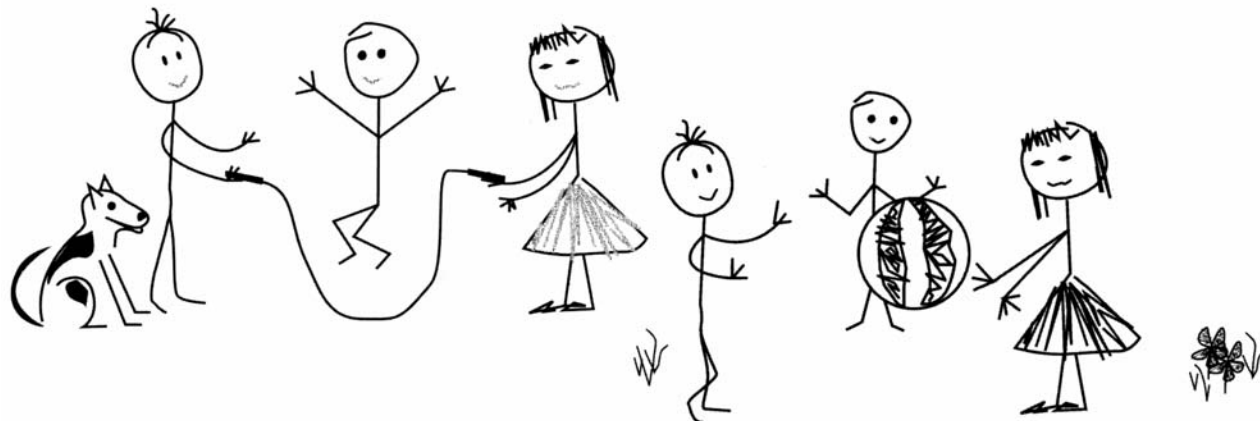


FAMILY JUSTICE

N E W S L E T T E R



Volume 1

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Kids
come
first

Update from the Family, Children and Youth Section

Child-centred Family Justice Strategy

On December 10, 2002, the Honourable Martin Cauchon, Minister of Justice and Attorney General of Canada, announced the Child-centred Family Justice Strategy to help parents focus on the needs of their children following separation and divorce. The three pillars of the Strategy will create a child-centred family justice system that:

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

To achieve these objectives, the Government of Canada will devote \$63 million in new funding over five years to the provinces and territories for family justice services such as mediation and parent education. Family justice services provide parents with tools to assist in decision-making about their children's care after separation or divorce.



Update from the Family, Children and Youth Section (cont'd)

Child-centred Family Justice Strategy

(cont'd from page 1)

The Government of Canada also proposes to amend the *Divorce Act* to adopt a new approach based on parental responsibilities. This new approach would provide greater clarity to parents about their respective roles after separation and divorce. By introducing this new concept, we hope to promote individualized parenting arrangements that meet the needs of each particular child and family.

In addition, the Government of Canada will provide funding of \$16.1 million a year for 62 new judges (46 will be elevated from the provincial court level) in order to expand the Unified Family Courts (UFC's). UFC's consolidate jurisdiction over all family law matters within a single court, and this structure—specialist judges, simplified procedures, and easy access to various family justice services—allows the court to take a holistic approach to each family's situation.

The Child-centred Family Justice Strategy reflects the important social role of the family justice system and will result in an improved, less adversarial system that will have important benefits for children and their families, as well as long-term benefits for Canadian society.

Proposed Changes

The legislative component of the Child-centred Family Justice Strategy, or Bill C-22, *An Act to amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act, the Garnishment, Attachment and Pension Diversion Act and the Judges Act and to amend other Acts in consequence*, proposes a number of amendments to the *Divorce Act*. These new parenting provisions would apply to cases commenced after the coming into force of the proposed legislation.

Existing custody and access orders under the *Divorce Act* will not be affected by the changes to the law. These orders will continue to apply as if the Act had not been amended.

Parenting Responsibilities

Bill C-22 would eliminate the terms *custody* and *access* from the *Divorce Act* for the purpose of determining parenting arrangements. These terms have long been viewed as contributing to a winner/loser mentality that focuses on parental rights when speaking about children. Under the amendments proposed by Bill C-22, a model based on parental responsibilities—the responsibilities for the care and upbringing of the child—would be introduced. *Parental responsibilities* include decision-making responsibilities such as decisions related to the child's health, education and religious upbringing, as well as *parenting time*. Parenting time is the period that a child spends under the care of a parent. In difficult cases where a court is required to make an order, the court would make a *parenting order*.

The proposed amendments would allow for many different types of parenting arrangements and the particular parenting arrangement will depend on the circumstances of the child. There are no presumptions in favour of any one type of parenting arrangement. These proposed amendments are consistent with the recommendations of the Special Joint Committee on Child Custody and Access to move away from a model based on *custody* and *access*, and to avoid presumptions about what parenting arrangement may be in the best interests of the child.

Best Interests Criteria

The amendments proposed in Bill C-22 would maintain the fundamental principle of the *Divorce Act* that parenting arrangements must be determined on the basis of the best interests of the child. In order, however, to provide parents, family justice professionals, and the courts with guidance about how to determine the best interests of the child in a particular case, Bill C-22 would include a new list of best interests criteria.



Update from the Family, Children and Youth Section (cont'd)

Best Interests Criteria (cont'd)

In making a parenting order, a court would have to consider the 12 enumerated best interests criteria. This list is not an exhaustive one—other factors that are relevant to the circumstances of a particular child may be considered. The weight to be given to the various factors would depend on the specific case.

Examples of the proposed best interests criteria are:

- The child's physical, emotional and psychological needs, including the child's need for stability, taking into account the child's age and stage of development;
- The benefit to the child of developing and maintaining meaningful relationships with both spouses, and each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse;
- Any family violence, including its impact on
 - i) The safety of the child and other family members,
 - ii) The child's general well-being,
 - iii) The ability of the person who engaged in family violence to care for and meet the needs of the child, and
 - iv) The appropriateness of making an order that would require the spouses to co-operate on issues affecting the child;
- The child's views and preferences, to the extent that those can be reasonably ascertained.

Contact Orders

The amendments proposed in Bill C-22 would also introduce *contact orders* that could provide for contact between the child and a person other than a spouse—for example, a grandparent or an older sibling—by visits or other means, such as by telephone. Leave of the court would be required to apply for a contact order and like parenting orders, contact orders would be made on the basis of the best interests of the child.



Lawyers

Bill C-22 would expand the duties of lawyers to assist in achieving the objectives of the Strategy. The proposed amendments recognize the important role played by lawyers in promoting the resolution of disputes and respect for the law.

In addition to their current duty to inform parents about mediation services, lawyers will also be asked to inform parents about family justice services, such as parent education courses, of which they are aware. This proposed amendment would promote non-adversarial dispute resolution mechanisms, as would the proposed section providing that a court may include in a parenting order a direction with respect to the dispute resolution mechanism to be pursued for future disputes between the parties, where the parties agree.

In addition, lawyers will be asked to explain the importance of complying with orders under the *Divorce Act*.

Interprovincial Variation of Support Orders

Bill C-22 also introduces a new procedure for the variation of support orders where parents live in different provinces or territories or where one parent lives outside the country. In these cases, it currently takes two court hearings to change a support order: one in the province or territory where the applicant lives, and another in the respondent's jurisdiction.

Bill C-22 provides the option of a written application with evidence that can then be forwarded to the recipient's jurisdiction to be determined. The court in the respondent's jurisdiction will then request evidence, first in a written format from the respondent. If additional evidence is required from either parent, the court has the flexibility to obtain it in the most expeditious and fairest way possible. One possibility would be teleconferencing. This eliminates the present need for court hearings in both jurisdictions.

A similar variation procedure was first developed for provincial support orders and is contained in the uniform *Interjurisdictional Support Orders Act*, which has recently been adopted by most provinces and territories. The amendments proposed in Bill C-22 wish to complement that approach.

Update from the Family, Children and Youth Section (cont'd)

For more information

For more information on the Child-centred Family Justice Strategy, please visit our Parenting After Divorce section of the Department of Justice Canada's Internet site at <http://canada.justice.gc.ca/en/ps/pad>. ❖

Publications

We still have copies of the following recent publications available free of charge. To order, please call our Family Law Information Line at 1-888-373-2222 or the Department's General Inquiries Line at (613) 946-2222. These publications are also available on the Internet at <http://canada.justice.gc.ca>.

Child Access in Canada: Legal Approaches and Program Support (2002-FCY-6E) by Pauline O'Connor.

This report examines the legal approaches and program supports related to child access enforcement in Canada. (October 2002)

An Overview of the Risks and Protectors for Children of Separation and Divorce (2002-FCY-2E) by Silvia C. Bernardini and Jennifer M. Jenkins.

The purpose of this paper is two-fold: to examine the factors related to divorce that put children at risk of maladjustment and protect them from negative consequences; and to review the usefulness of available measures for assessing conflict in families experiencing parental divorce. (October 2002)

The Voice of the Child in Divorce, Custody and Access Proceedings (2002-FCY-1E) by Ronda Bessner.

This paper examines the participation of children in divorce, custody and access proceedings. (October 2002)

Family Mediation Canada Consultation on Custody, Access and Child Support (2001-FCY-11E) by Joanne J. Paetsch, B.A., Lorne D. Bertrand, Ph.D., and Joseph P. Hornick, Ph.D. (Canadian Research Institute for Law and the Family).

The purpose of this survey was to obtain feedback from mediators about their experiences with custody and access issues and the Guidelines, as well as their perceptions of the need for changes, both legislative and

otherwise, in these areas. Participants were asked to comment on issues and policy options based on their professional knowledge and experience. (February 2002)

An Analysis of Options for Changes in the Legal Regulation of Child Custody and Access (2001-FCY-2E) by Brenda Cossman.

Separation and divorce are tumultuous for children, as their parents struggle to restructure their parenting relationship. Legal conflicts over parenting arrangements can be protracted and bitter. Increasing public attention has been directed to the question of whether the current legal regime is up to the task of facilitating the restructuring of parental relationships following separation and divorce in a way that promotes the best interests of children. The objective of this research paper is to evaluate three options for reform. Option one works within the current language of custody and access. Option two proposes a neutral model of parenting responsibility and parenting orders. Option three is based on a model of shared parenting. (August 2001)

Federation of Law Societies of Canada: Consultation on Child Support Guidelines and Custody and Access (2001-FCY-10E) by Federation of Law Societies of Canada and Canadian Research Institute for Law and the Family.

The purpose of this project was to get feedback from lawyers and judges about their experiences and perceptions regarding the Federal Child Support Guidelines and the issues of custody and access. The project was undertaken by the Federation of Law Societies of Canada (FLSC) on behalf of the Department of Justice Canada. The Federation worked in partnership with the Canadian Research Institute for Law and the Family (CRILF). (August 2001)

Overview and Assessment of Approaches to Access Enforcement (2001-FCY-8E) by Dr. Martha Bailey.

The purpose of this project was to produce a comparative review of legal approaches to the problem of enforcement of access orders, and to investigate and analyze Canadian case law and legislation. (August 2001)

Update from the Family, Children and Youth Section (cont'd)

The Early Identification and Streaming of Cases of High Conflict Separation and Divorce: A Review (2001-FCY-7E) by Ron Stewart, MSW.

This paper, based on a comprehensive review of the literature, plus a series of interviews with clinicians and researchers who work with divorced families, identifies a series of risk factors that contribute to negative outcomes for many children whose parents separate and divorce. One of the risk factors for children frequently identified in studies of divorce is increased or high conflict between parents. This review summarizes the difficulties found in many other studies that try to clearly define high conflict divorces. Despite these difficulties, the research review identifies the behavioural, emotional and environmental factors most frequently connected with high conflict divorce. (July 2001)

Allegations of Child Abuse in the Context of Parental Separation: A Discussion Paper (2001-FCY-4E) by Nicolas M.C. Bala et al.

The tension, hostility and challenges that arise when parents separate are inevitably heightened if there are allegations of child abuse. If the allegations are true, the child and a supportive parent will suffer; if those allegations are improperly dismissed by the courts as unfounded, the consequences for a child and a supporting parent can be devastating. An unfounded allegation can also have very damaging consequences for a child and the wrongly accused parent. This paper reviews what is known about these very difficult cases, and how our legal and social service systems try to achieve a balance between the various rights and interests that arise. (June 2001)

Keeping Contact with Children: Assessing the Father/Child Post-separation Relationship from the Male Perspective (CSR-2000-3) by Céline Le Bourdais, Heather Juby and Nicole Marcil-Gratton.

The authors analyzed variations in the frequency of father/child contact following parental separation using data from the General Social Survey on the Family, carried out in 1995 by Statistics Canada. Separated parents replied to questions concerning the amount of time each of their children had spent with them, and with their other parent, during the year preceding the survey. This information made it possible to take into consideration men's attitudes towards, and perceptions of, their parental role. (March 2001)

Post-Separation Visitation Disputes: Differential Interventions (2001-FCY-6) by Rachel Birnbaum and Willson McTavish.

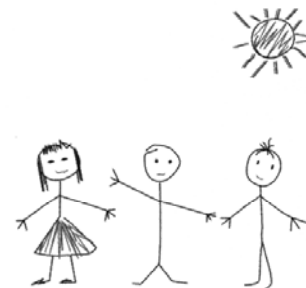
Visitation is a highly contentious issue in separation and divorce. When it is brought before the court for resolution, mental health professionals are engaged to provide "evidence" for a recommendation. The process by which evidence is obtained during the evaluation is referred to as the "custody and access assessment." The purpose of this study was to explore and examine the process and outcomes of different types of interventions in visitation disputes before the court. (March 2001)

Divorce Reform and the Joint Exercise of Parental Authority: The Quebec Civil Law Perspective (2000-FCY-3E) by Dominique Goubau.

This study describes the civil law notion of joint exercise of parental authority and provides a critical analysis of how it is applied and understood in Quebec. The purpose of this study is to determine whether, in the event of divorce reform, Quebec law offers an alternative in terms of parental roles. (February 2001)

Focus Groups on Family Law Issues Related to Custody and Access (2000-FCY-5E) by SAGE Research Corporation.

In early 2000, focus groups were conducted to explore the public's views on which "best interests of the child" criteria should be used in the reform of family law. The groups also examined the underlying values and rationales that lead the public to those choices and preferences as well as attitudes towards current "custody and access" terminology and the possible alternatives that could be used. (February 2001) ❖



Provincial/Territorial Corner

Alberta Justice

Pilot Project Updates

In Alberta, Special Incentive Funds are being used to offer two pilot projects which are intended to assist parties to resolve their differences without resorting to court proceedings. The Dispute Resolution Officer (DRO) project coordinated by the Calgary Family Law Information Centre has been operating since December 1, 2001. Senior family law lawyers volunteer one-half day every three weeks to mediate the issues in dispute between the parties. If mediation proves to be unsuccessful, the DROs provide their opinions as to the probable outcomes if disputes were to proceed to court. It is hoped that those opinions assist the parties in further settlement negotiations. The program is mandatory for parties bringing applications dealing with child support (initial applications or variations, under federal or provincial legislation), but parties may attend to deal with other family law issues by consent or upon direction from a judge.

Edmonton's Child Support Resolution (CSR) project started more recently, on September 1, 2002. The CSR project is restricted to and mandatory in cases where at least one of the parties is self-represented and the issue in dispute is child support. Unlike Calgary's project, parties may attend a CSR meeting without having filed a complete application. Due to the extremely popular response to the program and the high percentage of resolution that has resulted, approximately thirty senior family law lawyers have been recruited to volunteer their time to serve as CSR officers in addition to the two lawyers on staff in the Family Law Information Centre.

Another new undertaking which is supported by the Special Initiatives Fund is the Edmonton Court Generated Orders pilot project. Court orders are produced daily in Family Law Chambers, pertaining to all family law cases and issues, where at least one party is self-represented. This project has assisted such parties, lawyers and the judiciary to conclude matters efficiently, avoiding the need for later clarification of issues and decisions.

Alberta Justice and the Department of Justice Canada have commissioned the Canadian Research Institute for Law and the Family to conduct an evaluation of Calgary's DRO project and Edmonton's CSR project. This study is to be completed by March 31, 2003. ❖

British Columbia Ministry of Attorney General

Comprehensive Child Support Service

The Comprehensive Child Support Service (CCSS) available in Kelowna offers an array of integrated services to assist parents dealing with child support issues. This pilot project is funded by the Federal Child-centred Family Justice Fund.

The Child Support Officer plays a vital role in the CCSS by explaining the child support guidelines to parents, informing them of the financial documentation required under the guidelines, performing child support calculations, assisting with court documentation and assisting parents to reach agreement using facilitated negotiation. It is anticipated that this project will ultimately help reduce the pressure on court resources.

The Child Support Officer also manages case progress and makes referrals to other service providers participating in the project. Referrals cover issues relating to maintenance enforcement, mediation, debt counselling, legal information and advice, and parenting after separation.

An evaluation of the CCSS will be completed this fiscal year. Early indications are that parents appreciate the information and assistance available to them through the project and that the CCSS facilitates the timely resolution of child support issues.

For more information, please contact the Kelowna Comprehensive Child Support Service at (250) 712-3636 or toll-free at 1-888-227-7734. ❖

Newfoundland Department of Justice

Family Justice Services Western

Family Justice Services Western is a pilot project operating out of Corner Brook on the west coast of the province. In partnership with Community Mental Health Initiatives Newfoundland, we provide on-site education, mediation and counselling services to adults and children where applications for divorce, custody, access, child and/or spousal support have been made to the Supreme Court or the Provincial Court in the area.

Provincial/Territorial Corner (cont'd)

Newfoundland Department of Justice (cont'd)

In March 2002, with the assistance of the Department of Justice Canada, Family Justice Services Western published an easy to read Family Law Guide which provides general legal information. This guide is intended for individuals who are considering, or who have already made, an application to court for divorce, custody, access, or child or spousal support. The guide is not a substitute for legal advice from a lawyer. ❖

Attorney General of Ontario Family Responsibility Office

Enhanced Collection Agency Project (ECAP)

The Enhanced Collection Agency Project (ECAP) originally started as a pilot project in October 1998 as part of the Ontario government's strategy to utilize private sector partnerships for the collection of arrears. Since 2001, it has evolved to a three year initiative with four private collection agencies being awarded contracts through an open bidding process. The current project involves 40,000 cases where no payments have been received for at least six months and a total of \$390 million in arrears. The cases are sent to the agencies in pre-established intervals with approximately 8,000 cases in each interval.

The aim of ECAP is to improve collection of arrears for difficult to enforce cases, improve the compliance rate and establish a system to close unenforceable cases. Since the fall of 2001, the Family Responsibility Office (FRO) has sent approximately 18,000 cases and agencies have collected over \$1.8 million in arrears. An important component of the project is regular monitoring of agency performance.

The project will be evaluated to determine the effectiveness of a private sector collections approach and the results will be used to design FRO's future enforcement efforts. ❖

Yukon Department of Justice

Assessing First Nations Child Support Needs

The Yukon Department of Justice, Court Services is conducting a needs assessment to seek feedback and recommendations from Yukon First Nations on how child support information, services, and enforcement is perceived, and how these services can be more effectively communicated and provided.

Previous needs assessments of aboriginal communities in the Northwest Territories have found that the obligation to pay child support is not clearly understood. In some cases, there is no expectation by either party that child support will be paid. In some aboriginal communities, the concept of child support is generally viewed in a very negative manner. While it is possible that the experience of Yukon First Nations is similar, there is currently no research to support that assumption. Yukon Justice wants to assess the level of current awareness in First Nations about the child support guidelines and existing resources to assist parents with child support issues. The department also wants to hear new community-based ideas to increase First Nation awareness of, and client satisfaction with, child support initiatives to help separating and divorcing parents and their children.

The needs assessment process uses a variety of information gathering techniques to meet the range of literacy needs in Yukon First Nation communities, including emailed survey forms and face-to-face community meetings. Recognizing that the issue of child support touches on many complex emotional, financial and responsibility issues for parents and communities, the needs assessment aims to collect and promote information using unobtrusive and culturally sensitive methods.

A report with the findings of the needs assessment will be completed by next spring. ❖



Provincial/Territorial Corner (cont'd)

Provincial/Territorial Information

For further information on provincial or territorial child support guidelines and related programs, please call the following number within each province or territory:

Alberta

Calgary (403) 297-6600
Edmonton (780) 415-0404
Dial 310-0000 for toll-free access

British Columbia

Vancouver 1-888-216-2211
(604) 660-2192

Manitoba

Winnipeg 1-800-282-8069 ext. 0268
(204) 945-0268

New Brunswick

1-888-236-2444

Newfoundland and Labrador

(709) 729-1831

Northwest Territories

1-888-298-7880

Nova Scotia

Halifax 1-800-665-9779 ext. 2
(902) 455-3135

Nunavut

Iqaluit 1-800-792-4183
(867) 975-6137

Ontario

1-800-980-4962

Prince Edward Island

Charlottetown 1-800-240-9798
(902) 892-0853

Quebec

Communication-Québec
1-800-363-1363
Ministère de la Justice du Québec
(418) 643-5140

Saskatchewan

1-888-218-2822

Yukon

Whitehorse 1-800-661-0408 ext. 3066
(867) 667-3066

Public Legal Information and Education News

Newfoundland and Labrador

Public Legal Information Association of Newfoundland (PLIAN)

Family law continues to be the area of law in which we receive the most requests for information. PLIAN fields calls on our information line from individuals looking for family law materials and information that pertains to child custody, support and access. We also receive requests from service providers and resource centres who are looking for information on various family law issues. Important family law information is also provided through our Family Law Kits.

Recently, PLIAN visited the Straits of Labrador and conducted family law sessions. These sessions were held morning, afternoon and evening for three days. The main focus of the presentations was issues pertaining to child custody, access, separation and divorce. PLIAN was well received and there was an extensive demand for information and presentations. We provided the people of Labrador with copies of our publications, pamphlets and brochures. It is the intention that the information provided will help the people of Labrador and other service providers in Labrador to better understand the child support guidelines and processes involved.

For more information, please contact Susan Doyle, Executive Director, PLIAN at info@publiclegalinfo.com, (709) 722-2643 or (709) 722-0054 (fax). ❖

Public Legal Information and Education News (cont'd)

Manitoba

Community Legal Education Association

Thanks to the support of the Department of Justice Canada, Community Legal Education Association in Manitoba will be distributing another 500 Family Law Kits, bringing the total number of kits distributed to 1,625. These kits will contain family law and domestic violence publications produced by the Department of Justice Canada, Manitoba Justice and Community Legal Education Association, as well as a resource list and survey. Most of the kits will be distributed outside of Winnipeg.

Community Legal Education Association's Law Phone-In and Lawyer Referral Program continues to handle many calls dealing with family law issues. In 2002 we answered 2370 family law inquiries (26% of the total). Of those calls,

- ✓ 464 dealt with divorce
- ✓ 533 dealt with custody
- ✓ 269 dealt with access
- ✓ 450 dealt with child support.

The number of unrepresented litigants with family law problems has been steadily increasing. Most of these involve child support or access variation, divorce or separation.

In 2002/2003 the Speakers Bureau completed 41 speaking engagements on the following family topics: separation, custody, common law relationships, parental rights, pre-nuptial agreements, grandparents' rights. We also distributed over 7,000 copies of publications dealing with family law and domestic violence. ❖

Quebec

Éducaloi

Éducaloi's mission is to give free access to quality information written in every day language, allowing citizens to learn more on their rights and obligations. Éducaloi's web site, www.educaloi.qc.ca, offers many info-sheets regarding child support, custody and access.

During the past months, a number of new features were added to the web site:

- **Côtécour, the Quebec Superior Court, Family Practice Division:** this virtual guided tour of a courtroom explains the judicial process and its stakeholders.
- **5 new info-sheets in The Law Your Rights:** these info-sheets explain standing in the place of a parent, children's lawyers, child support for persons who have reached the age of majority, sexual assault against children, and criminal harassment.
- **Provincial Law on Civil Union:** Éducaloi modified the information on its web site to bring it into accord with the new law on civil unions.

Finally, our staff answers hundreds of questions that are sent by e-mail. ❖

