



A REVIEW OF BRIEF SERVICES IN FAMILY LAW

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TABLE OF CONTENTS

	Page
Acknowledgements	v
1.0 Introduction	1
1.1 Background	1
1.2 Purpose and Objectives	1
1.3 Methodology	1
1.3.1 Literature Review	2
1.3.2 Environmental Scan	2
1.4 Organization of the Report	2
2.0 Literature Review of Brief Services	3
2.1 Definitional Issues	3
2.2 Types of Brief Services	3
2.2.1 Information and Referrals	4
2.2.2 Advice	6
2.2.3 Parent Education Programs	9
2.2.4 Dispute Resolution Mechanisms	12
2.2.5 Duty Counsel	15
2.2.6 Limited Scope Retainers	16
3.0 Environmental Scan of Brief Family Law Services in Alberta	19
3.1 Information and Referrals	19
3.1.1 Family Law Information Centres (FLIC)	19
3.1.2 Intake Services	20
3.1.3 Edmonton Community Legal Centre Family Law Information Sessions	21
3.1.4 The Family Law Project	21
3.1.5 Dial-a-Law	22
3.1.6 Community Information Session: Family Law 101	23

3.2	Legal Advice	23
3.2.1	Legal Clinics.....	23
3.2.2	Legal Services Program.....	24
3.2.3	Do Your Own Divorce Clinics	25
3.2.4	Legal Advice Clinic.....	25
3.2.5	Student Legal Assistance	26
3.2.6	Central Alberta Community Legal Clinic	26
3.2.7	Grande Prairie Legal Guidance Clinics	27
3.2.8	Lethbridge Legal Guidance Clinics	28
3.3	Parent Education Programs.....	28
3.3.1	Parenting After Separation	28
3.3.2	Parenting After Separation for High Conflict Families	29
3.3.3	Focus On Communication in Separation.....	30
3.4	Dispute Resolution Mechanisms	31
3.4.1	Brief Conflict Intervention (Provincial Court).....	31
3.4.2	Dispute Resolution Officer / Child Support Resolution Officer	32
3.4.3	Family Mediation Services.....	33
3.4.4	Caseflow Conference.....	34
3.4.5	Court Counsellors	35
3.5	Duty Counsel	35
3.5.1	Duty Counsel Program	35
3.6	Limited Scope Retainers.....	36
3.6.1	Limited Scope Representation	36
4.0	Conclusions and Recommendations for Best Practices of Brief Services.....	37
4.1	Introduction	37
4.2	Conclusions.....	37
4.3	Recommendations.....	40
	References	43

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1.0 INTRODUCTION

1.1 Background

The term “brief services model” usually refers to situations where parties in need of legal services receive some assistance and advice from a lawyer but essentially manage their legal issues on their own. This is sometimes referred to as “unbundling” or “limited scope retainers” and is receiving much attention among family law practitioners as a helpful service model for those who cannot afford to retain counsel to manage their issue from start to finish. Numerous programs using variations of the brief services model (which can range in length of service from 15 minutes to 10 hours) have been developed and funded despite the fact that there is little research information that supports the effectiveness of these models. Given the lack of research information, the Canadian Research Institute for Law and the Family, with funding support from the Alberta Law Foundation, conducted this review to identify best practices in the provision of brief legal services in family law matters.

1.2 Purpose and Objectives

The purpose of this project was to identify best practices in the provision of brief services in the family law area to enable agencies in Alberta to provide more effective legal information and advice to those Albertans who cannot afford to retain counsel for the entire length of time that may be required to resolve their legal issues. Specifically, this project had the following objectives:

- (1) To review the current literature on brief services in family law matters in Canada and internationally;
- (2) To identify agencies and organizations in Alberta that provide brief services in family law matters; and
- (3) To make recommendations regarding best practices in the provision of brief services in family law matters.

1.3 Methodology

This project involved two methodologies: an international literature review, and an environmental scan of brief services programs in Alberta.

1.3.1 Literature Review

The literature review was conducted using both academic databases and online search engines, yielding a combination of academic (published) and gray (informally published) material. Research studies were reviewed to examine emerging trends, issues, and best practices in brief services models in family law matters. The literature review also examined unbundling of family law legal services, including the advantages and concerns regarding this form of service delivery, as well as current best practices.

1.3.2 Environmental Scan

Based on information acquired from the literature review and internet searches, the researchers identified a number of agencies and organizations in Alberta that provide brief services in family law. Using the information available (e.g., websites, annual reports, articles, evaluation materials), profiles of each program were developed including the name of the organization, length of service offered, cost, location, contact information, nature of brief services provided, target clientele, other relevant information, and evaluation findings if available.

1.4 Organization of the Report

Chapter 2.0 of the report presents findings from the literature review of brief services in family law matters in Canada and elsewhere, and Chapter 3.0 presents the results of the environmental scan of brief services in family law matters in Alberta. The findings from the literature review and the environmental scan are discussed in Chapter 4.0, and recommendations are made regarding best practices for brief services models in family law matters.

2.0 LITERATURE REVIEW OF BRIEF SERVICES

2.1 Definitional Issues

The term “brief services model” does not have a specific definition, and therefore what constitutes a brief service varies considerably among organizations. As discussed in the next section, a brief legal service can range in duration from 15 minutes to 10 or more hours, depending on the type of services provided. These variations make it difficult to assess whether the “brief services model” works. In the following section, we present findings from evaluation studies of specific brief services that show some brief services do work, while others do not.

It may be more useful way to describe brief services in terms of what it is not, i.e., a complete representation of the party from the start to the resolution of a legal issue. Access to justice, particularly within family law, has been recognized as a serious problem in Canada. The family justice system is seen as being too complex, too slow, and too expensive.¹ In *Meaningful Change for Family Justice: Beyond Wise Words*, the Family Justice Working Group acknowledged that “access to lawyers and to legal advice is an important element of access to justice,” and made several recommendations specific to service delivery.²

The lack of access to affordable legal advice and representation was also identified in the Alberta Legal Services Mapping Project as a barrier to accessing legal services and the resolution of legal issues. The majority of services mapped in the project only provided public legal education and information, and most advice or representation services were either brief or had low-income or other eligibility criteria.³ The brief services model has arisen as a way to address the service delivery problem by providing limited services to the public in a cost-effective and efficient manner.

2.2 Types of Brief Services

While the specific programs offered by organizations vary considerably by service provider and jurisdiction, the types of brief services offered can be generally categorized as follows: information and referrals; legal advice; parent education

¹ Action Committee on Access to Justice in Civil and Family Matters, 2012, 2013; Canadian Bar Association, 2013.

² Action Committee on Access to Justice in Civil and Family Matters, 2012, p. 41.

³ Stratton, 2011.

programs; dispute resolution services; duty counsel; and limited scope retainers or unbundled legal services offered by private lawyers. These types of services are described below and examples of programs under each category are provided. Where available, evaluation results of specific programs are presented.

2.2.1 Information and Referrals

The dramatic rise in self-represented litigants⁴ has created a need for easily-accessible public legal information.⁵ In addition to self-help services (such as legal information websites⁶), this category of brief services includes family law information centres, which are often government-run and provide information on a variety of family law topics, but not legal advice. Court forms for most family law applications are available at these centres, and assistance is provided in completing the forms. The brief services provided by Alberta's Family Law Information Centres (FLICs) are outlined in Section 3.1.1.

In 2012, the Canadian Research Institute for Law and the Family conducted a study to examine clients' experiences with accessing Calgary's Family Justice Services (FJS), including FLIC.⁷ The study found that a substantial majority of the clients did not have a lawyer at the time of their visit to FJS. This is not surprising since one of the goals of FJS is to provide assistance to self-represented parties. Over one-half of survey respondents indicated that they had made use of one or more FJS services prior to their current visit, suggesting that clients find the services offered by FJS useful and that they are willing to visit the centre multiple times as their needs change while moving through the legal process. Most commonly, clients said that they were looking for general information or assistance with completing forms during their visit to FJS. Overall, clients were very positive about their experience during their visit to FJS and expressed very high levels of satisfaction.

⁴ It has been argued by some authors and agencies (e.g., Law Society of Upper Canada, 2008) that a distinction should be made between "unrepresented" and "self-represented" parties. According to this argument, unrepresented litigants refer to those individuals who do not have legal representation because they have no choice, usually due to financial reasons, while self-represented litigants do not have legal counsel because they have made the choice not to. It is often difficult to distinguish between these two groups, and in this report, the term "self-represented" is used to describe litigants who do not have a lawyer for any reason (see Birnbaum, Bala, & Bertrand, 2013 for a discussion of this issue).

⁵ Bertrand, Paetsch, Bala, & Birnbaum, 2012; Gray, 2013; Hilbert, 2009; Lande, 2012.

⁶ See, for example, Alberta's A-Link, an online directory designed to provide quick and easy access to information on law-related programs and services in Alberta (<http://www.acjnet.org/alink/>), and John-Paul Boyd's popular Wikibook, which provides practical, in-depth coverage of family law and divorce in British Columbia (http://wiki.clicklaw.bc.ca/index.php/JP_Boyd_on_Family_Law).

⁷ Bertrand & Paetsch, 2012.

In New Brunswick, the Family Law Information Centre is located at the courthouse and provides in-person and telephone assistance to people with family law matters. While it was created to provide information to users of the Court of Queen's Bench, Family Division, it was designed with the general needs of unrepresented litigants in mind.⁸ In addition to providing general information on the family law process and resources available, the FLIC assists clients with completion of court forms. Clients can call or visit in person, and a computer workstation is available for public use. Prairie Research Associates evaluated the FLIC in 2012 as part of the evaluation of the Saint John Family Law Pilot, and found that it provided a daily average of 26 telephone and in-person assists. Key informants reported that the main users of FLIC were unrepresented litigants, and both clients and key informants reported positively on the helpfulness and usefulness of the FLIC services. Almost all clients said the assistance they received was very helpful (61%) or somewhat helpful (32%), and almost all said they would use the service again if needed (90%) and would recommend the service to others (95%).

The BC Supreme Court Self-Help Information Centre (SHC) opened as a one-year pilot in Vancouver in 2005. The project was designed to be a "self-help centre for unrepresented litigants that would facilitate access to justice by offering advice, information, and education about procedures in the Supreme Court of British Columbia."⁹ An evaluation of the SHC after its first year of operation found that 85% of the visitors to the Centre were "brief service" users, defined as only requiring up to 15 minutes of staff time ("full service" users were defined as requiring more than 15 minutes of staff time, and "frequent" users were those whose use of the Centre was ongoing). The most common brief services provided were referrals, followed by distribution of blank court forms, providing directions, and directing people to Centre computers.¹⁰ The evaluators concluded that the SHC was highly effective in satisfying user needs and helped users to prepare themselves for court. The evaluation also demonstrated that the Centre was effective in connecting users to appropriate services, and was viewed by other service providers as facilitating referrals. The greatest unmet need identified in the evaluation was the availability of legal advice.

⁸ Prairie Research Associates, 2012.

⁹ Malcomson & Reid, 2006, p. 5; see also <http://www.supremecourtselfhelp.bc.ca/>.

¹⁰ Malcomson & Reid, 2006.

2.2.2 Legal Advice

Included in this category are legal help lines, which can provide legal information, advice and referrals. Alberta's Law Line, for example, is a telephone-based program that was launched in 2004 to help Albertans overcome barriers to access such as delay, lack of awareness or understanding of the legal system, and affordability. It provides advice to individuals who meet Legal Aid Alberta's financial eligibility criteria, as well as legal information and referrals to the general public.¹¹ While legal help lines have the advantage of reaching rural and northern areas, research has shown that they are most effective when accompanied by ongoing support.¹²

A number of organizations offer brief legal advice on family law issues from volunteer lawyers. Calgary Legal Guidance, for example, operates evening clinics and partners with other agencies to offer pro bono summary legal advice to their respective members (see Section 3.2.1). In British Columbia, Access Pro Bono uses volunteer lawyers to provide summary legal advice (up to one-half hour) to low- and modest-income clients on a wide range of legal issues, including family law matters.¹³

Two such services in British Columbia were recently evaluated by Focus Consultants.¹⁴ The Family LawLINE is a telephone advice service by lawyers for individuals who do not qualify for and/or cannot access other services. Out of Court Advice Lawyers are available at family justice counsellors' (FJC) offices around the province to help clients by giving independent legal advice about agreements reached through a process of mediation with FJCs, but cannot provide assistance in court. Clients receive up to three hours advice for each new family matter if financial eligibility requirements are met, or up to one hour if they are not financially eligible but are attempting to negotiate an agreement. The evaluators conducted telephone interviews with former clients of both services approximately one year later and found that in almost three-quarters of the cases the issues were completely resolved (71% for Family LawLINE; 70% for Out of Court Advice Lawyers). Client satisfaction with the outcome was high for both services; 84% of Family LawLINE clients were mostly or completely satisfied compared to 76% of Out of Court Advice Lawyers clients.

In New Brunswick, the Family Advice Lawyer (FAL) service is available to parties at no charge and with no financial eligibility criteria. Parties can meet with a

¹¹ The service was transferred to the Edmonton Legal Services Centre in April 2010 with the amalgamation of Legal Aid Alberta's Edmonton Regional Office and Alberta Law Line.

¹² University of Toronto Faculty of Law, 2011.

¹³ <http://accessprobono.ca/node/137>

¹⁴ Focus Consultants, 2012.

FAL for up to 60 minutes, and two parties with a common dispute are each entitled to 60 minutes with different FALs. FALs can advise clients on court forms and documents, provide guidance on completing forms, review clients' pleadings, and answer general family law or court process questions. The program was evaluated in 2012, and the evaluators found that FAL is perceived as proving useful and helpful information.¹⁵ Both key informants and survey respondents reported that FAL assisted litigants with understanding their family law issues and the court process, as well as information on the completion of forms and what documents were needed. The majority of clients (70%) used the service to have their court forms reviewed for completeness. Over half of the clients found the service very helpful, and almost one-third found it somewhat helpful. Almost all clients (93%) said they would use the service again and would recommend it to others. However, several key informants commented that 60 minutes was insufficient time, and that clients would use up their time early in the process and could not return for specific information.

The current trend to serve a wider population by limiting service is not fully supported in the literature. Robert Bickel argues that "when the legal services community attempts to help more clients by limiting the services available to those clients, more clients are served, but fewer clients are served well."¹⁶ He claims that members of the low-income community are more likely to have mental or physical disabilities, lack education or belong to an oppressed group, and therefore require full representation to enforce their rights because they are less able to function well within the court system. Using telephone hotlines as an example, Bickel cites an American study by Echols and Gordon¹⁷ that surveyed over 2,000 hotline callers and found that almost one-half of the clients had an unfavourable outcome, or resolution, as determined by comparing what the client wants with the result obtained in combination with the authors' independent legal judgement. To improve the quality of hotlines, Echols and Gordon recommended that hotlines follow-up with clients who are likely to face obstacles, provide more brief services such as writing letters or making phone calls on behalf of clients, and send written materials to more clients. As Bickel states, "In short, to solve the problems they found with regard to hotlines, they propose providing a modestly higher level of services for fewer clients."¹⁸

Bickel also argues that a triage system, in which an assessment is made of the client's objectives and the assistance necessary to meet them, does not work because it is

¹⁵ Prairie Research Associates, 2012.

¹⁶ Bickel, 2006, p. 333.

¹⁷ Echols & Gordon, 2003.

¹⁸ Bickel, 2006, p. 360.

difficult to triage a client in an in-person interview. Bickel asserts that to triage such a client over the phone is not only difficult, it's dangerous.¹⁹ He states that triage requires a lawyer to separate out clients who will have trouble protecting their rights from those who are more likely to succeed without full representation, but very few clients will present such barriers over the phone. Bickel recommends, "In the face of scarce resources, the legal services community should give up on the goal of providing greater access, which must occur at the cost of providing less representation, and limit the number of clients to those it can serve fully."²⁰

The Family Law Clinic in Salt Lake City is a brief advice clinic that provides two hours of service twice monthly out of a courthouse. Legal services are provided by volunteer pro bono lawyers and volunteer law students. A recent evaluation of the clinic found that most of the clients were female (63%) and predominately low income (86%). Further, the majority of clients' problems were complex -- not simple and uncontested matters -- and most clients had more than one legal concern.²¹ While clients' overall satisfaction ratings were extremely high immediately following their consultation, clients were less positive in the follow-up survey two to three months later. The authors suggest that "the warm glow of thanks for having been heard and advised may wear off as unrepresented parties have difficulty carrying their cases forward,"²² and caution that the legal community must not assume that brief advice is enough.

The evaluators examined which types of cases resulted in higher satisfaction levels, and found that legal issues with clear guidelines such as child support were more successful than legal issues on which the courts have more discretion (e.g., custody and alimony). Clients were also less satisfied when trying to enforce an order.²³

In terms of types of assistance received, in the exit survey administered immediately following the consultation, clients most appreciated referrals to legal aid agencies and receiving forms for completion, and gave the receipt of general information about the law, legal rights and responsibilities an average rating. In the follow-up survey, however, the referrals to the legal aid agencies and the forms were found to be unhelpful, while the general information received was considered the most valuable service. Clients also valued the assistance they received in understanding a

¹⁹ Bickel, 2006.

²⁰ Bickel, 2006, p. 374.

²¹ Smith & Stratford, 2012.

²² Smith & Stratford, 2012, p. 213.

²³ See Boyd, 2013, for the views of the family law bars of Alberta, Nova Scotia and Ontario on enforcing orders for access.

legal document more highly at the follow-up than they did immediately following the consultation, and the provision of particular advice about what to do was highly valued in both the exit and follow-up surveys. The evaluators suggested that a brief advice clinic may be most productive for clients who have concrete questions about legal documents, indicating that the involvement of expert family law practitioners is important for the success of brief advice clinics.

In terms of overall satisfaction, the poorer the client, the less satisfied he/she was with the clinic. Also, the better educated clients were more likely to recommend the clinic to others than were the less-educated clients. These findings suggested that “brief advice clinics may be most helpful for those who need them least and least helpful to those who have no ability to hire an attorney,”²⁴ and therefore clinics should be conducted in ways that maximize helpfulness to the poor.

The evaluators concluded:²⁵

...the low income litigants have complex, serious, and contested matters. Our lawmakers should act to make the legal standards for particular relief as clear and concrete as possible. Our courts should act to make forms maximally intelligible and comprehensively available. The bench and bar must provide additional assistance for pro se²⁶ parties beyond occasional brief advice if they are to competently present their cases to the courts and access justice.

2.2.3 Parent Education Programs

In quite a few places in Canada, including Alberta, there are education programs for separating parents. The programs are intended to provide parents with information about the effects of separation and parental conflict on children, and some of the more ambitious programs help parents to develop better communication skills. The programs vary in length, with the longer programs doing more skills development work. Separated parents typically do not attend together, and in many jurisdictions (including Alberta, Saskatchewan, and British Columbia) parents are required to attend the course before they can proceed with litigation.²⁷ In 1999, the Canadian Research Institute for Law and the Family conducted an evaluation of Alberta’s Parenting After

²⁴ Smith & Stratford, 2012, p. 214.

²⁵ Smith & Stratford, 2012, p. 215.

²⁶ Latin for “for oneself, on one’s own behalf.” When a litigant proceeds without legal counsel, they are said to be proceeding “pro se.”

²⁷ Paetsch, Bertrand, Young, Monna, Bala, & Hornick, 2007.

Separation (PAS) Seminars, a 6-hour parent education program offered by Alberta Justice (see Section 3.3.1).²⁸ PAS is mandatory for parents who are applying for parenting, custody or access orders in the Court of Queen's Bench. The objectives of PAS are to:

- provide information about stages and experiences of separation and its effects on both parents and children, changes in family relationships, ways to communicate effectively, legal aspects of separation and divorce, parenting plans, and mediation;
- encourage parenting plans to resolve disputes between the parents on how their children are to be cared for; and
- promote mediation as a way to help parents resolve the parenting issues in disputes between them and develop a parenting plan.

Findings of the evaluation indicated that participants found the information provided highly valuable, and that the seminars were both relevant and useful. Alberta Justice has also instituted a High Conflict PAS course (see Section 3.3.2), a version of which is being implemented in Nova Scotia. High Conflict PAS is mandatory for all case-managed cases in Calgary and Edmonton.

Another spin-off of PAS is the Focus on Communication in Separation (FOCIS) program, which is offered by Alberta Justice and is targeted to high conflict families (see Section 3.3.3). In its review of high conflict intervention programs in Alberta,²⁹ the Canadian Research Institute for Law and the Family found that almost all FOCIS participants would recommend the course to others and that the course would help them to reduce negative conflicts with the other parent in the future. Stakeholders who were surveyed about FOCIS overwhelmingly agreed that FOCIS is effective in reducing conflict, and the vast majority of respondents agreed that FOCIS saves court and clients time and costs. Over three-quarters of respondents agreed that FOCIS helps to settle cases in both the short term and long term.

A multi-site Canadian research study conducted in 2004 suggests that parenting education programs have a significant positive effect on low and moderate conflict parents, in terms of reducing conflict and improving co-operation and communication,

²⁸ Sieppert, Lybarger, Bertrand, & Hornick, 1999.

²⁹ Paetsch et al., 2007.

with less positive impacts on high conflict families.³⁰ The researchers did find, however, that high conflict parents had greater levels of satisfaction with custody/access issues following completion of the course; an important finding given that high conflict parents are often viewed within the legal community as difficult and unlikely to benefit greatly from these courses.

A recent evaluation of the effectiveness of a parenting education program in England and Wales, the Separated Parenting Information Programme (PIP), found that its impact has been disappointing.³¹ PIP is the first nationally-available parenting education program for parents involved in litigation over contact and residence in England. It is a court-referred four-hour program for parents, and both parties are required to attend the program. Groups involve both men and women, but former couples attend separate groups. The program encourages parents to focus on children's needs and perspectives, and is delivered by trained providers from mediation, counselling or contact services backgrounds. The evaluation study involved a telephone survey of PIP and non-PIP parents, follow-up interviews with parents reporting positive and negative outcomes from PIP, focus groups with attendees, and focus groups with key informants. Parents were generally supportive of attending a parent education program, and were positive about the purpose of the course, as well as how it was facilitated. While PIP had a positive impact on contact rates by converting "no contact" into some, but not frequent, contact, it did not seem to have an impact on parental relationship quality, nor did it seem to reduce the extent of court involvement in cases compared to non-PIP pathways.

The evaluators suggest that the limited impact may be due to several factors: they are difficult cases; the program occurs late in the process when habits of hostility and distrust may be ingrained and difficult to alter; the program is short, with only generic aims and no specific behavioural skills element; and there is no follow through as the cases go back to the court process. The evaluators made the following recommendations to maximize the effectiveness of PIP:³²

- PIP should be made available at an earlier stage. This should be as voluntary self-referral and also linked with mediation as a mandatory step before proceedings in appropriate cases.
- More effective and systematic screening and assessment is required whether PIP is used during or before proceedings.

³⁰ Bacon & McKenzie, 2004.

³¹ Trinder, Bryson, Coleman, Houlston, Purdon, Reibstein, & Smith, 2011.

³² Trinder et al., 2011, p. 8.

- More attention needs to be paid to ensuring that all parents have full, clear and accurate explanations about PIP before attending the course.
- The programme aims and content should be reviewed. The aims should be clearer and more targeted. More skills development is needed. The programme should be more clearly focused on post-separation parenting challenges.
- A suite of programmes is required to address very different needs, including programmes for working with high/entrenched cases and domestic violence programmes to set alongside the basic PIP programme.
- More effective mechanisms need to be set in place to follow up after PIP and to provide a bridge between parents and between PIP and the dispute resolution process.
- The PIP and associated material should be more widely available.
- Mechanisms are required for practice and professional development amongst PIP providers.

In a follow-up study, two of the authors further explored the significance of the findings by examining them in the light of psychological research and in the context of general trends in the family justice system.³³ They found that it is important to be mindful of the gap between the needs of the parents and the nature of the course, and suggested that two broad changes of approach are required. First, the course needs to be more specifically focused on conflict resolution and communication skills. Second, the course needs to be part of a more comprehensive intervention strategy, capable of responding to the complex needs of individual parenting disputes.

2.2.4 Dispute Resolution Mechanisms

Alternative dispute resolution programs are designed to help parties (both represented and unrepresented) resolve issues and avoid going to court. Mediation is one of the most common dispute resolution mechanisms, and is intended to help parents to negotiate their own plans to care for their children after separation. Mediation can also help parents to develop the ability to better communicate with one another. Mediation is provided by professionals in private practice in most places in Canada, and in some jurisdictions parents are obliged to attend at least one session with a mediator to learn about the process before proceeding to court, with exceptions for cases where there are domestic violence concerns.³⁴

³³ Smith & Trinder, 2012.

³⁴ Department of Justice Canada, 2006.

In British Columbia, the Child Support Eligibility Mediation Project, a collaboration between the Mediate BC Society and the British Columbia Ministry of Justice, gave parents and adult children involved in the BC maintenance enforcement system an opportunity to mediate issues around how the parents would continue to support the child past the age of 19, usually as the adult child pursued post-secondary education.³⁵ The project provided up to six hours of free mediation service to 50 families with children aged 19 or over to help families determine how much child support should be provided for the adult child's post-secondary education. The mediations were conducted by six experienced family law lawyer/mediators, and the child's participation was central to the process. The services included pre-mediation sessions between the mediator and each parent and child, followed by joint or shuttle mediation sessions and post-mediation negotiations. The evaluator found that two-thirds of the cases mediated resulted in an agreement between the parties, and one-third of the cases were settled in less than three months.³⁶ Interestingly, 90% of the mediations were conducted over distance, primarily by teleconference, which had both advantages and disadvantages. Parents liked the convenience of being in their own home and not having to be in the same room as the other parent, and scheduling sessions was easier. However, both parents and mediators found it harder to do the "emotional work" such as rapport building and picking up on sensitive issues. Settlement was more likely when the adult children had clear plans and demonstrated responsibility.

Another common dispute resolution mechanism is the use of dispute resolution officers (often volunteer family law lawyers) to conduct settlement conferences on family law issues such as child support. Examples of this type of program are Calgary's Dispute Resolution Officer (DRO) program, and Edmonton's Child Support Resolution (CSR) Officer program (see Section 3.4.2). Both programs allow parties who want to apply for or change their child support to meet together with a senior family law lawyer for one hour. The lawyer will discuss the matter with the parties, assess the state of their financial disclosure, describe the requirements of the Child Support Guidelines and help parties resolve their dispute using interest-based mediation skills. If the parties are able to reach an agreement, a consent order can be prepared so that the parties can finalize the matter without going to court. If the parties are not able to resolve their issues, the lawyer will give them instructions about their next steps and may discuss with them what will happen in court.

³⁵ Vander Veen, 2013.

³⁶ Vander Veen, 2013.

An evaluation of these programs as pilot projects found that both programs were successful.³⁷ Based on feedback from the program personnel, court officials, family law lawyers, family court judges, community representatives, and clients, the DRO and CSR meetings were described as effective and valuable in assisting parties to settle or narrow family law disputes. Further, almost all key informants thought that the project reduced the court's caseload and time. The easily accessible and simple process for self-represented applicants dealing with child support issues suggested that access to justice was enhanced for those individuals who could not otherwise afford legal assistance. The evaluation did recommend that longer meeting times such as one and one-half hours instead of one hour might more effectively address more complicated issues or cases involving more than one issue. It was also suggested that to enhance long-term sustainability, means by which the volunteer lawyers providing the service could be rewarded should be explored.

The Canadian Research Institute for Law and the Family conducted an evaluation of a similar program in Saint John, New Brunswick – the Child Support Variation Service (CSVS).³⁸ The CSVS was developed to serve individuals who want to vary the amount of an existing child support order or to deal with other child support-related issues such as special or extraordinary expenses and arrears if they are relevant to the child support variation application. Attendance at a CSVS meeting was mandatory and had to be completed prior to an appearance before a judge to hear the motion. Meetings were scheduled in one-hour blocks; however, if progress was made on a case but it was not resolved during the one-hour meeting, parties could request to adjourn to another CSVS meeting. The evaluation found that the CSVS program was successful, and issues were settled in two-thirds of the cases. Findings suggested that there was a reduction in the number of cases going to court, and all key informants thought that the project reduced the court's caseload and time. Some key informants thought that other family law issues could be dealt with using the CSVS model, but it was recognized that doing so would necessitate longer meetings. The CSVS has since been incorporated in the Saint John Family Law Pilot, and the service is provided through a case conference.³⁹

³⁷ Gomes, Paetsch, Bertrand, & Gee, 2003.

³⁸ Bertrand & Paetsch, 2004.

³⁹ Hackett, 2012.

2.2.5 Duty Counsel

As defined by Alberta Courts,⁴⁰ duty counsel are:

lawyers or articling students who will give you brief legal advice and/or help you with your court application. Duty counsel do not represent you and may help both parties.

Due to the increased number of self-represented litigants in family court, Legal Aid Alberta has recently begun providing duty counsel service for family law matters in Calgary, Edmonton, and Wetaskiwin. In some jurisdictions, litigants must meet certain financial eligibility to qualify for duty counsel services in family court.⁴¹

In British Columbia, Family Duty Counsel (FDC) are private lawyers who are contracted by the Legal Services Society of BC to provide services in provincial and supreme courts.⁴² They give legal advice to unrepresented parties with family law and child protection issues and can also assist parties in Chambers with uncontested matters. They can help draft or review documents and negotiate issues, but cannot represent clients at trial. The FDC was one of the family legal services evaluated by Focus Consultants in 2012.⁴³ Using telephone interviews with former clients, the evaluators found that issues were completely resolved in 75% of the cases, and 76% of the clients were mostly or completely satisfied with the outcome. For cases that were resolved, one-third were resolved by consent (in court or by a written agreement), and over half were resolved after a court hearing. When asked how helpful the service was in getting the client closer to a resolution, clients gave Family Duty Counsel a rating of 3.8 on a 5-point scale.

Duty counsel in Ontario has seen a vast improvement in both quantity and quality over the last decade.⁴⁴ In his review of the legal aid system in Ontario, Michael Trebilcock reported that Legal Aid Ontario has quadrupled the complement of staff duty counsel in both criminal and family courts over the past eight years.⁴⁵ In 1999, Legal Aid Ontario implemented Family Law Expanded Duty Counsel (EDC) pilot projects in three locations in Ontario. Depending on financial eligibility, family duty counsel can advise individuals about family law issues, provide information on basic

⁴⁰ <http://www.albertacourts.ab.ca/fjs/definitions.php#Duty-Counsel>.

⁴¹ University of Toronto Faculty of Law, 2011.

⁴² Focus Consultants, 2012.

⁴³ Focus Consultants, 2012.

⁴⁴ University of Toronto Faculty of Law, 2011.

⁴⁵ Trebilcock, 2008.

court procedures, help negotiate and settle issues, review or prepare court documents to be filed, and provide assistance in the courtroom.⁴⁶ An evaluation of the EDC conducted in 2002 found that there were fewer adjournments and more settlements at earlier stages in the proceedings for EDC clients. In his report, Trebilcock recommended that Legal Aid Ontario should “explore the potential for duty counsel to provide more, and more varied, pre-litigation services, especially in family law.”⁴⁷

2.2.6 Limited Scope Retainers

While not new, limited scope retainers, or “unbundled legal services” have been receiving a lot of attention in the literature. What is new, according to Forrest Mosten,⁴⁸ one of the earliest writers on limited scope retainers, is the “mind-set of lawyers to proactively make such limited services available and to tell Jane Q Public how to get them.” The Law Society of Upper Canada offers the following definition:⁴⁹

Unbundling of legal services refers to the provision of limited legal services or limited legal representation. It is the concept of taking a legal matter apart into discrete tasks and having a lawyer or paralegal provide limited legal services or limited legal representation, that is, legal services for part, but not all, of a client’s legal matter by agreement with the client. Otherwise, the client is self-represented. Some common services involve lawyers or paralegals:

1. Providing confidential drafting assistance,
2. Making limited appearances in court as part of the limited scope retainer,
3. Providing legal information and advice under a limited scope retainer, and
4. Providing legal services at a court-annexed program, or through a non-profit legal service program.

Unbundled legal services have been used successfully in the United States since the 1990s, and many US states have modified their rules of court and lawyer codes of conduct to accommodate limited scope retainers and provided lawyers with guidelines and training on the effective provision of limited-scope retainers.⁵⁰ One of the major

⁴⁶ http://www.legalaid.on.ca/en/getting/dutycounsel_family.asp

⁴⁷ Trebilcock, 2008, p. 84.

⁴⁸ Mosten, 2002, p. 15.

⁴⁹ Law Society of Upper Canada, 2010.

⁵⁰ University of Toronto Faculty of Law, 2011.

advantages of unbundled legal services is to provide at least some legal services for those who simply cannot afford full representation by a lawyer and do not meet eligibility guidelines for legal aid coverage.⁵¹ These factors, coupled with the assistance now available for self-represented litigants, makes limited scope retainers an attractive option for clients. From the lawyer's perspective, the advantages of unbundled legal services include the following: it is much less stressful for a lawyer to take on a discrete task on a file rather than the whole retainer; lawyers can avoid court if they do not wish to be litigators; and lawyers can control their own agenda and work hours.⁵²

According to Marie Gordon in a recent article,⁵³ concerns about a reduction in ethical standards were inevitable in the beginning, but have largely proven to be unfounded. Nova Scotia has recently updated its Barristers' Society Code of Professional Conduct to introduce specific rules for lawyers providing limited representation, as well as to provide additional guidance on ethical and competence questions that may arise.⁵⁴ Similar rules are already in place in Alberta, British Columbia, Manitoba and Ontario. The Federation of Law Societies of Canada's Model Code of Professional Conduct recommends the following regarding limited scope retainers:⁵⁵

Before undertaking a limited scope retainer the lawyer must advise the client about the nature, extent and scope of the services that the lawyer can provide and must confirm in writing to the client as soon as practicable what services will be provided.

On October 3, 2013, the Benchers of the Law Society of Alberta passed amendments to its *Code of Conduct*, intended to heighten the awareness and use of the limited scope retainer.⁵⁶ The amendments are similar to those adopted by the Law Society of Upper Canada and the Federation of Law Societies of Canada, and are intended to confirm existing standards and practices.

Jeanette Fedorak recommends the following best practices for lawyers to ensure that lawyers are providing the best possible service to their clients:⁵⁷

⁵¹ Fedorak, 2013; Gordon, 2013; Macfarlane, 2013.

⁵² Gordon, 2013.

⁵³ Gordon, 2013.

⁵⁴ Nova Scotia Barristers' Society, 2013.

⁵⁵ Federation of Law Societies of Canada, 2012, p. 22.

⁵⁶ Carruthers, 2013, pp. 12-13.

⁵⁷ Fedorak, 2013.

- Lawyers should conduct a thorough initial interview to assess the legal issues in the case, the client's ability to represent themselves, and their ability to work together;
- Lawyers should ensure a clear mutual understanding of the scope of the work – limitations on scope must be informed and in writing, and should clearly state who is responsible for particular tasks;
- Lawyers should stick to offering services in areas of the law in which they are knowledgeable.
- Lawyers should explain to clients the importance of obtaining all facts relevant to the client's problem on an ongoing basis to enable them to provide competent services.
- If additional issues are identified by the lawyer, the lawyer should raise them with the client.

3.0 ENVIRONMENTAL SCAN OF BRIEF FAMILY LAW SERVICES IN ALBERTA

This chapter presents the findings from the environmental scan of brief family law services in Alberta. Programs are listed by general category, and include the name of the organization providing the service, the length and cost of the service, as well as a description of the program. Where available, evaluation results are summarized.

3.1 Information and Referrals

3.1.1 Family Law Information Centres (FLIC)

Organization: Alberta Family Justice Services

Length of Service: Varies

Cost of Service: No charge

Description:⁵⁸ Family Law Information services are provided at various locations throughout Alberta. Staff at these locations help the public (including self-represented individuals), the legal community, the judiciary and government offices/agencies, by providing the following: general information about family law; plain language explanations of court procedure; court forms for most family law applications in either the Court of Queen's Bench or the Provincial Court; help in making sure that the court forms are properly filled out; and Child Support Guidelines calculations to self-represented litigants and to the judiciary. Information is offered on many topics relating to family law, including:

- Child support
- Spousal/partner support
- Maintenance enforcement
- Child custody/access or parenting time
- Guardianship of or contact with a child
- Enforcement of time with a child
- Inter-jurisdictional support issues
- Divorce and corollary relief proceedings
- Family violence restraining/protection orders

⁵⁸ Information in this section is from: <http://www.albertacourts.ab.ca/fjs/flic.php>.

Court forms and instructions are available for applications:

- for custody, access, child or spousal support (or to change those Orders) under the Divorce Act;
- for any relief under the Family Law Act;
- to apply for or change support under the Interjurisdictional Support Orders Act; and
- for many other types of family law matters.

The staff at Family Justice Services are not lawyers and cannot give legal advice or an opinion about what the court would do in a particular case. Family law information is provided in centres in Calgary, Edmonton, Grande Prairie, Lethbridge, Medicine Hat, and Red Deer.

Evaluation: In 2012, the Canadian Research Institute for Law and the Family examined clients' experiences with accessing Calgary's Family Justice Services, including FLIC. Overall, clients were very positive about their experience with FLIC and expressed very high levels of satisfaction.

3.1.2 Intake Services

Organization: Alberta Family Justice Services

Length of Service: Varies

Cost of Service: No charge

Description:⁵⁹ Intake services are provided by appointment to help with parenting, guardianship or contact. The services include the following:

- Information on options and services for resolving family issues
- Referrals to services and programs including mediation
- Information on the effects of separation and divorce on children
- Help with choosing and filling out court forms to make court applications such as parenting, guardianship, contact, including grandparent contact, or enforcement of parenting or contact orders
- Help with arranging court dates

⁵⁹ Information in this section is from: <http://www.albertacourts.ab.ca/fjs/intake.php>.

At least one of the parties must live in Alberta. Intake Services are provided in centres in: Calgary, Camrose, Edmonton, Fort McMurray, Grande Prairie, High Prairie, Hinton, Lethbridge, Medicine Hat, Red Deer, Vermilion, and Wetaskiwin.

3.1.3 Edmonton Community Legal Centre Family Law Information Sessions

Organization: Edmonton Community Legal Centre

Length of Service: 2 hours

Cost of Service: No charge

Description:⁶⁰ The Edmonton Community Legal Centre offers free legal education sessions throughout Edmonton. These sessions are designed to offer important information about family law matters to the general public, with the aim of helping people to understand their rights and obligations more clearly, navigate the complicated family law landscape, and have the benefit of experienced family law lawyers in the process. Each session focuses on one of four topics and is presented by two experienced volunteer family law lawyers. The presentations last for approximately 45 minutes and are followed by a general question period. In the fall of 2013, topics covered included: child custody and access; child and spousal support; property issues; and court procedure and evidence.

3.1.4 The Family Law Project

Organization: Student Legal Services of Edmonton

Length of Service: Varies

Cost of Service: Income-based

Description:⁶¹ The Family Law Project provides basic legal information on the following topics:

- Divorce
- Separation

⁶⁰ The information in this section is from: <http://www.eclc.ca/information-sessions.html>.

⁶¹ Information in this section is from: <http://www.slsedmonton.com/family/>.

- Parenting Time
- Child and Spousal Support
- Matrimonial property
- Adult interdependent partnerships
- Where to go if you need more in-depth information or help

In addition, the Family Law Project assists people in obtaining uncomplicated child support orders and variations, as well as related applications. A volunteer from the Family Law Project may be able to assist individuals in court if they meet eligibility criteria. The Family Law Project also provides a Do-Your-Own-Divorce Clinic, as well as free family law information over the phone.

The Family Law Project has been a part of Student Legal Services since 1969, and has helped thousands of people in the Edmonton area. The project currently operates from Emily Murphy House on the University of Alberta campus. Law student caseworkers act as agents for individuals in the Provincial Court of Alberta and the Court of Queen's Bench of Alberta (Family Law Chambers) for uncomplicated child support matters. All caseworkers act under the supervision of advising lawyers. Over 75 law students volunteer with the Family Law Project every year.

3.1.5 Dial-a-Law

Organization: Calgary Legal Guidance

Length of Service: 15 minutes (varies)

Cost of Service: No charge

Description:⁶² The topics in the Dial-A-Law series provide general information on a wide variety of legal issues in the Province of Alberta. This service is provided by Calgary Legal Guidance with funding in part from the Alberta Law Foundation. Individuals can listen to a Dial-A-Law topic by calling the Dial-A-Law Operator between 8:30 a.m. and 4:30 p.m. during normal business hours, Monday to Friday, excluding all statutory holidays and staff in-house training days.

A variety of family law topics are included under the following general headings:

⁶² Information in this section is from: <http://clg.ab.ca/dial-a-law/>.

- Your Relationship, Separation and Divorce
- Property and Financial Support
- Violence in the Family
- Children – Financial Support
- Access and Custody
- Adoptions
- Children’s Rights

3.1.6 Community Information Session: Family Law 101

Organization: Calgary Legal Guidance

Length of Service: 2 hours

Cost of Service: No charge

Description:⁶³ Calgary Legal Guidance runs many workshops and presentations in the community on a variety of legal topics including family law. Family Law 101 offers information on:

- Basic Legal Rights
- Court Process
- Parenting and Custody Orders
- Divorce and Separation
- Child Support
- Information and Resources for Families

3.2 **Legal Advice**

3.2.1 Legal Clinics

Organization: Calgary Legal Guidance

Length of Service: 30 minutes

Cost of Service: No charge if low income

⁶³ Information in this section is from: <http://clg.ab.ca/wp-content/uploads/2013/06/FAMILY-LAW-101-Poster-2013-.pdf>.

Description:⁶⁴ Calgary Legal Guidance offers free legal advice at evening clinics and outreach clinics to low-income Calgarians who do not qualify for Legal Aid. In particular, Calgary Legal Guidance provides those facing cultural, financial or other kinds of barriers:

- evening legal clinics and outreach at the downtown CLG office or at other agencies and educational institutions around Calgary
- assistance on a variety of legal issues at these venues
- legal advice, information and referrals in a community setting where clients feel more comfortable

Evening clinics are held most Monday-Thursday evenings, and Outreach clinics are held at the following organizations: Eastside Family Clinic; Calgary Immigrant Women's Association; Calgary Chinese Community Services Association; SAIT; and the Centre for Newcomers.

3.2.2 Legal Services Program

Organization: Kerby Centre, in partnership with Calgary Legal Guidance

Length of Service: 20 minutes

Cost of Service: No charge

Description:⁶⁵ The Kerby Centre Legal Services Program offers brief, free legal services to older adults three afternoons per week. Attendance at the program is by appointment only and approximately 30 to 40 sessions are conducted per month. Sessions are offered by either volunteer lawyers from the Calgary community or by a staff lawyer from Calgary Legal Guidance.

Evaluation: The Canadian Research Institute for Law and the Family conducted a research project to provide information about the process and effectiveness of the Legal Services Program.⁶⁶ The researchers concluded that the legal services provided by the Kerby Centre are beneficial for the clients served and that a large majority of clients felt they received the assistance they were seeking and were satisfied with their consultation.

⁶⁴ Information in this section is from: <http://clg.ab.ca/services/legal-clinics/>.

⁶⁵ Information in this section is from Bertrand & MacRae-Krisa, 2013.

⁶⁶ Bertrand & MacRae-Krisa, 2013.

3.2.3 Do Your Own Divorce Clinics

Organization: Calgary Legal Guidance

Length of Service: 2 hours

Cost of Service: Under \$300

Description:⁶⁷ The Do Your Own Divorce Clinics are a follow-up service offered to CLG clients who first come to the evening clinics looking for information about the divorce process. If the parties have been separated for more than one year, and if there is an agreement as to property division and child custody/access, clients are able to complete an uncontested divorce themselves for under \$300.00. Calgary Legal Guidance brings 8 – 10 clients together for an evening session with a family law practitioner and walks them through the divorce process with a complete set of draft divorce forms. The clients then go home with a copy of the CLG “how-to” manual to complete the good copy of the forms themselves. Calgary Legal Guidance staff remain available to answer questions as the clients go through the process.

3.2.4 Legal Advice Clinic

Organization: The Women’s Centre of Calgary

Length of Service: 30 minutes

Cost of Service: No charge

Description:⁶⁸ The Women's Centre Legal Advice Clinic is an established program of the Women's Centre of Calgary having run for almost 40 years. Volunteer female lawyers provide free legal advice to women on a one-to-one basis in various areas of law, with the highest demand in the family law area. The program is open to all women without restrictions as to issue or individual circumstances. Because women may not have access to family money, the Centre does not screen for income. The clinic is aimed at providing women with the preliminary information, summary legal advice

⁶⁷ Information in this section is from: <http://clg.ab.ca/services/legal-clinics/>.

⁶⁸ Information in this section is from: http://www.pbla.ca/projects/item.766-Womens_Centre_Legal_Advice_Clinic.

and support they may need to access the legal system. The volunteer lawyers do not provide ongoing legal work or representation at or through the clinic.

Evaluation: In 2012, 205 women received free legal advice in over 70 clinics. Of those women, 154 attended a Family Law clinic, and 51 attended a Non-family clinic. Some highlights from the Outcome Report for 2012 are:⁶⁹

- 99% of women who attended the clinics felt the lawyer listened to them carefully and seemed to understand their situation
- 99% of women who attended the clinics know what their next steps will be
- 93% of women felt more in control of their situation
- 63% had never been to the Women's Centre before

3.2.5 Student Legal Assistance

Organization: Student Legal Assistance (University of Calgary)

Length of Service: Varies

Cost of Service: No charge

Description:⁷⁰ Founded in 1979, Student Legal Assistance (SLA) offers legal information and representation to residents of the Calgary area who are unable to afford a lawyer. These services are provided by law students from the University of Calgary, who volunteer as Caseworkers with the organization. While providing a much-needed community service, the work at SLA allows members to gain experience and develop professional skills. SLA provides representation or summary legal information to clients without ongoing assistance with the following family law matters: guardianship; parenting; child support; contact; and enforcement. SLA does not assist with the following: matters involving Child & Family Services; matters under the *Divorce Act*; or matters before the Court of Queen's Bench.

3.2.6 Central Alberta Community Legal Clinic

Organization: Central Alberta Community Legal Clinic Foundation

Length of Service: 30 minutes

⁶⁹ <http://www.womenscentrecalgary.org/wp-content/uploads/2013/08/Outcome-Report-2012.pdf>.

⁷⁰ Information in this section is from: <http://www.slacalgary.com/index.php/services/family>.

Cost of Service: No charge

Description:⁷¹ The Central Alberta Community Legal Clinic offers free legal advice to those who do not qualify for Legal Aid and who cannot afford a lawyer. If an individual's legal and financial situation fit their guidelines, they will schedule an appointment in one of their evening or afternoon clinics to obtain free legal advice from a volunteer lawyer. If an individual qualifies for their Follow Up Program, services may include document preparation and representation in court. Legal advice is provided on the following family law topics:

- Separation
- Divorce
- Common law
- Child support and spousal support
- Custody and access
- Guardianship/trusteeship

3.2.7 Grande Prairie Legal Guidance Clinics

Organization: Grande Prairie Legal Guidance

Length of Service: Varies

Cost of Service: No charge if low income

Description:⁷² Grande Prairie Legal Guidance (GPLG) offers free legal guidance to low income individuals who have a legal problem and do not qualify for Legal Aid. GPLG uses a set of income guidelines to determine whether individuals qualify for assistance from GPLG. GPLG can help clients understand legislation, obtain information, complete forms, and prepare for court dates and hearings. Representation in Court is not provided. Legal clinics are offered twice per month, and volunteer lawyers donate their professional time to meet with clients to discuss their legal concerns. Services are now being provided in the area of family law, and may include information, advice or referrals to appropriate agencies.

⁷¹ Information in this section is from: <http://www.communitylegalclinic.net/public/>.

⁷² Information in this section is from: <http://www.gplg.ca/public/>.

3.2.8 Lethbridge Legal Guidance Clinics

Organization: Lethbridge Legal Guidance

Length of Service: Varies

Cost of Service: No charge if low income

Description:⁷³ Lethbridge Legal Guidance (LLG) offers free legal guidance to low income individuals who have a legal problem and do not qualify for Legal Aid. LLG uses a set of income guidelines to determine whether individuals are eligible for their services. LLG helps clients to understand legislation, obtain information, prepare for court hearings, and discuss their rights. Representation in court may be available. In the family law area, lawyers may provide advice to individuals who have legal problems regarding separation/divorce, child support, and custody and access. Legal clinics are offered every Tuesday evening by appointment only. Volunteer lawyers donate their professional time to meet with clients to discuss their legal concerns, and services may include information, advice or referral to appropriate agencies.

3.3 **Parent Education Programs**

3.3.1 Parenting After Separation

Organization: Alberta Family Justice Services

Length of Service: 6 hours

Cost of Service: No charge

Description:⁷⁴ Parenting After Separation (PAS) is a six-hour seminar offering information to parents about the separation and divorce process, the effects of separation and divorce on children, techniques for communication and legal information that affects parents and children. Separating or divorcing parents who live near a judicial centre and have issues concerning child support or parenting time may access this service. PAS teaches parents the importance of working together to meet children's health, social, educational and emotional needs. The program encourages

⁷³ Information in this section is from: <http://www.lethbridgelegalguidance.ca/public/>.

⁷⁴ Information in this section is from: <http://www.albertacourts.ab.ca/fjs/education.php>.

parents to attend mediation and to consider other dispute resolution options. Course topics include:

- Relationship Building
- Effect of separation on Parents
- Effect of separation on Children
- Communication Skills
- Legal Issues
- Mediation
- Collaborative Family Law
- Parenting Plans

Attending PAS is voluntary. However, in most cases, before filing an application in the Court of Queen's Bench, the party applying must file a certificate showing that they completed PAS. In Provincial Court, the judge can order that a party complete the course before going ahead with their court application.

Evaluation: The Canadian Research Institute for Law and the Family conducted an evaluation of PAS in 1999.⁷⁵ Findings of the evaluation indicated that participants found the information provided highly valuable, and that the seminars were both relevant and useful.

3.3.2 Parenting After Separation for High Conflict Families

Organization: Alberta Family Justice Services

Length of Service: 3 hours

Cost of Service: No charge

Description:⁷⁶ Parenting After Separation for Families in High Conflict (PASHC) is a three hour seminar available in Edmonton and Calgary to parents who have already completed the six hour Parenting After Separation course. PASHC offers information about the process of separation, how to emotionally disengage from one another and how to identify and renegotiate boundaries. Parents are encouraged to develop a Parallel Parenting Plan, which can be an effective tool to reduce conflict and minimize the contact between parents. Course topics include:

⁷⁵ Sieppert, Lybarger, Bertrand, & Hornick, 1999.

⁷⁶ Information in this section is taken from: <http://www.albertacourts.ab.ca/fjs/education.php>.

- Parental Enmeshment and Disengagement/ Disinterest
- Parenting Plan for High Conflict Families
- Anger, Abuse, Power and Control
- Child Development and the Needs of Children
- Renegotiating Boundaries (Skill Development)

Participation in the program is voluntary, although parties may be directed to attend by a judge. Parents do not attend the program together.

3.3.3 Focus On Communication in Separation

Organization: Alberta Family Justice Services

Length of Service: 6 hours

Cost of Service: No charge

Description:⁷⁷ Focus on Communication in Separation (FOCIS) is a six hour, skill-based communication course teaching parents how to communicate effectively while living apart. FOCIS aims to enhance the communication skills of parents, reduce parental conflict and improve long term outcomes for children. Upon completing the course, parents will be able to reduce conflict through good communication and problem solving skills, decrease tensions arising from conflicts and decrease stress for children and parents. Course topics include:

- The impact of parental conflict on children
- The importance of listening
- The effective use of questions, paraphrases and summarizing techniques
- Conflict styles / conflict cycle
- Changing how the behaviours of others are perceived
- Anger

Participation in FOCIS is voluntary. Parents are not permitted to attend the course together.

Evaluation: In its review of high conflict intervention programs in Alberta in 2007, the Canadian Research Institute for Law and the Family found that almost all FOCIS

⁷⁷ Information in this section is taken from: <http://www.albertacourts.ab.ca/fjs/education.php>.

participants would recommend the course to others and that the course would help them to reduce negative conflicts with the other parent.⁷⁸ Stakeholders agreed that FOCIS is effective in reducing conflict, saves court and clients' time and costs, and helps to settle cases.

3.4 Dispute Resolution Mechanisms

3.4.1 Brief Conflict Intervention (Provincial Court)

Organization: Alberta Family Justice Services

Length of Service: Up to 10 hours

Cost of Service: No charge where parties have a child under the age of 6 and the gross income of one of the parties is less than \$40,000

Description:⁷⁹ Brief Conflict Intervention is a service for parents who are not able to resolve a parenting dispute. Up to 10 hours of solution-focused intervention from a specialized clinician is provided. The clinician helps the parents to better understand the needs of their children during separation or divorce, to gain greater understanding of the conflict and its effects on their children, and to reach an agreement (when possible) regarding their specific dispute. At the end of the intervention, the clinician completes a report summarizing the issues covered, those resolved and those remaining in dispute. The report does not contain recommendations, and it is available to the Court.

Brief Conflict Intervention may be ordered by a Provincial Court Judge. Referrals can also be made by lawyers, mediators, family professionals, or the parents themselves. Both parents must agree to participate in the intervention, and they must have a parenting, contact or enforcement application before the Provincial Court. The parents are required to attempt mediation prior to accessing this service. Brief Conflict Intervention is available across Alberta.

Evaluation: In its review of high conflict intervention programs in Alberta in 2007, the Canadian Research Institute for Law and the Family found that almost all respondents agreed that Brief Conflict Intervention is effective in reducing conflict and saving courts

⁷⁸ Paetsch et al., 2007.

⁷⁹ Information for this section taken from: <http://www.albertacourts.ab.ca/fjs/high-conflict.php>.

and clients' time and costs.⁸⁰ Most respondents agreed that Brief Conflict Intervention increases clients' knowledge about the effects of conflict on children and that it helps to settle cases in both the short term and long term.

3.4.2 Dispute Resolution Officer / Child Support Resolution Officer

Organization: Alberta Family Justice Services

Length of Service: 1 hour

Cost of Service: No charge

Description:⁸¹ The Dispute Resolution Officer (DRO) program is offered in Calgary, and the Child Support Resolution Officer (CSRO) program is offered in Edmonton. Both programs allow parties who want to apply for or change a child support order to meet together with a senior family law lawyer. The lawyer will discuss the matter with the parties, assess the state of their financial disclosure, describe the requirements of the Child Support Guidelines and help parties resolve their dispute using interest-based mediation. If the parties are able to reach an agreement, in some cases Family Justice Services staff are able to prepare a consent order for the parties, so that the parties can finalize the matter without a court hearing. If the parties are not able to resolve their issues, the lawyer will give them instructions about their next steps and may discuss with them what will happen in court.

In Calgary, the DRO program is mandatory for all applications in the Court of Queen's Bench either for child support or to vary a child support order, except for provisional orders under the *Divorce Act* and applications under the *Interjurisdictional Support Orders Act* where the other party lives outside Alberta. The court may also grant exemptions from the program in some cases. The program is also available for those making child support applications in the Provincial Court, and on a consent basis, for those who have not yet filed an application, but simply want to meet to discuss child support. Parties may also be referred to the program by the court.

In Edmonton, the CSRO program is mandatory for self-represented parties who want to apply for or vary a child support order in the Court of Queen's Bench.

⁸⁰ Paetsch et al., 2007.

⁸¹ Information for this section taken from: <http://www.albertacourts.ab.ca/fjs/adr.php#csrp>.

Evaluation: A 2003 evaluation of these programs, when they were pilot projects, found that both were successful.⁸² Key informants described the DRO and CSRO as effective and valuable in assisting parties to settle or narrow family law disputes, and almost all thought that the projects reduced the court's caseload and time.

3.4.3 Family Mediation Services

Organization: Alberta Family Justice Services

Length of Service: Varies

Cost of Service: There is no cost to qualifying families. To qualify, there must be at least one dependent child under the age of 18 years and one or both parties must have an income of less than \$40,000 per year.

Description:⁸³ Family Mediation Services offers an interest-based mediation process. Mediators encourage the parties to communicate, negotiate and cooperate to resolve disputes outside of court. Issues that may be discussed at mediation include the following:

- Options and services available to parents and children
- How decisions are to be made about the children
- Parenting time (the time the child is to spend with each parent)
- Contact (time with a child by a non-guardian)
- Communication and resolving issues in the future
- Child Support
- Spousal Support
- Minor issues related to the division of property

Settlements reached through mediation are not legally binding. However, most parties will use the terms of their mediation agreement to create a consent court order, or will take the agreement to their lawyers to include in a separation agreement. There does not have to be a court action started to make use of the Family Mediation Services. However, the services are also available to families with court actions before either Provincial Court or the Court of Queen's Bench. The parties may attend mediation on their own, or they may agree to come with their lawyers. Parties who wish to attempt

⁸² Gomes et al., 2003.

⁸³ Information for this section taken from: <http://www.albertacourts.ab.ca/fjs/adr.php>.

mediation are pre-screened to make sure that the mediation process will be appropriate for them.

Family Mediation Services are available in and around the following centres: Calgary; Camrose; Edmonton; Fort McMurray; Grande Prairie; High Prairie; Hinton; Lethbridge; Medicine Hat; Red Deer; Vermilion; and Wetaskiwin.

3.4.4 Caseflow Conference

Organization: Alberta Family Justice Services

Length of Service: Varies

Cost of Service: No charge

Description:⁸⁴ The Caseflow Conference is a program in the Provincial Court of Alberta as an alternative to a docket appearance before a judge. The service helps the parties reach agreements and/or makes sure parties are ready to go to court. The Caseflow Conference gives the parties a chance to discuss their issues about the court application(s) in a private, less formal atmosphere than a courtroom. A caseflow coordinator will give information about resources available to help parents resolve their disputes. Parties may be referred to mediation or other Family Justice Services programs. If the parties are able to reach an agreement, the caseflow coordinator may prepare a consent order for them, allowing them to finalize their matter without going before a judge. Examples of consent orders that may be prepared are:

- Parenting Order
- Contact Order
- Guardianship Order
- Grandparent Contact Order
- Child Support

Caseflow Conferencing is mandatory for all self-represented litigants in Edmonton and Calgary who are applying for parenting, guardianship or contact. Parties with a lawyer or who are applying for child support may schedule an appointment with a caseflow coordinator upon request at the time they are filing their application. Caseflow Conferencing is available in centres in Calgary and Edmonton.

⁸⁴ Information in this section is taken from: <http://www.albertacourts.ab.ca/fjs/adr.php>.

3.4.5 Court Counsellors

Organization: Alberta Family Justice Services

Length of Service: Varies

Cost of Service: No charge

Description:⁸⁵ Court Counsellors help with court applications in Provincial Court. The help provided includes:

- Information about the court process
- Discussion with both parties outside the courtroom to see if any agreement can be reached
- Help setting the terms of a consent order
- Neutral presentation to the judge in court

Court Counsellors are available in centres in Calgary, Camrose, Edmonton, Fort McMurray, Grande Prairie, High Prairie, Hinton, Lethbridge, Medicine Hat, Red Deer, Vermilion, and Wetaskiwin.

3.5 **Duty Counsel**

3.5.1 Duty Counsel Program

Organization: Legal Aid Alberta

Length of Service: Varies

Cost of Service: No charge

Description:⁸⁶ In Calgary and Edmonton, staff and roster lawyers are available in the courthouses to help people understand the court process, provide free legal advice, and present a party's case to the judge. If both parties do not have a lawyer, duty counsel will present both sides to the judge.

⁸⁵ Information in this section is from: <http://www.albertacourts.ab.ca/fjs/intake.php>.

⁸⁶ Information in this section is from: <http://www.legalaid.ab.ca/programs/Pages/dutycounsel.aspx>.

Legal Aid Alberta (LAA) has recently begun providing duty counsel service for family law matters in Edmonton, Calgary and Wetaskiwin. According to LAA, the need for this expansion has been demonstrated through the high number of people reporting to court for family legal matters without representation by a lawyer. In July 2012, Legal Aid Alberta contracted a Camrose firm to provide Wetaskiwin duty counsel services in Family Chambers of the Court of Queen's Bench, and in family and youth court.

3.6 Limited Scope Retainers

3.6.1 Limited Scope Representation

Organization: Legal Aid Alberta

Length of Service: Varies

Cost of Service: Income based

Description:⁸⁷ In 2011, Legal Aid Alberta (LAA) announced the opening of 11 Legal Services Centres in Alberta. LAA provides clients with a lawyer and LAA staff are able to channel clients into the appropriate stream of legal service, ensuring that the best possible service is provided for their specific need and situation. Based on their legal issue and financial eligibility, clients may be eligible to receive services that include referrals, information, legal advice and/or brief services, and limited scope or full representation. Limited scope services may include document drafting/review, negotiations, attendance at a settlement meeting, coaching and research.

⁸⁷ Information in this section is from: <http://www.legalaid.ab.ca/help/Pages/default.aspx>.

4.0 CONCLUSIONS AND RECOMMENDATIONS FOR BEST PRACTICES OF BRIEF SERVICES

4.1 Introduction

The purpose of this project was to identify best practices in the provision of brief services in the family law area to enable agencies in Alberta to provide more effective legal information and advice to those Albertans who cannot afford counsel. Specifically, this project had the following objectives:

- (1) To review the current literature on brief services in family law in Canada and internationally;
- (2) To identify agencies and organizations in Alberta that provide brief services in family law; and
- (3) To make recommendations regarding best practices in the provision of brief services in family law.

To meet these objectives, an international literature review was conducted to review emerging trends, issues and best practices in brief services models in family law. In addition, an environmental scan was performed to identify agencies and organizations in Alberta that provide brief services in family law. The Canadian Research Institute for Law and the Family conducted this project with funding support from the Alberta Law Foundation.

4.2 Conclusions

It is widely recognized that there is a serious access to justice problem in Canada, particularly within the family justice system, which is seen as being too complex, too slow, and too expensive.⁸⁸ In its report, *Access to Civil and Family Justice: A Roadmap for Change*, the Action Committee identified access to legal services as a priority area that needs to be addressed. In *Meaningful Change for Family Justice: Beyond Wise Words*, the Family Justice Working Group acknowledged that access to lawyers and legal advice is an important element of access to justice, and made several recommendations specific to service delivery.⁸⁹ The Canadian Bar Association's recent report, *Reaching Equal*

⁸⁸ Action Committee on Access to Justice in Civil and Family Matters, 2013.

⁸⁹ Action Committee on Access to Justice in Civil and Family Matters, 2012.

Justice: An Invitation to Envision and Act also proposes a strategic framework to address access to justice inequalities.⁹⁰ The report discusses the growth of unrepresented litigants in Canada's courts, especially in family law matters, and recognizes that available resources are often insufficient to meet the demand for support.

Brief services have arisen as a way to address the service delivery problem by providing limited services to the public in a cost-effective and efficient manner. The need for brief services is well documented in the literature, and the types of brief services, which can range from 15 minutes to 10 hours or more, were categorized as follows: information and referrals; advice; parent education programs; dispute resolution mechanisms; duty counsel; and limited scope retainers, or unbundled legal services. In many cases, these services are provided by lawyers at no charge to the public. In addition to helping low-income individuals, brief services help to address the needs of the growing population of self-represented litigants, who are often middle-income and educated yet also unable to afford counsel. Brief services also address the problem of the lack of family law lawyers available to provide full service representation.

Many of the brief service models identified in the literature have been evaluated and, for the most part, the evaluations have been very positive. An evaluation of New Brunswick's Family Law Information Centre, an information and referral service similar to Alberta's Family Law Information Centres, found that over 90% of clients said the assistance they received was helpful, and they would use the service again and recommend it to others.⁹¹ Similarly, an evaluation of BC's Family LawLine and Out of Court Advice Lawyers (both advice services) found very high levels of client satisfaction, as well as a high level of case resolution.⁹² The Canadian Research Institute for Law and the Family's evaluation of Alberta's Parenting After Separation program indicated that participants found the information provided highly valuable, relevant and useful,⁹³ and a multi-site Canadian research study found that parenting education programs have a significant positive effect on low and moderate conflict parents in terms of reducing conflict and improving co-operation and communication.⁹⁴

Evaluations of dispute resolution programs have also yielded positive results. British Columbia's Child Support Eligibility Mediation Project resulted in an agreement between the parties in two-thirds of the cases mediated, with one-third of the cases

⁹⁰ Canadian Bar Association, 2013.

⁹¹ Prairie Research Associates, 2012.

⁹² Focus Consultants, 2012.

⁹³ Sieppert et al., 1999.

⁹⁴ Bacon & McKenzie, 2004.

being settled in less than three months.⁹⁵ The Canadian Research Institute's evaluations of Calgary's Dispute Resolution Officer program and Edmonton's Child Support Resolution Officer program found both programs were successful, and assisted parties in settling or narrowing family law disputes, thus reducing the court's caseload and time.⁹⁶ Similarly, the Institute's evaluation of Saint John's Child Support Variation Service found that the program was successful, issues were settled in two-thirds of the cases, and the number of cases going to court was reduced.⁹⁷

While brief services are viewed very favourably by both clients and stakeholders, there is also recognition that there are clients who require more assistance than a brief service can provide. In addition, evaluations of brief services suggest that some issues are better suited for brief services than others. Recommendations regarding these issues are made in Section 4.3.

The environmental scan identified a number of agencies and organizations in Alberta that provide brief services to the public, and indeed there are likely many more brief services available that are not advertised as such or are just being developed. The Edmonton Community Legal Centre (ECLC), for example, has just received funding from the Alberta Law Foundation for a new pilot project – a summary legal advice clinic – that ECLC hopes to implement by April 2014.⁹⁸ One night a week, four volunteer lawyers will provide 45 minutes of summary legal advice to individuals. While legal representation will not be provided, there will be follow-up with a social worker to ensure that people's non-legal needs have not been ignored.

The environmental scan found examples for each general category of brief services, with the most services providing legal advice and information and referrals. The length of brief services ranged from 15 minutes to 10 hours, and the majority of services were free to the public. Over two-fifths of these services were provided by Alberta Family Justice Services, with the remainder being provided by private agencies and universities. While many of the government-based services were available province-wide, some services were only available in Calgary or Edmonton.

⁹⁵ Vander Veen, 2013.

⁹⁶ Gomes et al., 2003.

⁹⁷ Bertrand & Paetsch, 2004.

⁹⁸ Personal communication with Marie Gordon, Q.C., Chair, Edmonton Community Legal Centre, January 16, 2014.

4.3 Recommendations

The evaluations of brief services presented in the international literature search were generally very positive, but they also highlighted some areas of concern and issues to be addressed in providing brief services in the family law area. These recommendations are summarized below by type of brief service.

General

- It is important to ascertain early in the process if clients have a mental or physical disability that requires full representation to enforce their rights and therefore makes them unsuitable for brief services.
- Clients need to be fully informed about the service they're receiving – what is offered and what is not.

Information and Referrals

- General legal information is highly valued by clients and should be readily available and in written format.
- Court and other forms need to be readily available and be as clear and concrete as possible.

Advice

- Law help lines are most effective when they are accompanied by ongoing support.
- Brief advice services are often limited to one hour, which is considered by some to be insufficient time to provide clients with the necessary information and advice, and should be extended if possible.
- Brief advice clinics are most productive for clients who have concrete questions about legal documents, indicating that the involvement of experienced family law lawyers is important for the success of brief advice clinics.
- Legal issues with clear guidelines such as child support are more successfully dealt with using brief services than issues on which the courts have more discretion such as custody and spousal support.

Parent Education Programs

- Parent education programs should be attended as early in the separation process as possible, before hostility and distrust are ingrained.
- Some research suggests that parent education programs are more suited to low- and moderate-conflict parents than high conflict families, indicating that highly entrenched conflict or domestic violence cases require specific programs.
- The aims of parent education programs should be clear and targeted, and should focus on post-separation parenting challenges and protecting children from parental conflict.
- Parent education programs should include more behavioural skills development, and should be more intently focused on conflict resolution and communication skills.
- Parent education programs should be part of a more targeted intervention strategy to be able to respond to the complex needs of individual parenting disputes.

Dispute Resolution Mechanisms

- Dispute resolution mechanisms such as child support resolution are often limited to one hour, and it is suggested that longer meetings might more effectively address more complicated issues or cases involving more than one issue.
- To enhance long-term sustainability of programs provided by pro bono lawyers, means by which volunteer lawyers could be rewarded should be explored.

Limited Scope Retainers

- Lawyers need to ensure that there is a clear, mutual understanding of the scope of the work with the client and that the limitations must be informed and in writing.
- Lawyers should explain to the client the importance of providing all facts relevant to their case so they can provide competent services.

- Lawyers should identify to the client any additional issues that arise, or may potentially arise, even if they are beyond the scope of the retainer.
- Lawyers appearing on behalf of a client must inform the Court of the limited nature of their retainer.

Research

- The majority of the brief services identified in Chapter 3.0 have not been evaluated. It is important that these services are evaluated to assess the processes and/or outcomes of the programs with the intent of furthering their development and improvement.
- Longitudinal evaluations (studies that involve data collection over a longer period of time) should be conducted because there is some indication in the literature that while client satisfaction is high immediately following a brief service, satisfaction may decrease when clients attempt to proceed with their cases on their own.

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