordered access rights? Make changes in the custody arrangements (i.e., giving the parent who has been denied access more time or primary care of the children)? Withhold support payments? Other?

- In your experience, does the wording of an order make a difference? Do clearer provisions or specific provisions prevent access problems? What do you think would help prevent future access problems?

- In your experience, is supervised access and/or supervised exchange an effective mechanism for ensuring that non-custodial parents exercise access?

- In your experience, is mediation or counselling an effective mechanism for addressing cases where non-custodial parents are having difficulty exercising access?

- Is the non-exercise of access by non-custodial parents a problem? If yes, under what circumstances? What do you or your clients do to try to address this?

- Are there specific characteristics of families in which non-exercise of access is a problem?

- What are the effects on children of denial of access?

- What role do the wishes of children play in access problems?

- What role does parental alienation play in access problems?

- Is parental relocation an issue with respect to access enforcement? What factors should be considered when a custodial parent wants to relocate? Do you include provisions in orders or agreements that are intended to deal with relocation and access?

3.1.2 Workshop Results

Extent of Problem

Workshop participants were asked if they were seeing more cases where access enforcement was a problem compared to a few years ago. The majority of participants said that it was about the same. A judge from Ontario reported seeing more motions for contempt to enforce access, as well as more motions for change of access arrangements. A lawyer from Alberta said there had not been a change in the amount of access litigation, but they were seeing more refusals by custodial parents to permit access as a conscious method of abusing the system.

A lawyer from BC said it was less of a problem compared to a few years ago for two reasons: (1) he has a large mediation practice, which has a more positive outlook on access enforcement; and (2) it is now more frequently recognized by mothers that it is good for children to see their fathers. A judge from central Ontario thought the problem was about the same or less; counsel isn't automatically taking clients' instructions to resist access—lawyers are telling clients that they generally have to facilitate access.

Another judge from Ontario reported that he thought it was more of a problem, because there are more unrepresented parties. The parties don't know about the law or the importance of access for children because they haven't been given advice or attended a parenting class. Likewise, this judge reported more high conflict cases. A lawyer from BC reported an increase in access difficulties, but usually because one parent has moved, and is looking for longer extended

periods of access due to the distance and financial circumstances. A lawyer from Quebec said there are various tools to use to deal with the problem, e.g., using mediation decreases the problem.

Participants were then asked if they believe there are actually more cases, or if there are more cases being pursued through the legal system. A judge from Ontario said it was a difficult question to answer. This respondent's perception was that there is an increase in self-represented clients, who don't have the benefit of assistance and hence are more likely to resort to the courts, in addition to a general increase in the number of divorced families.

Access Denial

Workshop participants were asked if access denial is a significant problem, and their opinions on the adequacy of civil enforcement legislation to deal with the problem. A lawyer from Quebec said even though contempt might deal with the problem initially, it's only a Band-Aid solution; the remedies through the legal system are inadequate.

When asked why access is denied, a lawyer from Ontario said they often find it's the presence of a new partner, and about one-half of the participants agreed. About one-quarter of the group said access is often denied because of domestic violence concerns. Almost all the participants said it is often a reflection of underlying conflict between the parents, and the vast majority said it is often a manipulative tactic on the part of the custodial parent. A lawyer from BC said they often hear that the kids don't want to go, but it's difficult to say if it's manipulation on the custodial parent's part.

A lawyer from Nova Scotia said that judges view denial of access as a quasi-criminal proceeding, and the problem is that orders are loosely worded, so they are difficult to enforce. A BC lawyer said there are difficulties with perception; a parent with a child who is crying and having behavioural problems at school think it's justified to deny access, but is it really? Another BC lawyer said contempt is only available at Supreme Court, and it's very expensive. So the only remedy is going to the police, and they don't really want to enforce orders. There is a real gap in how to deal with non-compliance, because the provincial court in BC doesn't have jurisdiction.

Participants were asked how many have used the police to enforce access orders, and over three-quarters of the group said they had. When asked how many use the police regularly to enforce orders, only one participant said they did. A lawyer from BC said that "under most circumstances, you don't want the police involved." Moreover, this participant said they have had difficulties in getting the police to enforce orders. Even when ordered by the Supreme Court, police are reluctant to enforce orders.

All participants were asked if they had experienced difficulties in getting police to enforce access orders, and over three-quarters indicated that they had.

A lawyer from Manitoba commented that in terms of involvement with the police, they feel for the child who is being torn. Involving the police puts the child in a real difficult position. It's a complex dynamic where the child is reliving the conflict from the marriage, including the frustrations and acting out.

A lawyer from Nova Scotia stated that she regularly represents children, and in mediation, children often say they don't want to go on access. The reality, however, is that there is going to be back and forth, and lawyers need to tell their clients that life is going to change. Parents need to be prepared for it.

Participants were asked how many had cases changing access orders, and about one-quarter indicated that they did.

Enforcement Legislation/Other Remedies

Participants were asked how many had provincial access enforcement legislation. A respondent from Manitoba said all provinces have legislation—the question of whether it's enough is a different issue. Is the legislation on access enforcement adequate, or are other remedies needed? When asked if their provincial legislation was adequate, nobody said it was. Participants were then asked what kinds of changes were needed. One participant said that a good place to start was in the social sciences, because we don't know if removing children from the alienating parent is the right thing to do or not. A lawyer and mediator from Newfoundland said there is a need to facilitate the parent/child relationship. In some cases the police are happy to jump in and take the child; in other cases they don't want to touch it. Regardless, it's always a trauma for the child if there is access denial or the police are involved.

Participants were asked what they'd like to see in terms of other remedies. One participant said they were trying to work with families by using family therapy with both parents and the child to see the dynamic of what's happening.

All participants were asked if they thought family therapy was the most effective solution, and roughly 90 percent indicated yes. Participants were then asked if there were adequate resources for counseling, and nobody said there was. A judge from Ontario expressed frustration at the lack of resources to help families at "the front-end." There should be mandatory parenting classes and mandatory counseling. Further, there is unequal funding across the provinces.

Workshop participants were asked if they thought parenting education was helpful in addressing access problems, and everybody agreed that it was. Participants were then asked if the resources in this area were adequate in their province/territory, and about one-quarter of the participants (primarily those from Manitoba and Alberta) said it was. A lawyer from BC commented that there is an urban/rural problem because a parenting session may be 1 to 1½ hours away, and they don't want parents at the same session.

A lawyer from Quebec said they have mandatory mediation information sessions for anybody who is going to court, and they are currently in the process of changing that to mandatory co-parenting sessions.

Court Responses

Participants were asked what judges tend to do on applications dealing with denial of access. About two-thirds of the group said they regularly provide for "make-up" access, about one-third indicated that the courts regularly made police enforcement orders, about one-quarter indicated that the courts regularly make changes in the custody arrangements, about one-fifth indicated

that the courts regularly ordered fines for a finding of contempt, and about one-tenth indicated that the courts held the parent in contempt with the threat of jail. Only one participant had a case where support payments were withheld. One participant said there was a program in Manitoba in the early 1990s that linked payment support to future access. It was pre Child Support Guidelines, but it worked at the time.

A judge from Alberta said that in high conflict access enforcement cases, she adjourns the application, and gets the child and access parent to a counseling intervention; in every case, it gets resolved through court-ordered counseling.

A lawyer from Ontario stated that it is important to get to the voice of the child. It is important to meet with the parents and the child to be able to focus on issues with children. A lawyer from Ontario who also acts as a children's lawyer said that when she is appointed to a situation like this, the conflict is often so entrenched that she can't do anything about it. A participant from Nova Scotia said we need to know better ways of getting kids' views known. Another participant believed that having a child advocate would make a good deal of sense in these situations.

A lawyer from BC thought that problems of access denial were better handled through family case conferences than judicial means, and that gender also had an impact. Women have custody and are denying access, but then they also say that fathers aren't exercising their access rights. This participant thought there should be repercussions for that behaviour.

Participants were asked how many found case conferences an effective method for dealing with access problems, and about one-half indicated that they did.

Non-exercise of Access

Workshop participants were asked if they thought non-exercise of access was a significant problem, and three-quarters of the group indicated yes. When asked what the solutions were, a lawyer from Alberta commented that "some people are just crazy. There are some cases where everything that's tried is manipulated by psychopathic people. Unfortunately, there have always been people like that. There are some parents children are better off not knowing. Bad guys finish first, especially bad guys with money." This participant wondered if parenting education would help. Participants were asked how many thought parenting education was an effective mechanism for dealing with non-exercise of access problems, and about one-half of the group indicated yes.

A participant wondered if judges should be ordering more support if access is not exercised. Some participants said they've tried to seek it, but had not succeeded. A participant from Quebec said that under the Quebec Child Support Guidelines, they can get 20 percent more support if there is no access; it's built into the provincial guidelines.

Other Comments

Participants were asked if they had any other issues regarding access enforcement they would like to discuss. One participant commented that there is a big difference in access to a 15-year-old and access to a breastfeeding baby. A lawyer from Alberta mentioned the problems that arise where two parents live in different provinces. If an access order is breached and the child is with

the primary caregiver, nobody wants to do anything. One participant said kids will say, "why do I have to go to counseling when it's not my fault."

A judge from Ontario suggested that there should be more resources up front when faced with a contempt motion, and commented that enforcing access through a contempt motion should be a last resort.

A participant from Newfoundland concluded by saying we need to ask, "what can we do to help this family?"

3.2 SPOUSAL SUPPORT ADVISORY GUIDELINES

3.2.1 Outline of Questions to be Posed to the Group

- How many of you have used the Spousal Support Advisory Guidelines (SSAG)? How many have used them in the following circumstances:

  - in discussions about spousal support with clients?
  - in negotiations with other lawyers?
  - in mediation?
  - in collaborative family law?
  - in settlement conferences or other case conferences?

  For those of you who have used the SSAG in any of these settings, did they help in the resolution of the case?

- How many of you have been involved with a contested spousal support claim in a trial or hearing since February 2005? Of these participants, in how many cases were the SSAG referred to by yourself, the opposing counsel, or the judge?

- Do you make it a practice to prepare computer print-out sheets showing the range of possible outcomes under the SSAG when arguing spousal support cases in court?

- Have the SSAG resulted in more consistency and predictability for spousal support outcomes?

- The "floor" for spousal support amounts is set at $20,000 for the payor's gross annual income, with more flexibility downwards for those earning $20,000 to $30,000. Is that "floor" about right? Should it be raised?

- After the payor's gross annual income exceeds the "ceiling" of $350,000, the determination of spousal support is individualized. Should the ceiling be left at $350,000? Should it be raised or lowered?

- In general, do the *without child support* formula ranges fit the outcomes you would expect as to amount and duration? Are the ranges for amount in the right ballpark? Are the ranges for duration about right?

- In general, do the *with child support* ranges seem about right? How many think they are too high? Too low? Are the guidelines for duration about right?

- How many participants have used the "exceptions" under the SSAG? Which of the following exceptions have you used, or considered, in your cases:

  - compensatory exception for shorter marriages?
  - illness and disability?
  - debt payment?
  - prior support obligations?
  - compelling financial circumstances at the interim stage?

- Do you have any other comments or suggestions regarding the SSAG?

3.2.2 Workshop Results

Use of the Spousal Support Advisory Guidelines

Workshop participants were asked how many have used the Spousal Support Advisory Guidelines (SSAG), and almost all of the participants indicated that they had. Participants were then asked how many have used them in particular circumstances. Again, almost all participants indicated that they used them in discussions about spousal support with their clients, and in negotiations with other lawyers. About two-thirds of the group indicated that they used them in settlement conferences or other case conferences, and about one-third of the group indicated that they used them in mediation, and in collaborative family law. Participants were then asked if the SSAG helped in resolution of the case, and the vast majority (80 percent) said they did. Only two participants said the SSAG were of no help.

Participants were asked how many had been involved with a contested spousal support claim in a trial or hearing since February 2005. About two-thirds of the group indicated that they had been. These participants were then asked in how many cases were the SSAG referred to by themselves, the opposing counsel, or the judge, and almost all indicated that the SSAG were referred to by somebody.

Participants were asked if they make it a practice to prepare computer print-out sheets showing the range of possible outcomes under the SSAG when arguing spousal support cases in court. Almost all of the participants (90 percent) indicated that they did.

Effectiveness of the Spousal Support Advisory Guidelines

Workshop participants were asked if the SSAG have resulted in more consistency and predictability for spousal support outcomes. Just over a quarter (25-30 percent) of the group indicated yes, and about 15 percent indicated no. A lawyer from Ontario said that the SSAG don't work with clients who have very low incomes. This participant also commented that the duration of spousal support awards in the SSAG aren't long enough for recipient spouses with mental health issues.

The Formulae

The "floor" for spousal support amounts is set at $20,000 for the payor's gross annual income, with more flexibility downwards for those earning $20,000 to $30,000. Participants were asked if this floor was about right. A lawyer from BC thought that the floor was too low, and that even with $30,000 to $35,000, there are "not enough dollars." A participant from New Brunswick said that it varies regionally, and that $20,000 was a reasonable floor in New Brunswick. When asked how many thought the floor was about right, approximately one-half the participants indicated that it was. When asked if the floor should be raised, only four participants agreed.

After the payor's gross annual income exceeds the "ceiling" of $350,000, the determination of spousal support is individualized. Participants were asked if this ceiling was about right, or if it should be raised or lowered. A lawyer from Ontario involved in quite complex high income cases said that the recipient often misreads the guidelines and uses it for the "climb." They ignore the ceiling altogether. "Once you go past $350,000, it's the wild blue yonder." This participant was waiting for a decision to come down on the first case with the payor's income over $350,000. This participant also felt that it wouldn't matter if the ceiling was $250,000 or $450,000; the result would be the same.

Participants were asked if anyone had experience with cases where the payor's gross annual income was over $350,000. A lawyer from BC thought that $350,000 was about the right amount for a ceiling. This participant had experience with a case in the $500,000 per year range, and found the numbers were still useful in analysis, and in arguing where the capital has gone in seven years. Another participant commented that anybody who actually has the ability to make over $350,000 usually doesn't report that level of income; businessmen rarely have taxable income over $350,000; they divert income to their business or to new intimate partners or other family members.

The Without Child Support Formula

Participants were asked if, in general, the *without child support* formula ranges fit the outcomes they would expect as to amount. The vast majority of respondents (80 percent) indicated that they were higher than what they were expecting prior to the introduction of the SSAG. No participants said they were lower. When asked if the amounts were too high, about six participants indicated yes. Another participant said it depends what side of the fence you're on. A Nova Scotia lawyer said the guidelines have created an expectation of what she would like to get; now she is waiting to see how many judges will follow the SSAG.

A lawyer from Manitoba said that lawyers and judges in that province don't follow the SSAG at all. Payment of debt is not taken into account, and lawyers in the province think they're "way out of whack" with respect to cases where there are children. There is also a huge disparity in rural versus urban cases. This participant said that most Manitoba judges and lawyers did not go to the SSAG presentations at the conference.

Participants were asked if they had any other comments on the *without child support* formula. A lawyer from BC questioned the percentage differentials between spouses, and whether 50 percent was reasonable. This participant thought that it is high when one spouse is not

working; if both are working, then 50 percent seems reasonable. Another lawyer from BC said it's like the old standard; the ideal was equal standards of living if there are equal efforts. When people don't perceive there's equal effort, that's where they have the problem. If they're both working hard (or both working three days a week), it's a better fit.

The SSAG state that entitlement is still an issue to be resolved in each case. Participants were asked how many thought entitlement has effectively disappeared, and three said yes. The remainder thought that it is still an issue. An Ontario lawyer brought up the problems that arise in cases with relatively short marriages, but older clients; a 55-year-old woman in a four-year marriage is looking for lifetime support.

Participants were asked if the *without child support* formula results in appropriate outcomes for duration, and about one-half indicated that it did. About one-third thought it should be one year for every year of marriage.

When asked to identify specific concerns, one participant said it's the rule of 65. They keep running into it again and again. A payor aged 55 to 57 has a younger wife and the big income is his, but he wants to retire and can't. Participants were asked if they thought the rule of 65 was about right. Approximately one-quarter of the group indicated that it was, but there was no consensus about how to alter it. One participant said their concern was that we might be linking duration of marriage to time-limited support, even in short marriages. Participants were asked how many had the type of fixed duration orders or agreements apparently contemplated by the SSAG, and nobody did.

Participants were asked how they felt about 20 years as the right threshold for indefinite support. Was it the right number? About one-half of the respondents indicated that it was; two respondents said it should be lower. Another respondent said it depends on the age and education of the couple. A lawyer from BC who also has a mediation practice said that people want to have fixed terms or lump sums because the cost of reviewing it is too high, and people don't want to do it again.

The With Child Support Formula

Workshop participants were asked if, in general, they thought the *with child support* ranges were about right. Two respondents thought they were too high. When asked how many thought the effect of the SSAG was to increase the amount of spousal support, about one-quarter of the group indicated yes. Nobody thought the effect was a decrease in spousal support amounts. One participant commented that most spousal support orders do not take into account the high amount of child support.

Participants were asked if there should be a shorter maximum duration that is in some way related to the duration of marriage. About one-quarter of the participants indicated yes, and four participants said they like the present situation. One participant commented that in a very short marriage, to have indefinite support until the child is out of high school greatly increases the duration of the award. Participants were asked if they agreed that duration outcomes were longer, and 80 percent indicated yes.

Regarding the re-partnering issue, workshop participants were asked if there should be a formula tied to the length of new relationships. A lawyer from Alberta said that everyone on the street believes that spousal support will end when re-partnering occurs; it's just a general public feeling. A BC lawyer thought that re-partnering should be left out of the equation. The purpose of SSAG is for interim support.

Exceptions under the SSAG

Participants were asked how many had used the "exceptions" under the SSAG, and only two said they had. A lawyer in Alberta used the illness and disability exception in negotiations, and another participant used the debt payment exception. Another participant commented that it's important to keep the discretionary aspect. For example, for a recipient spouse who is an immigrant from Afghanistan with no education, the duration of support would be too short.

Other Comments

Workshop participants were asked if they had any other comments on the SSAG. A mediator from Alberta questioned the duration with kids. She has half a dozen files with young children and very short marriages. When the clients see the numbers for duration, they think they're ridiculously long and just discard them, and come up with their own duration. A lawyer from Alberta agreed with these comments, and said the SSAG don't work well in these cases. This participant usually tries to come up with a lump sum, or finite term, and would like to see more definition of duration of marriages with young children. A lawyer from Nova Scotia echoed these comments, but thought that the SSAG generally tie duration of support to length of marriage. The expectation is that child support will continue until the kids are 18. With spousal support, perhaps the duration should continue until the children are all in school or, at least, spousal support should be reviewed then. Another participant said clients want to have a sense of finality, and would like to see the SSAG push toward resolution and finite time.

Participants debated the issue of duration of spousal support related to the age of any children. One participant thought it was bizarre that spousal support should continue until the youngest child reaches 18 since child care is freed up immensely when the youngest turns 12. Another participant disagreed that spousal support should end when the youngest reaches 12; as a hockey parent, she argued that the needs change as the child gets older, but they don't end.

One participant commented that there is a problem in the SSAG with regard to shared parenting, since the guidelines ignore it and treat spousal support the same. Another participant said that with respect to short-term marriages, clients often fail to recognize that there's an ongoing impact and spousal support could go on longer than the marriage. One participant brought up regional differences, and, lastly, a lawyer from BC thought the guidelines were way too complex, particularly with respect to the *with child support* formula.

4.0 SUMMARY AND CONCLUSIONS

In this chapter, the overall findings from the 2006 Survey on the Practice of Family Law in Canada are presented, and the findings from the workshops on access enforcement and the Spousal Support Advisory Guidelines are summarized. In addition, differences between the 2006 and 2004 surveys are highlighted. The concluding section discusses positive and negative aspects of the family law system in Canada, as identified by the lawyers, judges, and justice system professionals who participated in the workshops and completed the surveys.

4.1 SUMMARY OF 2006 SURVEY AND WORKSHOP FINDINGS

4.1.1 Demographics of Survey Respondents

- The response rate in 2006 was 42 percent; in 2004, the response rate was 34 percent.

- In 2006, the largest proportion of respondents were from Alberta, Ontario and British Columbia. In 2004, the largest proportion of respondents were from Ontario, Alberta, and Nova Scotia.

- Of the 164 surveys returned, 90 percent were completed by lawyers, 7 percent were completed by judges, and 1 percent was completed by other professionals.

- Lawyers had been practising family law an average of 16 years, and on average 82 percent of their practice involved family law cases.

- The largest proportion of respondents were from Alberta, Ontario and British Columbia, and their client base was mostly large urban (>100,000 population) (65 percent) and small urban (10,000 – 100,000 population) (20 percent).

- Over one-third of lawyers said they conduct mediation sessions.

- A substantial proportion of respondents had attended continuing education and training programs in the following areas: spousal support, custody/access, child support guidelines, and property division.

4.1.2 Case Characteristics

- Survey respondents handled an average of 78 family law cases in the past year; an average of 75 percent of those involved children.

- Over one-quarter of survey respondents' family law cases with children involved were variations of previous orders/agreements.

- Survey respondents reported that cases were resolved most frequently in the following manners: settled by negotiation before trial (43 percent) and settlement conference (21 percent), with only a minority (13 percent) being decided by a judge.

- Issues that survey respondents identified as most likely to require a trial and judicial decision to be resolved in divorce cases were: spousal support (69 percent); custody (52 percent); and property division (35 percent).

- Issues that survey respondents identified as most likely to require a trial and judicial decision to be resolved in variation cases were parental relocation (65 percent) and spousal support (50 percent).

4.1.3 Services

- Survey respondents said they keep informed about family justice services through the following mechanisms: colleagues; provincial/territorial continuing legal education courses; national or international conferences; local professional seminars; professional associations and meetings; and professional publications.

- Lawyers who responded to the survey reported that most of their clients are either only somewhat informed or not at all informed about family justice services and issues at the outset of their case. Clients are most likely to be informed about individual counselling, child support issues, and marriage or relationship counseling. Clients are least likely to be informed about child assessment services, parenting plans, and supervised exchange.

- Survey respondents said that their clients were most likely to get their information about family justice services and issues from friends and family members, the Internet, and media stories or advertising.

- According to the survey, lawyers were most likely to inform their clients about, or refer clients to, the following family justice services: maintenance enforcement programs; individual counseling; mediation services; parenting education programs; and marriage or relationship counselling.

- Over two-thirds of the lawyers reported that their clients are somewhat willing to use family justice services. For clients who are not willing to access family justice services, respondents said the biggest obstacles were: lack of trust in the service; time delay; cost; and location of service.

- Survey respondents said that their cases are somewhat more likely (46 percent) or much more likely (17 percent) to be settled out of court because of the family justice services that are available.

- Survey respondents reported that the following services would be helpful to their clients, but are not available in their community: parent information/education services or programs; mediation/affordable mediation; supervised access/affordable supervised access; and assessments/assessors/assessment centers.

- Almost half of the survey respondents (48 percent) indicated that there is a Unified Family Court in their province/territory. In general, less than half of the respondents agreed or strongly agreed that Unified Family Courts have positive consequences, while about one-quarter disagreed or strongly disagreed.

- Almost three-quarters of the survey respondents (72 percent) who do not have Unified Family Courts in their jurisdiction said they would like to see them established.

4.1.4 Best Interest Criteria

- According to the survey respondents, the processes most likely to be consistent with the best interests of the child are arrangements negotiated by lawyers (on their own or after judicial conference), and arrangements made as a result of mediation.

- Almost three-quarters of survey respondents (74 percent) said that the provincial/territorial legislation in their jurisdiction included specific criteria for determining the best interests of the child. The vast majority of those respondents (91 percent) reported that they also use those criteria in cases under the *Divorce Act*.

- A somewhat surprising 35 percent of survey respondents said that even when parents are aware of the negative effects of separation/divorce on their children, this awareness does not affect their behaviour. The most common reasons given for this were: even when parents are aware, they have difficulties changing their behaviour; and the emotional and/or financial repercussions of the separation interfere, and parents can't get past their anger.

- Three quarters of individuals responding to the survey (75 percent) thought that parenting plans are a good mechanism for ensuring that the best interests of the child are met in most cases, 13 percent thought they were a good mechanism in high conflict cases, and 5 percent thought they were a good mechanism in all cases. Only 7 percent did not think parenting plans are a good mechanism for ensuring that the best interests of the child are met.

- Survey respondents said that parenting plans were used in just under one-third of their cases (31 percent) involving children. Over one-third of the lawyers (35 percent) said they have a form they use as a guide for parenting plans, and 84 percent who said they did not have a form said they would find a form useful.

- The vast majority of lawyers responding to the survey reported that they found parenting plans were somewhat or very helpful to their clients. A few respondents said parenting plans are still very new and are unfamiliar to clients, and parenting plans are not very helpful because each situation has its own unique twists and the plans tend to be too general.

4.1.5 Child Representation

- Survey respondents thought that the best mechanisms to enable children to voice their views were legal representation for the child (71 percent) and assessment reports (70 percent).

- Survey respondents thought the following factors were important when deciding what weight should be given to the child's views: age of child; child's reason for views; ability of child to understand the situation; indication of parental coaching/manipulation; the child's emotional state; and ability of child to communicate.

- The older the child, the more weight respondents thought should be given to their preferences regarding custody decisions. While 62 percent of survey respondents thought no weight should be given to children under the age of 6 years, 92 percent thought the preferences of children 14 or over should be weighed heavily.

4.1.6 Custody and Access

- Almost two-thirds of survey respondents said that they often or almost always use terminology other than "custody" and "access" in their *agreements*. Almost half reported that they often or almost always use alternate terminology in their *orders*.

- Three-quarters of survey respondents thought that legislative changes to the *Divorce Act* to replace the terms "custody" and "access" with "parenting order" would promote a less adversarial process.

- The majority of survey respondents said that parents shared decision making often or almost always in the areas of education and health.

- When parents do not comply with their custody/access orders, survey respondents reported that the most frequent problem is that the child refuses the visit with the access parent.

- Almost all of the workshop participants reported that when access is denied, it is a reflection of underlying conflict between the parents. The vast majority said it is often a manipulative tactic on the part of the custodial parent, and about half said it is often due to the presence of a new partner.

- About three-quarters of the workshop participants said that they had used the police to enforce access orders, but they also reported that they had experienced difficulties in doing so.

- None of the workshop participants thought that provincial access enforcement legislation was adequate.

- In terms of other remedies for dealing with access enforcement, about 90 percent of workshop participants said that family therapy was the most effective solution, but the resources aren't adequate.

- All workshop participants thought that parenting education was helpful in addressing access enforcement problems, although most said current services were not adequate.

- When asked what judges do on applications dealing with denial of access, about two-thirds said that they regularly provide for "make-up" access, and about one-third said they regularly made police orders.

- Three-quarters of the workshop participants said that non-exercise of access was a significant problem. About one-half of the group thought that parenting education was an effective mechanism for dealing with the problem.

- Lawyers who responded to the survey reported that very few of their cases involved supervised access (8 percent) or supervised exchange (6 percent). Supervised access was most likely to be recommended in cases of child abuse allegations, substance abuse, and mental health concerns. Supervised exchange was most likely to be recommended in cases of high conflict and spousal violence.

- Survey respondents reported that parental relocation was an issue in 13 percent of their cases with children involved. In cases where parental relocation was an issue, the most common reasons were to be with a new partner, employment opportunity, and to be closer to family/friends.

- According to the survey, the most common circumstances in cases of parental relocation were when the custodial parent wished to move within the province/territory and when the custodial parent wished to move to a different province/territory.

4.1.7 Child Support Guidelines

- Survey respondents overwhelmingly agreed that the Guidelines are meeting their objectives. Almost all respondents agreed or strongly agreed that the Child Support Guidelines have resulted in a better system of determining child support than the pre-1997 system (90 percent). Similarly, the vast majority of respondents agreed or strongly agreed that cases are settled more quickly since the implementation of the Guidelines (89 percent), most cases are resolved simply by relying on the tables to establish amounts of support (85 percent), and, in cases involving litigation, the issues to be resolved are more defined and focused than prior to implementation of the Guidelines (86 percent).

- Survey respondents reported that very few of their child support cases (6 percent) involved undue hardship applications.

- Almost one-half of survey respondents said that income disclosure is often or almost always a problem. The most frequent reasons for this were income from self-employment, unwillingness to disclose or provide supporting documentation, and lack of complete disclosure.

- Over one-third of survey respondents said that second families are often an issue in child support cases, and over one-half said they are an issue occasionally. The most common reasons were: child support payors with second families often refuse to acknowledge first family obligations; access problems are more common when there are second families; and children's relationship with new partner and siblings.

- Survey respondents identified the most problematic areas of the Guidelines as: section 9—shared custody and the 40 percent rule; section 7—special or extraordinary expenses; and imputing income.

4.1.8 Spousal Support

- Survey respondents reported that spousal support was an issue in almost one-half of their cases.

- When asked how often they use the Spousal Support Advisory Guidelines (SSAG), over half of the respondents said that they use them often or almost always (55 percent). Only 10 percent of respondents said that they never use the SSAG.

- Almost all of the workshop participants said that they had used the SSAG, and 80 percent of the group said that the SSAG helped in resolution of the case.

- Fewer than half of the survey respondents agreed that the SSAG have made the handling of spousal support applications: more consistent (42 percent); fairer (39 percent); less conflictual (37 percent); and generally easier to resolve (44 percent).

- Less than one-third of the workshop participants thought that the SSAG resulted in more consistency and predictability for spousal support outcomes.

- In terms of regional differences, the data allowed for comparison of four provinces: Alberta, Ontario, British Columbia, and Nova Scotia. Each province reported similar usage of the SSAG; however, respondents from British Columbia were most likely to be positive about the objectives of the SSAG, while respondents from Alberta were least positive.

- Survey respondents reported making reference to the SSAG often in a variety of situations. Reference to the SSAG was most likely to be made in discussions with clients (84 percent) and in cases settled by negotiation (77 percent).

- Almost all workshop participants had used the SSAG in discussions about spousal support with the clients and in negotiations with other lawyers. About two-thirds of the participants said they used them in settlement conferences or in other case conferences, and about one-third said they used them in mediation and collaborative family law.

- Case resolutions that are within the SSAG range were most likely to be reported in cases settled by negotiation (59 percent) and in discussions with clients (59 percent), and have less of an effect on trials and judicial resolution.

- The majority of workshop participants said that the outcomes for the *without child support* formula ranges were higher than the amounts that they were expecting before the SSAG were introduced, and about one-quarter thought that the *with child support* formula resulted in higher amounts than before. None reported that the SSAG were lower than previously awarded amounts.

- About one-half of the participants said that the duration limits for the *without child support* formula were appropriate, and agreed that 20 years was the right threshold for indefinite support.

- The circumstances that survey respondents reported occurred often in cases where spousal support is an issue are: payor's income is considerably higher than claimant spouse's income; claimant spouse is a stay-at-home parent; and claimant spouse was a stay-at-home parent to children now grown and is not in the labour force.

- In cases where both child support and spousal support are issues, almost all survey respondents stated that child support is dealt with first.

4.1.9 Family Violence

- Almost three-quarters of lawyers who responded to the survey indicated that they always make enquires to attempt to identify cases of family violence. However, almost all respondents said that they do not use a screening tool to identify cases of family violence.

- In cases involving spousal violence, respondents were asked how the court addressed this issue. The most likely response was to deny custody to the abusive parent. The least likely response was to give the child legal representation. Access denial occurred rarely.

- In cases involving child abuse, respondents were asked how the court addressed this issue. The most likely responses were to deny custody to the abusive parent, and to order access supervision. The least likely response was to give the child legal representation.

- Almost two-thirds of survey respondents said that training sessions on spousal violence issues are available to family justice professionals in their jurisdiction.

- Almost two-thirds of survey respondents said that training sessions on child abuse issues are available to family justice professionals in their jurisdiction.

- Two-thirds of the respondents thought that the training sessions on spousal violence issues and child abuse issues were adequate.

4.2 COMPARISON OF 2006 AND 2004 SURVEY RESULTS

As expected, most of the survey findings in 2006 paralleled those in 2004. Notable differences are summarized in this section. It should be borne in mind, however, that some variance may be due to the demographic differences in the two samples, e.g., in 2006 there were more respondents from Alberta and British Columbia, while in 2004 there were more respondents from Ontario. The response rate in 2006 (42 percent) was greater than the response rate in 2004 (34 percent), thus providing a more representative sample of the conference attendees in 2006.

- Survey respondents were asked about any training that they have taken on family law issues in the past five years. While 2006 results were similar to those in 2004, 2006 respondents reported taking more training in spousal support, which probably reflects the introduction of the SSAG.

- The average number of family law cases handled by respondents in the past year was considerably lower in 2006 (78) than in 2004 (93).

- The average proportion of lawyers' family law cases funded by legal aid in the past year was down slightly in 2006 (18 percent) compared to 2004 (25 percent).

- Survey respondents were asked what proportion of their cases in the past year were resolved in various ways. For the most part, the results were similar to those obtained in 2004; however, the proportion of cases settled by parents increased from 13 percent in 2004 to 17 percent in 2006.

- Respondents were asked which issues in divorce cases are most likely to require a trial and judicial decision to be resolved. Spousal support, property division and child support were less likely to be issues in 2006 than in 2004, while spousal support arrears was more likely to be an issue.

- Issues in variation cases most likely to require a trial and judicial decision to be resolved also differed between the two surveys. In 2006, the proportion of respondents indicating spousal support and child support arrears showed the largest decrease, while the proportion indicating custody issues increased the most.

- Survey respondents were asked how well informed their clients are at the outset of their case. The areas in which respondents indicated that a greater proportion of their clients were informed about in 2006 than in 2004 included collaborative family law and mediation services. The areas in which respondents rated their clients as less informed in 2006 included spousal support issues and support variation or recalculation services.

- Several questions were asked regarding Unified Family Courts. The proportion of 2006 respondents indicating the availability of a Unified Family Court in their jurisdiction (48 percent) was lower than 2004 respondents (57 percent), undoubtedly reflecting the geographical differences in the response group. Overall, the proportion of 2006 respondents who agreed or strongly agreed that Unified Family Courts have positive consequences was lower than in 2004. The proportion of respondents who indicated that they would like to see Unified Family Courts implemented in their jurisdiction was considerably higher in 2006 (72 percent) than in 2004 (59 percent). These differences, however, may be due in part to the higher proportion of respondents from Alberta in the 2006 survey.

- Respondents were asked if parenting arrangements made through specific processes are consistent with the best interests of the child. Main differences between the two surveys were that respondents to the 2006 survey were more likely to state that arrangements made by parents themselves and arrangements made by a judge are consistent with the best interests of the child. Also, in 2006, respondents were less likely to state that arrangements resulting from collaborative family law are consistent with the best interests of the child.

- When asked if the provincial/territorial legislation in their jurisdiction included specific criteria for determining the best interests of the child, the proportion responding affirmatively in 2006 (74 percent) was higher than in 2004 (63 percent). This finding may be due to demographic differences in the two samples.

- Survey respondents were asked if parents' awareness of the negative effects of separation/divorce on their children affects their behaviour. A greater proportion of the 2006 respondents (64 percent) indicated that this awareness does affect parents' behaviour than the 2004 respondents (56 percent).

- While, in general, respondents to both the 2006 and 2004 surveys found parenting plans helpful, a smaller proportion of lawyers stated in 2006 that parenting plans were very helpful (38 percent vs. 45 percent in 2004), and a larger proportion indicated that they were not helpful (14 percent vs. 9 percent in 2004).

- Respondents were asked how often they use terminology other than "custody" and "access" in their agreements. While the overall pattern was similar for the two surveys and showed support for alternative terminology, fewer respondents in 2006 stated that they often use other terminology (36 percent in 2006 vs. 50 percent in 2004), and a greater proportion of respondents stated that they rarely use other terminology (13 percent in 2006 vs. 10 percent in 2004).

- Different results were also obtained when respondents were asked if they use terminology other than "custody" and "access" in their orders. A greater proportion of respondents in 2006 said that they often or almost always use alternative terminology (48 percent) in court orders than in respondents to the 2004 survey (35 percent).

- When respondents were asked if training sessions on spousal violence issues are available to family justice professionals in their jurisdiction, a considerably larger proportion of 2006 respondents indicated that training sessions were available (62 percent) than 2004 respondents (42 percent). Respondents to the 2006 survey were also more likely to indicate that the available training was adequate (64 percent) than 2004 respondents (53 percent).

- Similarly, when respondents were asked if training sessions on child abuse issues are available to family justice professionals in their jurisdiction, a substantially greater proportion of the 2006 sample said yes (60 percent) than the 2004 sample (36 percent).

4.3 CONCLUSIONS

This project was undertaken in accordance with the Results-based Management and Accountability Framework for the Child-centred Family Justice Strategy of the Department of Justice Canada. The purpose of this project was threefold: (1) to obtain current information on the characteristics of cases handled by family law lawyers in Canada; (2) to obtain feedback from both lawyers and judges concerning family law issues based on their knowledge and experience; and (3) to examine trends in family law cases and practice over a two-year period from 2004 to 2006.

Overall, data from the survey and the workshops indicate that there are many positive aspects of the current family law system in Canada. As was the case in 2004, the 2006 survey found that one of the most positive components identified by survey respondents is the Federal Child Support Guidelines. It is clear from the responses received that the Guidelines are meeting their stated objectives and that they have resulted in a much fairer determination of child support than

the former regime. The vast majority of respondents agreed or strongly agreed that the Child Support Guidelines have resulted in a better system of determining child support than the pre-1997 system.

Participants in both surveys indicated strong support for case resolution mechanisms other than the traditional judicial resolution of cases. The proportion of cases that required resolution after a hearing or trial was slighter lower in 2006 than in 2004. Mechanisms that respondents indicated as most effective were negotiation between lawyers before trial and settlement conferences.

While project participants were very supportive of out-of-court mechanisms for settling family law disputes in both surveys, they also reported that their clients are generally not well informed about family justice services and issues at the outset of their case, which suggests the need for enhanced public legal education initiatives. In fact, when respondents were asked if there are services that are not available in their community that would be helpful to them and their clients, the most popular response was parent information/education services or programs.

Survey participants continued to show strong support for using terminology other than “custody” and “access” in 2006. Almost two-thirds of respondents stated that they often or almost always use terminology other than “custody” and “access” in their agreements, and almost half stated that they often or almost always use alternate terminology in their orders. Three-quarters of survey respondents agreed that replacing the terms “custody” and “access” with “parenting order” terminology would promote a less adversarial process.

Workshop participants agreed that access enforcement is a problem. None of the participants thought that provincial access enforcement legislation was adequate. In terms of other remedies for dealing with access enforcement, almost all workshop participants said that family therapy and parenting education were the most effective solutions, but that the current resources aren’t adequate.

When asked about the new Spousal Support Advisory Guidelines (SSAG), opinions were mixed. The majority of survey respondents and workshop participants stated that they use the SSAG, particularly in discussions with clients and in cases settled by negotiation or case conference. While the vast majority of workshop participants thought that the SSAG helped in the resolution of cases, survey participants were not as positive, with one-third to one-half agreeing that the SSAG made the handling of spousal support applications more consistent, fairer, less conflictual, and generally easier to resolve. The SSAG are still relatively new however, and some respondents stated that it’s too early to assess the success of the SSAG.

Respondents’ opinions on Unified Family Courts also continued to be somewhat mixed in the 2006 survey. Over one-third to one-half of the respondents agreed that Unified Family Courts have positive consequences, while about one-quarter disagreed. Regardless, almost three-quarters of the survey respondents who do not have Unified Family Courts in their jurisdiction said they would like to see them established. Concerns regarding Unified Family Courts were lack of funding and appropriate services.

A problematic area that was identified by project participants in 2004 was family violence. A positive development in the 2006 survey was that a considerably larger proportion of

respondents stated that training sessions on both spousal violence issues and child abuse issues are available to family justice professionals in their jurisdiction. Further, larger proportions of respondents reported that the training in both these areas was adequate compared to the 2004 survey.

Even though 2006 survey respondents continued to be very positive about the Child Support Guidelines, they also reiterated the same problematic areas identified by survey respondents in 2004. Almost one-half of survey respondents said that income disclosure is often or almost always a problem, and over one-third stated that second families are an issue often. Survey respondents identified the most problematic areas of the Guidelines as: section 9—shared custody and the 40 percent rule; section 7—special or extraordinary expenses; and imputing income.

In conclusion, this project has provided information on the characteristics of cases handled by family law lawyers in Canada, as well as legal professionals' opinions on the current family law system. It has also allowed an examination of trends in family law cases and practice from 2004 to 2006, and has identified areas of change. This project has also identified aspects of the family law system that are working well, and has highlighted areas where improvement is desired. This information will be useful to the Department of Justice as it further develops its Child-centred Family Law Strategy, and interesting for policy makers and others who want to better understand the functioning of Canada's family law justice system.

APPENDIX A
ADVISORY COMMITTEE MEMBERSHIP

ADVISORY COMMITTEE MEMBERSHIP

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APPENDIX B
SURVEY ON THE PRACTICE OF FAMILY LAW IN CANADA

SURVEY ON THE PRACTICE OF FAMILY LAW IN CANADA*

The Canadian Research Institute for Law and the Family is conducting this survey as part of a project funded by the Department of Justice Canada. This survey is intended to obtain current information on the characteristics of cases handled by family law practitioners in Canada, and to obtain information from both lawyers and judges concerning family law issues. You may have completed a similar survey at the 2004 National Family Law Program in La Malbaie. This survey is being replicated this year to allow for the examination of trends in family law, and to allow practitioners to share their views about developments in family law, such as the Spousal Support Advisory Guidelines.

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

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

As an incentive for participating in this project, if you complete the survey, your name will be entered in a draw for one of several prizes, including: one waiver of the registration fee for the 2008 National Family Law Program; and ten copies of the most recent edition of *Canadian Child Welfare Law: Children, Families and the State*. To enter this draw, please complete the entry form attached to this page, remove it from the survey, and drop both the entry form and the completed survey off at the Conference Registration Desk before 5:30 p.m. on Wednesday, July 12, 2006. The draw for the prizes will be made on Wednesday evening. Entry forms will be destroyed after the draws are made.

Thank you for your cooperation in completing this survey.

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

SURVEY ON THE PRACTICE OF FAMILY LAW IN CANADA

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

1.0 Demographic Information

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

1.2 What is your profession?

- ❑ Lawyer – private practice
- ❑ Lawyer – government or agency
- ❑ Lawyer – clinic
- ❑ Judge [*Please go to Question 1.7*]
- ❑ Other (please specify) _____

1.3 If you are a lawyer, how long have you been practicing family law? _____ years

What proportion of your practice involves family law cases? _____%

1.4 Is your client base:

- ❑ Mostly large urban (>100,000 population)
- ❑ Mostly small urban (10,000 – 100,000 population)
- ❑ Mostly rural (<10,000 population)
- ❑ Fairly equal mix of urban and rural

1.5 Are you registered with a lawyer referral service?

❑ Yes ❑ No

If yes, what proportion of your cases come from a lawyer referral service? _____%

1.6 If you are a lawyer, do you also conduct mediation sessions? ❑ Yes ❑ No

1.7 In the past five years, have you taken any training, including continuing education courses, on the following family law issues? (Please check all that apply.)

- ❑ Dispute resolution (e.g., mediation)
- ❑ Collaborative family law
- ❑ Family violence
- ❑ Child support guidelines
- ❑ Custody/access
- ❑ Property division
- ❑ Spousal support
- ❑ Other (please specify) _____

2.0 Case Characteristics

2.1 How many family law cases have you handled in the past year? _____

2.2 What proportion of these cases involved children? _____%

2.3 In what proportion of the family law cases that you have handled in the past year was either party funded by legal aid? _____%

2.4 What proportion of your family law cases with children involved are variations of previous orders/agreements?
_____% [*Judges: Please go to Question 2.8*]

2.5 How would you classify the majority of your clients?

- ❑ Primarily custodial (or primary care) parents
- ❑ Primarily non-custodial parents
- ❑ Approximately equal proportions of custodial and non-custodial parents

2.6 In what proportion of your cases in the past year was the final resolution of the case accomplished in the following ways?

Settled by parents	_____%
Settled by mediation	_____%
Settled by negotiation before trial	_____%
Settled by settlement conference	_____%
Resolved by collaborative family law	_____%
Decided by a judge after a hearing or trial	_____%

How frequently do you encourage your clients to seek resolutions outside court?

❑ Rarely ❑ Occasionally ❑ Often ❑ Almost always

2.7 In what percent of your family law cases is there an interim order that is, in effect, the final judicial disposition, because the case is thereafter resolved without a trial?
_____%

2.8 In your experience, in a *divorce* case, which of the following issues are most likely to require a trial and judicial decision to be resolved? (Please check all that apply.)

- ❑ Child support ❑ Custody ❑ Access
- ❑ Spousal support ❑ Property division ❑ Child support arrears
- ❑ Spousal support arrears

2.9 In your experience, in a *variation* case, which of the following issues are most likely to require a trial and judicial decision to be resolved? (Please check all that apply.)

- ❑ Child support
- ❑ Custody
- ❑ Access
- ❑ Spousal support
- ❑ Child support arrears
- ❑ Spousal support arrears
- ❑ Undue hardship
- ❑ Parental relocation (mobility)

3.0 Services

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

- ❑ Colleagues
- ❑ Local professional seminars
- ❑ National or international conferences
- ❑ Professional associations and meetings
- ❑ Internet
- ❑ Newsletters
- ❑ Provincial/territorial continuing legal education courses
- ❑ Professional publications (reporting services, journals, etc.)
- ❑ Other (please specify) _____

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

[*Judges: Please go to Question 3.9*]

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

	Very well informed	Somewhat informed	Not at all informed	They are misinformed	N/A
Marriage or relationship counselling	❑	❑	❑	❑	❑
Individual counselling	❑	❑	❑	❑	❑
Mediation services	❑	❑	❑	❑	❑
Child assessment services	❑	❑	❑	❑	❑
Collaborative family law	❑	❑	❑	❑	❑
Parenting education programs	❑	❑	❑	❑	❑
Parenting plans (written document jointly developed by parents)	❑	❑	❑	❑	❑
Psychological effects of divorce on children	❑	❑	❑	❑	❑
Domestic violence services	❑	❑	❑	❑	❑
Supervised access	❑	❑	❑	❑	❑
Supervised exchange	❑	❑	❑	❑	❑
Child support issues	❑	❑	❑	❑	❑
Family Law Information Centres	❑	❑	❑	❑	❑

Maintenance enforcement programs	❑	❑	❑	❑	❑
Financial assistance services	❑	❑	❑	❑	❑
Legal Aid services/Duty counsel	❑	❑	❑	❑	❑
Spousal support issues	❑	❑	❑	❑	❑
Variation or recalculation services	❑	❑	❑	❑	❑

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

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

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

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

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

❑ Very willing ❑ Somewhat willing ❑ Not willing

For clients who are willing to use family justice services, did they experience any difficulties in accessing them?

❑ Yes ❑ No

If yes, what was the major difficulty?

❑ Cost ❑ Time delay ❑ Location of service

❑ Lack of trust in service ❑ Other (please specify) _____

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

❑ Cost ❑ Time delay ❑ Location of service

❑ Lack of trust in service ❑ Other (please specify) _____

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

❑ Not more likely ❑ Somewhat more likely ❑ Much more likely

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

_____

_____

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

❑ Yes ❑ No

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

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

	Strongly agree	Agree	Disagree	Strongly Disagree
Simplify procedures	❑	❑	❑	❑
Provide easy access to various family justice services	❑	❑	❑	❑
Provide timely resolution to family law matters	❑	❑	❑	❑
Produce outcomes tailored to individual needs	❑	❑	❑	❑

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

❑ Yes ❑ No.

Please explain. _____

_____

4.0 Best Interest Criteria

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

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

❑ Yes ❑ No

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

❑ Yes ❑ No. If No, why not? _____

_____

_____

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

	Yes	No
Arrangements made by parents themselves	❑	❑
Arrangements made as a result of mediation	❑	❑
Arrangements negotiated by lawyers (on their own or after judicial conference)	❑	❑
Arrangements that are a result of collaborative family law	❑	❑
Arrangements made by a judge after a trial of hearing	❑	❑

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

❑ Yes ❑ No. Please explain. _____

_____

_____

_____

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

❑ Yes, in all cases ❑ Yes, in most cases

❑ Yes, in high conflict cases only ❑ No

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

_____% [*Judges: Please go to Question 5.1*]

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

❑ Yes ❑ No

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

❑ Yes ❑ No

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

❑ Not very helpful ❑ Somewhat helpful ❑ Very helpful

Please explain _____

_____

_____

_____

5.0 Child Representation

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

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

❑ Judicial interview with child

❑ Testimony by child

❑ Assessment report

❑ Legal representation for child

❑ Non-legal representation for child

❑ Legislative provision that parents should consult their children respectfully when making parenting arrangements upon separation

❑ Other (please specify) _____

_____

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

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

_____

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

	None	Light	Heavy
Under 6 years of age	❑	❑	❑
6 to 9 years of age	❑	❑	❑
10 to 13 years of age	❑	❑	❑
14 years or older	❑	❑	❑

6.0 Custody and Access

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

❑ Rarely ❑ Occasionally ❑ Often ❑ Almost Always

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

❑ Rarely ❑ Occasionally ❑ Often ❑ Almost Always

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

	Rarely	Occasionally	Often	Almost Always
Health	❑	❑	❑	❑
Education	❑	❑	❑	❑
Religion	❑	❑	❑	❑
Cultural	❑	❑	❑	❑
Child's residence	❑	❑	❑	❑
Other (please specify)	❑	❑	❑	❑

_____

_____

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

❑ Not at all ❑ Somewhat ❑ To a great extent

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

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

_____

_____

[*Judges: Please go to Question 6.10]*

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

_____%

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

❑ In high conflict situations

❑ In situations of spousal violence

❑ In situations where there are allegations of child abuse

❑ In situations where there is substance abuse

❑ In situations where there are mental health concerns

❑ I don't recommend supervised access

❑ Not available in my jurisdiction

❑ Other (please specify) _____

_____

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

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

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

_____

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

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

	Rarely	Occasionally	Often	Almost Always
Employment opportunity	❑	❑	❑	❑
Educational opportunity	❑	❑	❑	❑
To be closer to family/friends	❑	❑	❑	❑
To be with new partner	❑	❑	❑	❑
No particular reason	❑	❑	❑	❑
Other (please specify)	❑	❑	❑	❑

_____

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

	Rarely	Occasionally	Often	Almost Always
Custodial parent wishes to move within the city	❑	❑	❑	❑
Custodial parent wishes to move within the province/territory	❑	❑	❑	❑
Custodial parent wishes to move to a different province/territory	❑	❑	❑	❑
Custodial parent wishes to move outside the country	❑	❑	❑	❑

Access parent wishes to move within the city	❑	❑	❑	❑
Access parent wishes to move within the province/territory	❑	❑	❑	❑
Access parent wishes to move to a different province/territory	❑	❑	❑	❑
Access parent wishes to move outside the country	❑	❑	❑	❑
Other (please specify)	❑	❑	❑	❑

_____

7.0 Child Support Guidelines

Please express your opinion regarding the following statements.

7.1 Overall, the Child Support Guidelines have resulted in a better system of determining child support than the pre-1997 system.

❑ Strongly Agree ❑ Agree ❑ Disagree ❑ Strongly Disagree

7.2 Cases are settled more quickly since the implementation of the Guidelines.

❑ Strongly Agree ❑ Agree ❑ Disagree ❑ Strongly Disagree

7.3 Since implementation of the Guidelines, most cases are resolved simply by relying on the Tables to establish amounts of support.

❑ Strongly Agree ❑ Agree ❑ Disagree ❑ Strongly Disagree

7.4 In cases involving litigation, the issues to be resolved are more defined and focussed than prior to implementation of the Guidelines.

❑ Strongly Agree ❑ Agree ❑ Disagree ❑ Strongly Disagree

7.5 What proportion of your child support cases involve undue hardship applications?

_____%

7.6 How often is income disclosure a problem in your experience?

❑ Rarely ❑ Occasionally ❑ Often ❑ Almost Always

If income disclosure is a problem, please explain.

_____

_____

7.7 How often are second families an issue in your experience?

❑ Rarely ❑ Occasionally ❑ Often ❑ Almost Always

If second families are an issue, please explain.

_____

_____

7.8 Are there areas of the Child Support Guidelines that you have found to be problematic in your experience? If so, please explain and suggest reforms.

_____

_____

_____

_____

_____

_____

8.0 Spousal Support

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

_____%

8.2 The spousal support Advisory Guidelines (SSAG) were released in January 2005. In cases where spousal support is an issue, how often do you use the SSAG?

❑ Never ❑ Occasionally ❑ Often ❑ Almost Always

8.3 Have the SSAG made the handling of spousal support applications:

more consistent	❑ Yes	❑ No
fairer	❑ Yes	❑ No
less conflictual	❑ Yes	❑ No
generally easier to resolve	❑ Yes	❑ No

8.4 In your experience, when spousal support is an issue, in what percent of the following situations is:

	Reference made to SSAG	Resolution within the SSAG range
Discussions with clients	_____	_____
Cases settled by negotiation	_____	_____
Cases settled by mediation	_____	_____
Interim motions	_____	_____
Cases settled by case conference	_____	_____
Cases resolved by judge after hearing	_____	_____

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

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

_____

_____

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

❑ Child support ❑ Spousal support ❑ Both are resolved together

[*Judges: Please go to Question 9.4*]

9.0 Family Violence

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

❑ Yes

❑ No

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

❑ Yes If yes, which one(s)? _____

❑ No

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

❑ Yes

❑ No

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

❑ Yes

❑ No

❑ No services available in my area

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

	Rarely	Occasionally	Often	Almost Always
Assessment services were used	❑	❑	❑	❑
Child was given legal representation	❑	❑	❑	❑
Access supervision was ordered	❑	❑	❑	❑
Exchange supervision was ordered	❑	❑	❑	❑
Counselling services were used	❑	❑	❑	❑
Parents were educated on the effects of family violence on children	❑	❑	❑	❑
Access was denied to abusive parent	❑	❑	❑	❑
Custody was denied to abusive parent	❑	❑	❑	❑
Civil order restraining harassment/ spousal contact	❑	❑	❑	❑
Court did not address the issue	❑	❑	❑	❑
Other (please specify)	❑	❑	❑	❑

_____

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

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

_____

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

❑ Yes ❑ No

If yes, is the available training adequate?

❑ Yes ❑ No

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

❑ Yes ❑ No

If yes, is the available training adequate?

❑ Yes ❑ No

9.8 Do you have any other comments about the family law system in Canada?

_____

_____

_____

_____

_____

_____

9.9 What topics would you like to see researched in the family law area in Canada?

Thank you for completing this survey.

APPENDIX C
SUPPORTING TABLES

LIST OF TABLES

Table C1 Respondents' Continuing Education or Training on Family Law Issues in the Past Five Years, 2006 and 2004

Family Law Issue	2006		2004	
	n	%	n	%
Dispute resolution (e.g., mediation)	91	55.5	58	49.6
Family violence	55	33.5	38	32.5
Custody/access	124	75.6	83	70.9
Spousal support	138	84.1	84	71.8
Collaborative family law	83	50.6	67	57.3
Child support guidelines	123	75.0	93	79.5
Property division	119	72.6	79	67.5
Other*	42	25.6	25	21.4

Sources of data: Survey on the Practice of Family Law in Canada, 2006 and 2004.
2006 Total N=164; 2004 Total N=117.
* Other includes a variety of family law issues such as: pensions, child protection, interest-based negotiation, child representation, taxation/business valuation, and case management.

Table C2 Characteristics of Respondents' Family Law Cases in the Past Year, 2006 and 2004

Characteristic	Mean	Range	n
2006			
Number of family law cases in past year	77.7	0 – 300	138
Proportion of family law cases involving children	74.5	5 – 100	144
Proportion of family law cases funded by legal aid	18.2	0 – 100	130
Proportion of family law cases with children involved that are variations of previous orders/agreements	26.2	0 – 80	142
2004			
Number of family law cases in past year	92.6	10 – 400	97
Proportion of family law cases involving children	74.1	9 – 100	108
Proportion of family law cases funded by legal aid	25.3	0 – 100	92
Proportion of family law cases with children involved that are variations of previous orders/agreements	28.1	0 – 100	106

Sources of data: Survey on the Practice of Family Law in Canada, 2006 and 2004.
2006 Total N=153; 2004 Total N=110 (excludes judges).

Table C3 Proportion of Respondents' Cases in the Past Year Resolved by Various Methods, 2006 and 2004

Resolution Method	Mean	Range	n
2006			
Settled by parents	17.1	0 – 70	108
Settled by mediation	12.9	0 – 80	102
Settled by negotiation before trial	42.7	5 – 100	133
Settled by settlement conference	20.5	0 – 80	117
Resolved by collaborative family law	9.1	0 – 75	83
Decided by a judge after a hearing or trial	13.1	0 – 60	127
2004			
Settled by parents	13.4	0 – 75	83
Settled by mediation	10.9	0 – 60	69
Settled by negotiation before trial	48.4	1 – 95	99
Settled by settlement conference	24.3	0 – 95	81
Resolved by collaborative family law	8.5	0 – 80	54
Decided by a judge after a hearing or trial	14.1	0 – 100	96

Sources of data: Survey on the Practice of Family Law in Canada, 2006 and 2004.
2006 Total N=153; 2004 Total N=110 (excludes judges).

Table C4 Respondents' Reports as to Which Issues in Divorce and Variation Cases are Most Likely to Require a Trial and Judicial Decision to be Resolved, 2006 and 2004

Issue	In a Divorce Case		In a Variation Case	
	n	%	n	%
2006				
Child Support	9	5.5	32	19.5
Custody	85	51.8	56	34.1
Access	55	33.5	47	28.7
Spousal support	113	68.9	82	50.0
Property division	58	35.4	--	--
Child support arrears	34	20.7	44	26.8
Spousal support arrears	44	26.8	40	24.4
Undue hardship	--	--	23	14.0
Parental relocation (mobility)	--	--	106	64.6
2004				
Child Support	14	12.0	22	18.8
Custody	63	53.8	33	28.2
Access	40	34.2	36	30.8
Spousal support	87	74.4	70	59.8
Property division	52	44.4	--	--
Child support arrears	28	23.9	41	35.0
Spousal support arrears	22	18.8	33	28.2
Undue hardship	--	--	22	18.8
Parental relocation (mobility)	--	--	75	64.1

Sources of data: Survey on the Practice of Family Law in Canada, 2006 and 2004.
2006 Total N=164; 2004 Total N=117.

Table C5 Respondents' Perceptions of How Well Informed Their Clients are at the Outset of Their Case, 2006 and 2004

Service/Issue	Very Well Informed		Somewhat Informed		Not at All Informed		They are Misinformed		N/A		Missing	
	n	%	n	%	n	%	n	%	n	%	n	%
2006												
Marriage or relationship counselling	29	19.0	96	62.7	19	12.4	2	1.3	1	0.7	6	3.9
Individual counselling	25	16.3	105	68.6	15	9.8	2	1.3	1	0.7	5	3.3
Mediation services	12	7.8	79	51.6	52	34.0	3	2.0	2	1.3	5	3.3
Child assessment services	6	3.9	20	13.1	107	69.9	9	5.9	3	2.0	8	5.2
Collaborative family law	5	3.3	44	28.8	91	59.5	4	2.6	2	1.3	7	4.6
Parenting education programs	10	6.5	49	32.0	84	54.9	2	1.3	2	1.3	6	3.9
Parenting plans (written document jointly developed by parents)	3	2.0	32	20.9	96	62.7	12	7.8	2	1.3	8	5.2
Psychological effects of divorce on children	2	1.3	64	41.8	56	36.6	24	15.7	2	1.3	5	3.3
Domestic violence services	9	5.9	72	47.1	57	37.3	2	1.3	7	4.6	6	3.9
Supervised access	2	1.3	49	32.0	72	47.1	22	14.4	2	1.3	6	3.9
Supervised exchange	2	1.3	31	20.3	92	60.1	14	9.2	5	3.3	9	5.9
Child support issues	20	13.1	107	69.9	11	7.2	10	6.5	1	0.7	4	2.6
Family Law Information Centres	5	3.3	31	20.3	91	59.5	3	2.0	17	11.1	6	3.9
Maintenance enforcement programs	15	9.8	82	53.6	40	26.1	10	6.5	2	1.3	4	2.6
Financial assistance services	6	3.9	51	33.3	77	50.3	4	2.6	8	5.2	7	4.6
Legal Aid services/duty counsel	16	10.5	72	47.1	44	28.8	7	4.6	7	4.6	6	3.9
Spousal support issues	5	3.3	60	39.2	50	32.7	29	19.0	1	0.7	8	5.2
Variation or recalculation services	9	5.9	29	19.0	87	56.9	6	3.9	14	9.2	8	5.2
2004												
Marriage or relationship counselling	12	10.9	76	69.1	14	12.7	4	3.6	0	0.0	4	3.6
Individual counselling	13	11.8	74	67.3	15	13.6	3	2.7	0	0.0	5	4.5
Mediation services	7	6.4	48	43.6	42	38.2	8	7.3	1	0.9	4	3.6
Child assessment services	3	2.7	19	17.3	72	65.5	9	8.2	2	1.8	5	4.5
Collaborative family law	1	0.9	20	18.2	77	70.0	5	4.5	1	0.9	6	5.5
Parenting education programs	4	3.6	33	30.0	62	56.4	4	3.6	3	2.7	4	3.6
Parenting plans (written document jointly developed by parents)	3	2.7	20	18.2	69	62.7	11	10.0	2	1.8	5	4.5
Psychological effects of divorce on children	3	2.7	40	36.4	48	43.6	14	12.7	0	0.0	5	4.5
Domestic violence services	5	4.5	59	53.6	31	28.2	6	5.5	4	3.6	5	4.5
Supervised access	3	2.7	31	28.2	55	50.0	15	13.6	1	0.9	5	4.5
Supervised exchange	3	2.7	20	18.2	68	61.8	12	10.9	1	0.9	6	5.5
Child support issues	12	10.9	81	73.6	8	7.3	5	4.5	0	0.0	4	3.6
Family Law Information Centres	1	0.9	22	20.0	64	58.2	2	1.8	16	14.5	5	4.5
Maintenance enforcement programs	10	9.1	62	56.4	25	22.7	8	7.3	1	0.9	4	3.6
Financial assistance services	5	4.5	45	40.9	40	36.4	4	3.6	9	8.2	7	6.4
Legal Aid services/duty counsel	9	8.2	61	55.5	23	20.9	4	3.6	7	6.4	6	5.5
Spousal support issues	6	5.5	55	50.0	28	25.5	17	15.5	0	0.0	4	3.6
Variation or recalculation services	3	2.7	34	30.9	54	49.1	4	3.6	10	9.1	5	4.5

Sources of data: Survey on the Practice of Family Law in Canada, 2006 and 2004.
2006 Total N=153; 2004 Total N=110 (excludes judges).

Table C6 Respondents' Reports of How Often They Inform Clients About or Refer Clients to Various Family Justice Services, 2006 and 2004

Family Justice Service	Rarely		Occasionally		Often		Almost Always		Missing	
	n	%	n	%	n	%	n	%	n	%
2006										
Marriage or relationship Counselling	17	11.1	43	28.1	44	28.8	39	25.5	10	6.5
Individual counselling	7	4.6	38	24.8	68	44.4	32	20.9	8	5.2
Mediation services	14	9.2	35	22.9	54	35.3	41	26.8	9	5.9
Child assessment services	27	17.6	76	49.7	33	21.6	7	4.6	10	6.5
Collaborative family law	52	34.0	34	22.2	28	18.3	30	19.6	9	5.9
Parenting plans	31	20.3	38	24.8	50	32.7	25	16.3	9	5.9
Parenting education programs	15	9.8	40	26.1	41	26.8	50	32.7	7	4.6
Domestic violence services	42	27.5	74	48.4	25	16.3	4	2.6	8	5.2
Supervised access	55	35.9	79	51.6	9	5.9	1	0.7	9	5.9
Supervised exchange	71	46.4	64	41.8	7	4.6	1	0.7	10	6.5
Maintenance enforcement programs	6	3.9	23	15.0	59	38.6	58	37.9	7	4.6
Financial assistance services	50	32.7	60	39.2	26	17.0	8	5.2	9	5.9
Legal Aid services/duty counsel	52	34.0	50	32.7	25	16.3	18	11.8	8	5.2
Variation or recalculation services	67	43.8	33	21.6	22	14.4	9	5.9	22	14.4
2004										
Marriage or relationship counselling	11	10.0	39	35.5	23	20.9	33	30.0	4	3.6
Individual counselling	6	5.5	29	26.4	46	41.8	26	23.6	3	2.7
Mediation services	10	9.1	34	30.9	32	29.1	30	27.3	4	3.6
Child assessment services	17	15.5	50	45.5	29	26.4	9	8.2	5	4.5
Collaborative family law	41	37.3	18	16.4	13	11.8	32	29.1	6	5.5
Parenting plans	14	12.7	26	23.6	31	28.2	30	27.3	9	8.2
Parenting education programs	12	10.9	28	25.5	23	20.9	42	38.2	5	4.5
Domestic violence services	25	22.7	53	48.2	21	19.1	7	6.4	4	3.6
Supervised access	33	30.0	54	49.1	10	9.1	9	8.2	4	3.6
Supervised exchange	45	40.9	44	40.0	8	7.3	8	7.3	5	4.5
Maintenance enforcement programs	6	5.5	15	13.6	36	32.7	50	45.5	3	2.7
Financial assistance services	41	37.3	35	31.8	16	14.5	11	10.0	7	6.4
Legal Aid services/duty counsel	29	26.4	36	32.7	19	17.3	21	19.1	5	4.5
Variation or recalculation services	44	40.0	30	27.3	14	12.7	11	10.0	11	10.0

Sources of data: Survey on the Practice of Family Law in Canada, 2006 and 2004.
2006 Total N=153; 2004 Total N=110 (excludes judges).

Table C7 Extent to Which Respondents Agree that Unified Family Courts Accomplish Specific Objectives, 2006 and 2004

Objective	Strongly Agree		Agree		Disagree		Strongly Disagree		Missing	
	n	%	n	%	n	%	n	%	n	%
2006										
Simplify procedures	27	16.5	51	31.1	30	18.3	14	8.5	42	25.6
Provide easy access to various family justice services	28	17.1	59	36.0	24	14.6	10	6.1	43	26.2
Provide timely resolution to family law matters	19	11.6	44	26.8	38	23.2	19	11.6	44	26.8
Produce outcomes tailored to individual needs	19	11.6	55	33.5	32	19.5	11	6.7	47	28.7
2004										
Simplify procedures	27	23.1	40	34.2	20	17.1	7	6.0	23	19.7
Provide easy access to various family justice services	24	20.5	40	34.2	19	16.2	8	6.8	26	22.2
Provide timely resolution to family law matters	20	17.1	33	28.2	28	23.9	13	11.1	23	19.7
Produce outcomes tailored to individual needs	18	15.4	44	37.6	24	20.5	8	6.8	23	19.7

Sources of data: Survey on the Practice of Family Law in Canada, 2006 and 2004.
2006 Total N=164; 2004 Total N=117.

Table C8 Respondents' Perceptions of Whether Parenting Arrangements Made Through Specific Processes are Consistent with the Best Interests of the Child, 2006 and 2004

Process	Yes		No		Missing	
	n	%	n	%	n	%
2006						
Arrangements made by parents themselves	133	81.1	20	12.2	11	6.7
Arrangements made as a result of mediation	134	81.7	13	7.9	17	10.4
Arrangements negotiated by lawyers (on their own or after judicial conference)	135	82.3	15	9.1	14	8.5
Arrangements that are a result of collaborative family law	98	59.8	8	4.9	58	35.4
Arrangements made by a judge after a trial or hearing	99	60.4	43	26.2	22	13.4
2004						
Arrangements made by parents themselves	86	73.5	19	16.2	12	10.3
Arrangements made as a result of mediation	98	83.8	7	6.0	12	10.3
Arrangements negotiated by lawyers (on their own or after judicial conference)	93	79.5	14	12.0	10	8.5
Arrangements that are a result of collaborative family law	77	65.8	3	2.6	37	31.6
Arrangements made by a judge after a trial or hearing	60	51.3	45	38.5	12	10.3

Sources of data: Survey on the Practice of Family Law in Canada, 2006 and 2004.
2006 Total N=164; 2004 Total N=117.

Table C9 Respondents' Perceptions of How Often Parents Share Decision Making in Specific Areas, 2006 and 2004

Decision-making Area	Rarely		Occasionally		Often		Almost Always		Missing	
	n	%	n	%	n	%	n	%	n	%
2006										
Health	12	7.3	55	33.5	68	41.5	21	12.8	8	4.9
Education	7	4.3	53	32.3	79	48.2	18	11.0	7	4.3
Religion	33	20.1	59	36.0	49	29.9	15	9.1	8	4.9
Culture	32	19.5	63	38.4	47	28.7	11	6.7	11	6.7
2004										
Health	9	7.7	32	27.4	50	42.7	21	17.9	5	4.3
Education	7	6.0	37	31.6	52	44.4	16	13.7	5	4.3
Religion	22	18.8	37	31.6	37	31.6	12	10.3	9	7.7
Culture	21	17.9	36	30.8	37	31.6	10	8.5	13	11.1

Sources of data: Survey on the Practice of Family Law in Canada, 2006 and 2004.
2006 Total N=164; 2004 Total N=117.

Table C10 Respondents' Perceptions of What the Circumstances are When Parents do not Comply with their Custody/Access Orders and How Frequently it Occurs, 2006 and 2004

Circumstance	Rarely		Occasionally		Often		Almost Always		Missing	
	n	%	n	%	n	%	n	%	n	%
2006										
Access parent does not exercise access	31	18.9	84	51.2	41	25.0	1	0.6	7	4.3
Access parent is late returning child	11	6.7	94	57.3	49	29.9	3	1.8	7	4.3
Custodial parent refuses access for no valid cause	33	20.1	90	54.9	30	18.3	4	2.4	7	4.3
Custodial parent refuses access for cause (e.g., access parent intoxicated)	35	21.3	92	56.1	30	18.3	0	0.0	7	4.3
Child refuses visit with access parent	15	9.1	106	64.6	36	22.0	1	0.6	6	3.7
Frequent changes in schedule	29	17.7	75	45.7	47	28.7	0	0.0	13	7.9
Family violence concerns	83	50.6	63	38.4	9	5.5	1	0.6	8	4.9
2004										
Access parent does not exercise access	17	14.5	58	49.6	38	32.5	0	0.0	4	3.4
Access parent is late returning child	16	13.7	45	38.5	48	41.0	3	2.6	5	4.3
Custodial parent refuses access for no valid cause	15	12.8	60	51.3	34	29.1	2	1.7	6	5.1
Custodial parent refuses access for cause (e.g., access parent intoxicated)	25	21.4	72	61.5	14	12.0	1	0.9	5	4.3
Child refuses visit with access parent	23	19.7	68	58.1	22	18.8	0	0.0	4	3.4
Frequent changes in schedule	27	23.1	53	45.3	30	25.6	2	1.7	5	4.3
Family violence concerns	57	48.7	41	35.0	12	10.3	3	2.6	4	3.4

Sources of data: Survey on the Practice of Family Law in Canada, 2006 and 2004.
2006 Total N=164; 2004 Total N=117.

Table C11 Proportion of Respondents Recommending Supervised Access or Exchange Under Various Circumstances, 2006 and 2004

Circumstance	2006				2004			
	Supervised Access		Supervised Exchange		Supervised Access		Supervised Exchange	
	n	%	n	%	n	%	n	%
In high conflict situations	36	23.5	105	68.6	29	26.4	85	77.3
In situations of spousal violence	57	37.3	96	62.7	43	39.1	76	69.1
In situations where there are allegations of child abuse	130	85.0	36	23.5	94	85.5	34	30.9
In situations where there is substance abuse	113	73.9	55	35.9	88	80.0	37	33.6
In situations where there are mental health concerns	113	73.9	53	34.6	88	80.0	42	38.2
Not available in my jurisdiction	2	1.3	9	5.9	2	1.8	8	7.3
Other	10	6.5	3	2.0	10	9.1	4	3.6

Sources of data: Survey on the Practice of Family Law in Canada, 2006 and 2004.
2006 Total N=153; 2004 Total N=110 (excludes judges).

Table C12 Respondents' Perceptions of How Often Specific Reasons are Given in Cases Where Parental Relocation is an Issue, 2006 and 2004

Reason	Rarely		Occasionally		Often		Almost Always		Missing	
	n	%	n	%	n	%	n	%	n	%
2006										
Employment opportunity	2	1.2	26	15.9	91	55.5	28	17.1	17	10.4
Educational opportunity	38	23.2	63	38.4	37	22.6	2	1.2	24	14.6
To be closer to family/friends	8	4.9	35	21.3	86	52.4	18	11.0	17	10.4
To be with new partner	7	4.3	25	15.2	95	57.9	18	11.0	19	11.6
No particular reason	84	51.2	15	9.1	6	3.7	0	0.0	59	36.0
2004										
Employment opportunity	7	6.0	23	19.7	57	48.7	21	17.9	9	7.7
Educational opportunity	25	21.4	43	36.8	23	19.7	1	0.9	25	21.4
To be closer to family/friends	2	1.7	28	23.9	60	51.3	13	11.1	14	12.0
To be with new partner	7	6.0	20	17.1	67	57.3	13	11.1	10	8.5
No particular reason	38	32.5	19	16.2	7	6.0	0	0.0	53	45.0

Sources of data: Survey on the Practice of Family Law in Canada, 2006 and 2004.
2006 Total N=164; 2004 Total N=117.

Table C13 Respondents' Perceptions of What the Circumstances are in Cases Where Parental Relocation is an Issue and How Frequently it Occurs, 2006 and 2004

Circumstance	Rarely		Occasionally		Often		Almost Always		Missing	
	n	%	n	%	n	%	n	%	n	%
2006										
Custodial parent wishes to move within the city	88	53.7	37	22.6	18	11.0	0	0.0	21	12.8
Custodial parent wishes to move within the province/territory	12	7.3	68	41.5	61	37.2	8	4.9	15	9.1
Custodial parent wishes to move to a different province/territory	10	6.1	63	38.4	63	38.4	14	8.5	14	8.5
Custodial parent wishes to move outside the country	98	59.8	34	20.7	10	6.1	7	4.3	15	9.1
Access parent wishes to move within the city	115	70.1	12	7.3	15	9.1	0	0.0	22	13.4
Access parent wishes to move within the province/territory	101	61.6	36	22.0	7	4.3	0	0.0	20	12.2
Access parent wishes to move to a different province/territory	92	56.1	41	25.0	12	7.3	0	0.0	19	11.6
Access parent wishes to move outside the country	127	77.4	15	9.1	2	1.2	1	0.6	19	11.6
2004										
Custodial parent wishes to move within the city	65	55.6	21	17.9	17	14.5	2	1.7	12	10.3
Custodial parent wishes to move within the province/territory	8	6.8	52	44.4	42	35.9	7	6.0	8	6.8
Custodial parent wishes to move to a different province/territory	7	6.0	44	37.6	42	35.9	16	13.7	8	6.8
Custodial parent wishes to move outside the country	71	60.7	24	20.5	6	5.1	7	6.0	9	7.7
Access parent wishes to move within the city	79	67.5	12	10.3	10	8.5	0	0.0	16	13.7
Access parent wishes to move within the province/territory	54	46.2	32	27.4	16	13.7	0	0.0	15	12.8
Access parent wishes to move to a different province/territory	56	47.9	34	29.1	10	8.5	1	0.9	16	13.7
Access parent wishes to move outside the country	84	71.8	14	12.0	1	0.9	1	0.9	17	14.5

Sources of data: Survey on the Practice of Family Law in Canada, 2006 and 2004.
2006 Total N=164; 2004 Total N=117.

Table C14 Respondents' Opinions Regarding Objectives of the Federal Child Support Guidelines, 2006 and 2004

Objective	Strongly Agree		Agree		Disagree		Strongly Disagree		Missing	
	n	%	n	%	n	%	n	%	n	%
2006										
Overall, the Child Support Guidelines have resulted in a better system of determining child support than the pre-1997 system.	81	49.4	66	40.2	6	3.7	3	1.8	8	4.9
Cases are settled more quickly since the implementation of the Guidelines.	92	56.1	54	32.9	8	4.9	2	1.2	8	4.9
Since implementation of the Guidelines, most cases are resolved simply by relying on the Tables to establish amounts of support.	72	43.9	68	41.5	14	8.5	3	1.8	7	4.3
In cases involving litigation, the issues to be resolved are more defined and focussed than prior to implementation of the Guidelines.	64	39.0	77	47.0	11	6.7	4	2.4	8	4.9
2004										
Overall, the Child Support Guidelines have resulted in a better system of determining child support than the pre-1997 system.	46	39.3	62	53.0	6	5.1	2	1.7	1	0.9
Cases are settled more quickly since the implementation of the Guidelines.	42	35.9	61	52.1	10	8.5	2	1.7	2	1.7
Since implementation of the Guidelines, most cases are resolved simply by relying on the Tables to establish amounts of support.	42	35.9	58	49.6	11	9.4	5	4.3	1	0.9
In cases involving litigation, the issues to be resolved are more defined and focussed than prior to implementation of the Guidelines.	34	29.1	66	56.4	12	10.3	2	1.7	3	2.4

Sources of data: Survey on the Practice of Family Law in Canada, 2006 and 2004.
2006 Total N=164; 2004 Total N=117.

Table C15 Proportion of Cases using the Spousal Support Advisory Guidelines (SSAG) in Various Situations, 2006

Situation	Reference made to SSAG			Resolution within SSAG Range		
	Mean	Range	n	Mean	Range	n
Discussions with clients	83.9	0-100	104	58.5	0-100	69
Cases settled by negotiation	76.6	0-100	102	59.0	0-100	86
Cases settled by mediation	63.6	0-100	64	47.9	0-100	53
Interim motions	66.4	0-100	90	51.7	0-100	74
Cases settled by case conference	69.4	0-100	84	54.0	0-100	71
Cases resolved by judge after hearing	63.0	0-100	86	54.6	0-100	69

Sources of data: Survey on the Practice of Family Law in Canada, 2006.
2006 Total N=164.

Table C16 Respondents' Perceptions of What the Circumstances are in Cases Where Spousal Support is an Issue and How Frequently it Occurs, 2006 and 2004

Circumstance	Rarely		Occasionally		Often		Almost Always		Missing	
	n	%	n	%	n	%	n	%	n	%
2006										
Claimant spouse is a stay-at-home parent	10	6.1	39	23.8	82	50.0	19	11.6	14	8.5
Claimant spouse was a stay-at-home parent to children now grown and is not in labour force	10	6.1	47	28.7	81	49.4	12	7.3	14	8.5
Couple had no children and claimant spouse is not in labour force	77	47.0	56	34.1	12	7.3	3	1.8	16	9.8
Respondent's income is considerably higher than claimant spouse's income	3	1.8	16	9.8	89	54.3	40	24.4	16	9.8
Potential payor has income of $75,000 or more	5	3.0	41	25.0	77	47.0	25	15.2	16	9.8
Trade off of property in lieu of monetary spousal support	42	25.6	60	36.6	44	26.8	1	0.6	17	10.4
2004										
Claimant spouse is a stay-at-home parent	0	0.0	34	29.1	66	56.4	12	10.3	5	4.3
Claimant spouse was a stay-at-home parent to children now grown and is not in labour force	5	4.3	34	29.1	65	55.6	8	6.8	5	4.3
Couple had no children and claimant spouse is not in labour force	51	43.6	51	43.6	8	6.8	2	1.7	5	4.3
Respondent's income is considerably higher than claimant spouse's income	2	1.7	18	15.4	67	57.3	26	22.2	4	3.4
Potential payor has income of $75,000 or more	8	6.8	41	35.0	48	41.0	15	12.8	5	4.3
Trade off of property in lieu of monetary spousal support	26	22.2	55	47.0	27	23.1	2	1.7	7	6.0

Sources of data: Survey on the Practice of Family Law in Canada, 2006 and 2004.
2006 Total N =164; 2004 Total N=117.

Table C17 Respondents' Reports on How the Court Addressed the Issue in Cases Involving Spousal Violence and How Frequently it Occurred, 2006 and 2004

Court Response	Rarely		Occasionally		Often		Almost Always		Missing	
	n	%	n	%	n	%	n	%	n	%
2006										
Assessment services were used	61	37.2	45	27.4	28	17.1	3	1.8	27	16.5
Child was given legal representation	86	52.4	32	19.5	15	9.1	1	0.6	30	18.3
Access supervision was ordered	30	18.3	76	46.3	31	18.9	3	1.8	24	14.6
Exchange supervision was ordered	41	25.0	52	31.7	35	21.3	4	2.4	32	19.5
Counselling services were used	35	21.3	50	30.5	46	28.0	6	3.7	27	16.5
Parents were educated on the effects of family violence on children	63	38.4	39	23.8	23	14.0	8	4.9	31	18.9
Access was denied to abusive parent	81	49.4	47	28.7	8	4.9	1	0.6	27	16.5
Custody was denied to abusive parent	30	18.3	31	18.9	49	29.9	25	15.2	29	17.7
Civil order restraining harassment/ spousal contact	9	5.5	33	20.1	74	45.1	26	15.9	22	13.4
Court did not address the issue	76	46.3	26	15.9	11	6.7	5	3.0	46	28.0
2004										
Assessment services were used	34	29.1	32	27.4	21	17.9	2	1.7	28	23.9
Child was given legal representation	48	41.0	31	26.5	12	10.3	2	1.7	24	20.5
Access supervision was ordered	17	14.5	47	40.2	26	22.2	5	4.3	22	18.8
Exchange supervision was ordered	29	24.8	36	30.8	21	17.9	6	5.1	25	21.4
Counselling services were used	27	23.1	35	29.9	26	22.2	8	6.8	21	17.9
Parents were educated on the effects of family violence on children	50	42.7	24	20.5	16	13.7	2	1.7	25	21.4
Access was denied to abusive parent	56	47.9	29	24.8	9	7.7	1	0.9	22	18.8
Custody was denied to abusive parent	15	12.8	27	23.1	36	30.8	11	9.4	28	23.9
Civil order restraining harassment/ spousal contact	--	--	--	--	--	--	--	--	--	--
Court did not address the issue	41	35.0	25	21.4	12	10.3	10	8.5	29	24.8

Sources of data: Survey on the Practice of Family Law in Canada, 2006 and 2004.
2006 Total N=164; 2004 Total N=117.

Table C18 Respondents' Reports on How the Court Addressed the Issue in Cases Involving Child Abuse and How Frequently it Occurred, 2006 and 2004

Court Response	Rarely		Occasionally		Often		Almost Always		Missing	
	n	%	n	%	n	%	n	%	n	%
2006										
Assessment services were used	15	9.1	29	17.7	62	37.8	22	13.4	36	22.0
Child was given legal representation	66	40.2	26	15.9	22	13.4	12	7.3	38	23.2
Access supervision was ordered	7	4.3	28	17.1	64	39.0	32	19.5	33	20.1
Exchange supervision was ordered	44	26.8	39	23.8	31	18.9	12	7.3	38	23.2
Counselling services were used	21	12.8	36	22.0	57	34.8	14	8.5	36	22.0
Parents were educated on the effects of family violence on children	49	29.9	35	21.3	30	18.3	13	7.9	37	22.6
Access was denied to abusive parent	39	23.8	41	25.0	41	25.0	7	4.3	36	22.0
Custody was denied to abusive parent	15	9.1	17	10.4	40	24.4	56	34.1	36	22.0
Court made referral to child welfare agency	52	31.7	37	22.6	16	9.8	16	9.8	43	26.2
Court did not address the issue	81	49.4	15	9.1	4	2.4	1	0.6	63	38.4
2004										
Assessment services were used	11	9.4	26	22.2	24	20.5	27	23.1	29	24.8
Child was given legal representation	37	31.6	22	18.8	23	19.7	10	8.5	25	21.4
Access supervision was ordered	2	1.7	22	18.8	45	38.5	26	22.2	22	18.8
Exchange supervision was ordered	22	18.8	27	23.1	22	18.8	10	8.5	36	30.8
Counselling services were used	23	19.7	28	23.9	31	26.5	5	4.3	30	25.6
Parents were educated on the effects of family violence on children	41	35.0	26	22.2	14	12.0	3	2.6	33	28.2
Access was denied to abusive parent	22	18.8	29	24.8	29	24.8	8	6.8	29	24.8
Custody was denied to abusive parent	6	5.1	9	7.7	34	29.1	40	34.2	28	23.9
Court made referral to child welfare agency	34	29.1	26	22.2	15	12.8	9	7.7	33	28.2
Court did not address the issue	58	49.6	14	12.0	2	1.7	2	1.7	41	35.0

Sources of data: Survey on the Practice of Family Law in Canada, 2006 and 2004.
2006 Total N=164; 2004 Total N=117.