Final Report to the Access to Justice Committee

by Vicki Trerise

July, 2000

A report concerning the impact of reductions in legal aid services for low income people, with a particular focus on women and children

Where the Axe Falls:

the real cost of government cutbacks to legal aid

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of British Columbia

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FOREWORD

This report was researched and written by Vicki Trerise, under the direction of the Access to Justice Committee of the Law Society of British Columbia and their staff lawyer, Charlotte Ensminger.

Both the Law Society and I are especially appreciative of the contribution of the 77 individuals involved in the legal system in four communities in the province, who gave their thoughtful and considered responses during the interview process. They took the time to participate in a rather lengthy interview process, in order to assist in identifying the difficulties facing low income people and the legal system in the present environment of reduced access to legal aid services.

Participation of members of the Supreme Court was facilitated by the Honourable Bryan Williams, then Chief Justice of the Supreme Court of British Columbia. Participation of members of the Provincial Court was facilitated by Mr. Justice Robert Metzger, then Chief Judge of the Provincial Court, with particular assistance from the Honourable Associate Chief Judges Dennis Schmidt and Hugh Stansfield. Participation of the Courthouse Registry staff was facilitated by Marg Sorensen, Executive Director, Court Management Services, Ministry of the Attorney General. Participation of the Legal Services Society staff, and the staff of associated services (community law offices, area directors) was facilitated by David Duncan, Chief Executive Officer, Legal Services Society of B.C.

Many thanks to them and to:

Mr. Justice Eric Chamberlist; Madam Justice Kathleen Downs; Mr. Justice Frank Maczko; Madam Justice Nancy Morrison; (plus three members of the Court who prefer not to be identified); Master Doug Baker; Master John Horn: Supreme Court of B.C.

Honourable Administrative Judge Jane Auxier; Honourable Judge Carole Lazar; Honourable Judge David Levis; Honourable Judge Dennis Overend; Honourable Judge David Pendleton; Honourable Associate Chief Judge Hugh Stansfield; Honourable Judge Ross Tweedale: Provincial Court of B.C.

Paul Beagan; Einar Gunnarson; Ruby Johnson; Rolph Krayenhoff; Linda Muschik; Mary Saxon; Gordon Schmidt; Dianne Taylor: Court Services.

Gary Cowell; Antony Davies; Anne Foss; Pam Grant; Michael Gray; Coralie Gregoire; Darwin Hanna; Maureen Hawkins; Arlene Laboucane; Carol Rosset; Lynn Siddaway; Randolph Smyth; Monica Trusler; Stephen Wright: Legal Services Society.

Ann Bayles; Michael Berman; Johanne Blenkin; Jasper Bomhof; Patricia Bond; Rita Bowry; Michael Bradshaw; Ronald Braun; Brian Burgess; M. Lee Burrows; Renzo Caron; Kuldip Chaggar; Natalie Cuk; Danica Djordjevich; Megan Ellis ; Erwin Epp; barbara findlay; Jacinta Gallant; Alan Gaudette; Robert Hamilton; Susan Hart; Carla

Lewis; Steven Mansfield; Terrence McCaffrey; Glen Perkins; Gregory Reif; Sunny Rothschild; Kelly Russ; Synthia Sheridan; Glenn Stasiuk; Charles Sutcliffe; Edward Tanaka; Ruth Lea Taylor; Linda Thiessen; Winfred van der Sande; Gary Vlug; William Wagner; Kyle Watts; Gordon White: private bar lawyers.

I also received input from several other people who did not participate in the full interview process, but who provided valuable information or perspectives that were of great assistance in the preparation of the report, or who organized the participation of others:

Barry Arnett, Senior Researcher/Systems Analyst; Ron Kelly, Research Analyst; Frank Kraemer, Vancouver Regional Director; Heidi Mason, Client Services Manager; Carol McEown, Director, Legal Information Services; Kent Patenaude, Manager of Native Programs; Wayne Robertson, Client Services Manager: Legal Services Society.

Penny Bain, Executive Director, B.C. Institute on Family Violence; Alison Cameron, Women's Access to Legal Services Coalition; Brian Chromko, Executive Director, Native Courtworker and Counselling Association of B.C.; Carla Courtenay, Chair, Vancouver Family Section, CBA; Marc Lavertu, Family Justice Counsellor, Courtenay.

The preparation of this report was greatly assisted by the professional editing services of Barbara Kuhne, and the over-the-shoulder editing comments of Nancy Richler. The feedback of Charlotte Ensminger and Jeff Hoskins of the Law Society was very helpful, as was the assistance provided by several management staff at Legal Services Society, coordinated by Carol McEown.

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From 1985 to 1988, Ms. Trerise worked for the Women's Directorate of the Ontario government, first as the Provincial Coordinator of Family Violence Initiatives and subsequently as the Director of Policy and Research. From 1989 to 1992 she provided consulting services to the Department of Social Services of the Northwest Territories, with respect to proposals for new family and child welfare legislation.

Ms. Trerise was called to the bar in B.C. in 1990, and worked as a Client Services Manager with the Legal Services Society of B.C in 1991-1992. She later worked for a year with the Community Law Office in Matsqui-Abbotsford as a staff lawyer providing services to legal aid clients with family and child welfare issues. Since 1994, Ms. Trerise has been in private practice as a lawyer/mediator and consultant.

TABLE OF CONTENTS

PART I

PART II – THE COMMUNITY INTERVIEWS

EXECUTIVE SUMMARY

The Access to Justice Committee of the Law Society of British Columbia commissioned a study into the impacts of reduced levels of legal aid funding, with a particular focus on women and children. The study is based on a review of information and data supplied by Legal Services Society, and analysis of responses from 77 interviews conducted with persons involved in the operations of the legal system in four locations: Courtenay, Chetwynd, Vancouver and Vernon. The interview participants were 9 members of the Supreme Court judiciary, 7 members of the Provincial Court judiciary, 8 members of the Court Services (registry) staff, 15 Legal Services Society staff who deal with legal aid applications at the local level, and 38 family lawyers who represent legal aid clients.

In 1997, Legal Services Society was required to reduce expenditures by $14 million. The bulk of this savings was achieved by a reduction in tariff expenditures of $9.6 million. The largest single item of budget reduction was the creation of more stringent financial eligibility standards, which resulted in an estimated saving of $3.4 million. By the combination of reducing levels of payment to tariff lawyers and introducing more controls on lawyers doing work on the legal aid tariff, a further saving of $3.5 million was achieved. The third major means to achieve savings was to restrict coverage in family law cases, resulting in an estimated saving of $1.35 million.

The combined effect of the restrictions on financial eligibility and coverage reduced the number of referrals to lawyers by 29.3% between 1992/93 and 1998/99. In criminal law, the referral rate declined from 82% to 71%, a decline of 11.5%. In family law, the referral rate started at 71.3% and declined to only 53.7%, a decline of 17.6%. The referral rate in family law, in which women are the predominant client group, was reduced disproportionately as compared with criminal law, in which men are the predominant client group. The study focuses upon the nature of the impacts of the steep decline in access to counsel in the family law area:

- There is a very wide gap between the new financial cut-off levels and the income required to afford to hire a lawyer; eligibility is now restricted almost entirely to people receiving social assistance, or single parents with a very low earned income.

- An adult working at minimum wage, with no children in the household, does not qualify for legal aid. This is the situation for many parents, mostly men, after separation.

- There are many problems concerning assets, regarding both eligibility and coverage; this tends to be particularly problematic for women from traditional marriages, especially immigrants.

- Lack of coverage for variation of orders is a serious problem. There is a high demand for variations in matters of access and support; failure to address problems in these areas has a major impact on the lives of the parties involved and their children.

- The availability of counsel to represent legal aid clients, especially experienced counsel, has become an issue due to the combined impact of payment restrictions and tariff administration.

- Those parties who are provided with counsel receive a restricted level of service. Some of the noted results are that women may not be able to pursue their share of family assets, and women who are trying to leave violent partners may have to deal with their spouses directly on issues of access enforcement and access to basic household assets, as well as divorce.

- In family law, unlike criminal law, it is not possible to know the "seriousness" of a case from its definition. While LSS has done a masterful job of establishing criteria to try to ensure that serious cases will get coverage, this can only be successful if the applicants fully understand what their situations are about. There are no checkpoints later in the system to identify those cases where people really cannot adequately represent themselves.

- People are being sent to participate in settlement discussions without being provided with any legal information or advice. In Vancouver, where this practice has been mandatory for the past year, there was strong agreement among family lawyers that people are going into these sessions not adequately informed to negotiate on their own behalf. If agreement is reached, there is no requirement for independent legal advice prior to formalization.

- There are many unrepresented people in both levels of court.

- Registry staff in all 4 communities note a higher demand for information and assistance at the counter for family matters in Provincial Court, partly because of the number of unrepresented people and partly because the new forms and procedures are more complex and difficult for people. Unrepresented people rely on the registry staff for general information, explanation about procedures, explanation after court about what happened and preparation of court orders.

- Registry staff have no information to provide to unrepresented women seeking protection orders about the difference between the civil restraining order and the criminal peace bond, or about the enforceability of restraining orders. In 3 of the 4 communities, registry staff reported women dealing with violence issues who are appearing in court unrepresented on variation applications and custody and access matters, as well as restraining orders.

- Members of the judiciary expressed concern that they may not be getting all of the information they need from these lay litigants, or that all of the issues may not be identified, which makes it less likely that good decisions will be made. There was comment from both judges and lawyers about the difficulty of maintaining neutrality while at the same time providing information and assistance to the unrepresented party. Supreme Court judges expressed concern about the number of unrepresented people and the risk of unfair orders being made.

- The judiciary at both levels of court observed that lay people dealing with financial issues often have difficulty providing the proper information, obtaining full disclosure from the other party, and testing the validity or significance of the information provided. Registry and legal aid staff noted that people cannot use the Child Support Guidelines properly without assistance.

- Several members of the judiciary stated that it appears that most of the unrepresented people are men. While it was noted that this is probably because women are more likely to experience poverty and family violence, it was also observed that this may be creating a feeling of unfairness.

- Several judges noted that unrepresented parties are less likely to settle: they don't trust the process or the opposing lawyer, they are very emotional, they are not able to assess the downside of proceeding to trial. Members of the judiciary also observed that people have more difficulty representing themselves in family matters than other types of civil cases. People do not understand what the court views as relevant, and have difficulty figuring out what they should be talking about.

- Six of the 9 Supreme Court judges identified custody and access as particularly difficult to manage when there `is an unrepresented party. Two judges noted that there are serious difficulties for self-representers on matters of spousal support and division of assets; some lawyers observe that women are walking away from these claims rather than pursue them on their own.

- A few judges from both levels of court noted the need for a voice for children in family law proceedings. Seven of the nine Supreme Court judges emphasized the loss of availability of custody and access reports as a significant negative effect of recent changes. Several judges mentioned the need for a child advocate in appropriate cases.

- Judges and registry staff identified a need for more assistance for people at the front end of the system, for several purposes: to identify cases where legal intervention is needed, to help people identify issues and organize their information, to explore settlement but also assess seriousness, to provide basic advice and information to everyone.

- Several members of the judiciary expressed concern about the people who are just not coming into the legal system any more. While lawyers gave examples of clients of both genders who are just giving up on getting assistance to advance their legal rights, many expressed the view that women are more likely than men to not participate without legal assistance. The observation that the majority of unrepresented people in court are men supports this view, because in absolute numbers far more women than men are being refused legal aid for family law cases.

Cuts to family coverage were made based on an understanding that alternative, less litigious services were being put in place which would meet the needs of family law clients. However, a full range of service has been provided only for “Family Justice Registry” courts, such as Vancouver. In the other 3 study communities, lawyers and court officials report a reduction in access to alternative resources, yet coverage cuts apply throughout the province.

PART I

I. The Purpose of the Study

It goes without saying that cutbacks to funding for legal aid have affected access to counsel for low-income people in British Columbia. In a study reviewing differences in referrals and refusals in the pre- and post-cutback eras,[1] attached as an appendix to this report, it is reported that, from the 1992/93 fiscal year to the 1998/99 fiscal year, the number of referrals to lawyers by Legal Services Society was reduced from 71,710 to 50,717, a decrease of 29.3%.

This study seeks to explore what those numbers mean. How has that decrease been brought about? In what financial circumstances will a person be eligible or not eligible for legal aid assistance? What types of legal problems will be covered, or not covered, by the program? What is the impact for members of the public and for the legal system when people with legal problems do not have lawyers to represent them? Does access to counsel mean the same thing as access to justice? What is the significance of the cutbacks in terms of access to justice?

These are large questions, and this is a small study. The research has focused on the impact of cutbacks on women and children, because this is an area of great concern to the Law Society.

On 27 July 1992, the Law Society received the report of the Gender Bias Committee entitled *Gender Equality in the Justice System.*[2] The authors of the report stated:

> *We concluded gender inequality is pervasive in the legal and justice systems in this province. While we are also satisfied there are examples of bias against men, the vast majority of concerns raised reflect discrimination against women. Furthermore, while the laws, for the most part, are gender neutral, the application of many of these laws creates a situation of systemic bias against women, particularly women of low-income status, aboriginal women, lesbians, women with disabilities, and women who are members of visible and immigrant minorities...*
>
> *We believe the family law system in our province fails to provide women and children with adequate means of economic support upon marriage breakdown.*[3]

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1 Carol McEown et al., *Gender Differences in Referrals and Refusals of LSS Services: Changes from Fiscal 1992/93 to Fiscal 1998/99* (Vancouver: Legal Services Society of B.C., 1999), p. 1.

2 *Gender Equality in the Justice System*, Report of the Gender Bias Committee, Volumes 1, 2 (Vancouver: Law Society of British Columbia, 1992).

3 Ibid., Vol. 1, p. 6.

The Law Society, in its commitment to following up on the recommendations made in the *Gender Equality* report, and having heard expressed from many quarters the concern that the legal aid cutbacks may be having a disproportionate impact upon women and children, decided that this study should have that issue as its primary focus.

It should be noted, however, that after consultation with Legal Services Society and community groups about the scope of the survey to be undertaken, it was broadened to encompass an overview of the context in which legal aid services are delivered.

II. A Description of the Study

The study first provides some descriptive material about the Legal Services Society, which is the organization with statutory responsibility for providing legal aid services in B.C. It then looks at material and information provided by L.S.S. to describe what the legal aid cutbacks have actually entailed. Some data has been made available by L.S.S. that provides "big picture" information about the effects of the changes to legal aid services.

The study then shifts into qualitative research, consisting of description and analysis of interview material collected primarily from people involved in the delivery of legal services in four communities of the province. The people interviewed fall into four categories: persons administering legal aid services at the community level; lawyers doing family law work on the legal aid tariff or as staff lawyers; Court Registry staff, and members of the judiciary. The communities selected for this interview process were Chetwynd, Courtenay, Vancouver and Vernon.

Based upon the study material, an analysis is undertaken to address how the legal aid cutbacks have had different impacts on women and men, whether the impacts on women and children have been disproportionate, and what the issues are that arise from this study concerning access to justice in British Columbia.

III. Government Policy and the Legal Services Society

The Legal Services Society was officially created by statute in 1979,[4] and was given the mandate to provide legal services and legal information for low-income people in British Columbia. It is governed by a Board of Directors with fifteen members:

- five members of the Board are appointed by the Attorney General to represent the interests and perspectives of the public;

4 *Legal Services Society Act*, S.B.C. 1979, c.15, now R.S.B.C. 1996, c.256.

- five are appointed by the Law Society, in consultation with the B.C. Branch of the Canadian Bar Association, to represent the interests and perspectives of the legal profession and, perhaps, the courts, in the sense that lawyers are officers of the court;

- five are appointed by the two Community Law Office organizations: the Native Community Law Office Association of B.C. and the Association of Community Law Offices of B.C.

The basic mandate of L.S.S. with respect to the services it is to provide is spelled out in the legislation at Section 3:

> *(1) The objects of the society are to ensure that*
>
> *(a) services ordinarily provided by a lawyer are afforded to individuals who would not otherwise receive them because of financial or other reasons, and*
>
> *(b) education, advice and information about law are provided for the people of British Columbia.*
>
> *(2) The society must ensure, for the purposes of subsection (1)(a), that legal services are available for a qualifying individual who meets one or more of the following conditions:*
>
> *(a) is a defendant in criminal proceedings that could lead to the individual's imprisonment;*
>
> *(b) may be imprisoned or confined through civil proceedings;*
>
> *(c) is or may be a party to a proceeding respecting a domestic dispute that affects the individual's physical or mental safety or health or that of the individual's children;*
>
> *(d) has a legal problem that threatens*
>
> *(i) the individual's family's physical or mental safety or health,*
>
> *(ii) the individual's ability to feed, clothe and provide shelter for himself or herself and the individual's dependents, or*
>
> *(iii) the individual's livelihood.*

On a few occasions, the courts have interpreted this mandate when a refused applicant has taken the Society to court to challenge the basis upon which he or she has been refused coverage.

Because of the wording of the *Legal Services Society Act*, and because of a large historic volume of case law and the wording of the *Charter of Rights and Freedoms*,[5] it has been generally held that there is a mandatory minimum level of service that must be provided to applicants who are financially eligible and who are charged with a criminal offence: they must be provided with a lawyer if they may be imprisoned as a result of the charge.

Coverage in family matters has historically been more discretionary in nature. The wording of the governing legislation has never been authoritatively interpreted by a court. Unlike criminal law, it is not possible in family law to pre-determine the "seriousness" of a case by looking at its definition. A custody and access case can be very straightforward or very seriously contested, depending on the nature of the competing claims. Thus, family law has generally not been considered to be an area of law which inherently involves such fundamental rights or interests that legal counsel must be provided.

It is interesting to note that, very recently, the Supreme Court of Canada has considered the question of eligibility for legal aid in the context of a child protection hearing in New Brunswick. This case, known as *J.G.*,[6] discusses whether a parent has the constitutional right to state-funded counsel in the circumstances of a custody application by the state. Lamer J., in reasons concurred in by the full court, stated at paragraph 75:

> *In the circumstances of this case, the appellant's right to a fair hearing required that she be represented by counsel. I have reached this conclusion through a consideration of the following factors: the seriousness of the interests at stake, the complexity of the proceedings, and the capacities of the appellant.*

The decision in this case will certainly have implications in all jurisdictions for the child protection branch of family law, and may have broader implications for the future of other areas of family law.

In the study undertaken by Legal Services Society at the request of the Law Society,[7] L.S.S. reported that beginning in 1993, they were required to operate within "increasingly narrow statutory and financial boundaries ... Initial changes to eligibility and coverage guidelines were established in late 1993 and early 1994. By 1997, the budget of L.S.S. was capped, and the organization was required to institute additional measures intended to produce an annualized saving of $14,000,000."[8]

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5 *Constitution Act*, S.C. 1982, c. 11, Schedule B.

6 *J.G.*-v.-*New Brunswick* (The Minister of Health and Community Services), Supreme Court of Canada File #26005, decided September 10, 1999.

7 *Gender Differences in Referrals*, see Footnote 1.

8 Ibid., p. 1.

Following is a list of the major measures that were implemented by L.S.S. between early 1993 and the end of 1997 in order to meet the budget restrictions and ultimately the budget cap imposed by the province.

A. Financial Eligibility

Originally, there were financial guidelines that were consistent with the low-income cut-off established by Statistics Canada and that were adjusted on a local basis to reflect actual costs of living. In addition, there was a flex test to be applied in situations where a person's income exceeded the guidelines, to determine more precisely the extent and nature of fixed expenses in order to assess whether the person could actually afford to hire a lawyer. The first change, in September 1993, was to eliminate the flex test and replace it with a maximum amount of $200 flex, which could be applied only in situations of emergency family matters and particularly complex criminal matters.

In August 1995, a contribution policy was introduced, requiring people whose income was above certain levels to make a small payment ($50-$150) towards their legal services; failure to do so would result in ineligibility. The contribution levels were later adjusted; the current amounts are $25–$100.

In April 1997, the possibility of flex was eliminated for all clients and new financial eligibility guidelines were established. The eligible income levels were substantially lower than in the previous guidelines, and were lower for criminal cases than for family cases.

B. Criminal Coverage

In July 1994, the test for criminal coverage changed. The new test provides for coverage only in situations where the accused person faces the likelihood of a jail sentence, deportation or loss of employment if he or she is convicted. The only change since that time has been a new policy in May 1999 which provides for coverage in situations where accused persons have a mental or emotional disability that would make the applicants unable to defend themselves, or cause the applicants to be unable to communicate effectively.

C. Family Coverage

In October 1994, the Family Case Management Program (FCMP) was introduced. This involved several factors, and represented a major difference in the way that coverage in family law matters would be decided and administered. The three main components involved in the implementation of this new system were:

- creating a two-tiered tariff structure that requires lawyers handling more complex cases to seek the approval of L.S.S. if work is required over and above the original referral;

- creating two separate tariffs, one for family matters (FCMP) and one for child protection matters (CFCSA);

- redefining, tightening up and formalizing coverage policies.

In April 1997, funding was eliminated for the "Do Your Own Divorce" program, and in June 1997 coverage was eliminated for variation of maintenance orders (with a directive to refer these applicants to Child Support Clerks or Family Maintenance Workers). Coverage was also severely reduced for variation of custody and access orders, limiting coverage to situations where there was a demonstrable risk of harm to the child or the custodial parent, and allowing for certain other specified situations to be submitted to head office for "Exception Review." There was also a directive to staff at this time to divert cases away from L.S.S. to Family Justice Counsellors where appropriate.

Starting in June 1998, some features of family coverage began to be modestly improved. The first step was to reintroduce a flex amount of $150 for family emergency services and CFCSA (child protection) cases. Then, in the winter of 1998, the CFCSA tariff was amended to cover some new aspects of the legislation. In October 1999, a limited authority to cover variation of maintenance orders in Supreme Court was introduced, and the authority to make decisions on Exception Reviews concerning variation of custody and access orders was shifted from head office to the local offices.

D. Tariff Reductions

It is probably worth noting that in 1991, the tariff was doubled. This obviously caused a huge increase in the legal aid budget, and by mid-1992 the Legal Services Society was on notice that the government wanted to see changes to control costs.

In December 1992, a new criminal tariff was implemented, which was designed to achieve a 15% reduction in criminal tariff expenditures. At the same time, L.S.S. was having trouble placing family cases, and it was generally agreed that the family tariff was grossly inadequate. In April 1993 it was amended to allow an increase of 10 hours for general preparation time per case. These attempts to simultaneously control costs on the criminal side and improve the tariff on the family side were quickly overtaken by directives from the provincial government to meet budget targets. In September 1993 the basic "affordability" flex test was eliminated to try to reduce the number of eligible clients, and in October 1993 the first tariff fee reductions were implemented.

The summer of 1994 saw massive "holdbacks" imposed upon tariff lawyers. The initial rate in July 1994 was 22.5% of fees billed. After several months during which holdback levels varied up and down, and the concurrent introduction of the Family Case Management Program, the current regime was established: holdbacks of 15% on the criminal tariff, 10% on the family tariff, 17% on the immigration tariff and 15% on the duty counsel tariff.

E. Expenditure Reductions Associated with the Changes

When the L.S.S. budget was capped in the spring of 1997, the Society was immediately forced to reduce expenditures by about $14 million.

The bulk of these savings came from a 16% reduction in tariff expenditures, amounting to a saving of $9.6 million. This reduction came from a few major changes:

- lowering financial eligibility levels and removing any flex test (savings of $3.4 million);
- eliminating or severely restricting coverage for variation of orders (savings of $.85 million);
- increasing tariff holdbacks by another 5% (savings of $2 million);
- managing the criminal and family tariffs to reduce costs (savings of $1.5 million);
- diverting family applicants to Family Court Counsellors (savings of $.5 million);
- switching two staff lawyer positions from poverty law to family law (savings of $.3 million).

Other reductions included an 18% reduction in head office budget (savings of $1.9 million) and a 12% reduction in field office budget (savings of $2.1 million). There was also a restructuring of the client contributions program to raise revenues of $.3 million.

IV. The New Financial Eligibility Guidelines

The largest item of budget reduction was the creation of new financial eligibility and contribution guidelines. The process of determining eligibility is complex, and will not be described in detail here, but the basic income guidelines provide insight into the general financial circumstances of people who are, and are not, eligible.

To be financially eligible, an applicant's net household income and share of equity in disposable assets must both meet L.S.S. criteria. Net household income includes sources of income from the applicant and the applicant's spouse or common-law partner, less allowable deductions. This figure is then plugged into an Income Guidelines table, which factors in case type and household size to determine eligibility.

Here are some examples: for a single person the allowable net income under the 1992 guidelines, based on the Statistics Canada Low-Income Cut-Offs, was $1,106 per month. In 1999, the allowable income was $833 for a criminal case and $941 for a family case. As of April 1, 2000 these figures were raised to $925 for a criminal case and $1,002 for a family case. A single employable person eligible for assistance from B.C. Benefits

received $500 a month, or up to $771 if the person was entitled to additional funds for reasons of disability.

For a household of three, which would encompass a parent and two children, the allowable net income in 1992 was $1,952 per month. In 1999, that figure was $1,458 for a criminal case and $1,647 for a family case; the April, 2000 amendments increased those amounts to $1,620 for a criminal case and $1,755 for a family case. The amount of income payable to such a family under B.C. Benefits in 1999 was $1,179 per month, or up to $1,354 if disability entitlement existed.

In 2000, the minimum wage in B.C. is $7.25 per hour. A person working a 35-hour week at minimum wage, with no dependents, would have a net monthly income of approximately $1,083. If that person has two dependent children, the net income would be only a few dollars higher, approximately $1,090. Thus a person assessed as single with no dependents, working for minimum wage, would not qualify for legal aid, but a single parent with two dependent children would qualify. The cut-off for a single parent with two children would be approximately $11.50/hour, or about $21,000/year.

What this means is that the vast majority of people who are financially eligible, by income level, for assistance from legal aid are people who are receiving social assistance benefits, people responsible for the care of children or low wage part-time workers. Single people who work full-time, even at a very low wage level, are no longer eligible for legal aid unless they have substantial allowable exemptions from income. This would include such items as payments on a maintenance order, daycare expenses, court fines, medical expenses and reasonable business expenses.

The next income-related test applied under the new eligibility standards is that of the Contribution Guidelines. An applicant will be asked to pay a contribution, ranging from $25 to $100, if his/her net income falls within the Contribution Guidelines. In emergency situations, a lawyer referral may be issued without the contribution having been paid, but normally this will not occur. The requirement for a contribution for a household of three begins at $25 for an income of $1130 per month and moves up incrementally to $100 at an income over $1529 per month.

If the person is eligible with respect to income, the next step in the process is to look at their assets. Eligibility is calculated based on the applicant’s share of equity in disposable assets, less any reasonable exemptions. Two examples are provided to illustrate the allowable levels: if the applicant could obtain more than $5000 from the sale of a vehicle, the applicant is ineligible; if the value of the applicant’s personal property, which includes RRSPs, insurance policies, livestock, recreational equipment and any household furnishings above the modest minimum, exceeds a value of $4500 for a family of three, the applicant is ineligible. By way of comparison, these allowable asset levels are in some instances lower than those of the B.C. Benefits program, so that people on assistance can be ineligible for legal aid based upon their assets.

V. Delivery of Legal Services

Legal Services Society has historically provided four types of legal services: criminal, family and immigration law—with services delivered by private bar lawyers working under a legal aid tariff—and non-family civil law (generally referred to as poverty law)—with services delivered by staff lawyers and paralegals. This study does not deal at all with the area of immigration law services.

In the attempts since 1992 to contain or reduce costs, and in some instances to improve services to clients, several initiatives have been taken that have affected coverage or service delivery in the areas of criminal, family and poverty law.

The service delivery initiative that is most relevant to this study is the introduction of delivery of family law services by staff lawyers. One family lawyer was added to the staff of the Fort St. John office eight years ago, because there were not enough lawyers in that area of the province (Fort St. John/Dawson Creek/Chetwynd/Fort Nelson) willing to take family legal aid files.

At about the same time, a debate began involving L.S.S., the Ministry of the Attorney General and the tariff bar about the option of using staff lawyers to do some of the work which up until then had been done by the tariff bar. Pilot projects began in a few communities in 1993, and the decision was made by L.S.S. to develop a "mixed model" for service delivery: still using predominantly the tariff bar, but having some staff lawyers in all three areas of law: criminal, family and immigration.

In Vancouver, the Family Law Clinic was opened three years ago. Family court has always had duty counsel; the staff lawyers now provide duty counsel on CFCSA days, as well as doing family duty counsel one day a week. A second lawyer was added in Fort St. John a year ago; he does both criminal and family work. The office does not formally provide duty counsel services in Chetwynd, but one of the staff lawyers is usually present on the days that family matters are dealt with. The court relies on them, or sometimes a member of the private bar, to provide advice to unrepresented people.

Staff lawyers also provide family law services in ten other communities in B.C., but not in Courtenay or Vernon. The paralegals on staff in the Vernon Community Law Office used to provide some level of information and assistance on family court days in Vernon, but they had to discontinue this service because of the high demand for poverty law services.

VI. Provincial Data on the Impact of the Cutbacks

This study began by looking at the province-wide picture. The L.S.S. report[9] comparing data from 1992/93 and 1998/99 shows that the reductions in both applications and referrals following the 1994-1997 cutbacks have been roughly equal for women and men. What this means is that the percentages of male and female applicants and male and female referrals have remained roughly equal: the ratio of applicants in both years was in the range of 40% women to 60% men, and the ratio of referrals in both years was in the range of 35% women to 65% men.

In 1992/93 there were a total of 114,002 applications for legal aid in the province; by 1998/99 this number had declined to 99,303. Thus, applications declined by 12.9%, but, as was stated earlier, referrals to lawyers (approvals) declined by 29.3%. This indicates that there was a decline in the approval rate.

In order to get a better understanding of what has actually happened with respect to gender, however, it is instructive to look at the approval rates in the different areas of law. This is because the number of male and female applicants differs by area of law, most noticeably between criminal and family law. In both poverty law and summary advice cases, numbers of male and female applicants and referrals are roughly equal. There is an approximate 3:1 ratio of males to females in immigration law, but it is believed that this is partly attributable to male heads of families, and numbers in this area of law are relatively small. It is the figures in criminal law and family law that are particularly significant.

In 1992/93 there were 51,294 criminal applicants. Among those applicants, the ratio of males to females was approximately 5:1. The referral approval rate (the percentage of applicants approved for referral to a lawyer) was 82.5%. In the same year, there were 29,959 family applicants; the ratio of females to males was approximately 2:1 and the referral approval rate was 71.3%.

In 1998/99 the ratio of males to females in each category remained roughly the same. There were 39,514 criminal applicants, and the referral approval rate in criminal cases was reduced by 11.5%, to 71%. In the same year there were 24,537 family applicants, and the referral approval rate in family cases was reduced by 17.6%, to 53.7%. The decline in the approval rate for family applicants (17.6%) was significantly steeper than the decline in the approval rate for criminal applicants (11.5%).

While the overall ratios of men and women who are receiving service have remained constant, in the process of implementing cutbacks there have been disproportionate cuts in the approvals in the area of family law, in which women are the predominant client group for legal aid services.

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9 *Gender Differences in Referrals*, see Footnote 1.

It should be noted that there is no suggestion that L.S.S. intended to disadvantage applicants in need of family law services. In fact, several measures were taken to try to protect these clients, for example, the higher levels of income allowed for financial eligibility. It is also relevant to note that on average a family case costs L.S.S. almost twice as much as a criminal case. Even though criminal approval rates are much higher than family approval rates, expenditures under the family tariff have exceeded expenditures under the criminal tariff since 1993/94.

Coverage cuts were made in the belief that the needs of these clients could be met by alternative, less litigious services such as the Family Justice Counsellors and the Child Support Clerks. Nevertheless, from the point of view of the client, only 53.7% of those who apply for legal aid are being approved for referral to a lawyer. Much of the focus of the rest of this study will be upon the nature of the impacts that the decline in access to counsel in the family law area has had on the low-income men, women and children who have been affected by it.

One of the first things to look at is the gender breakdown of applications and referrals for family law applicants. In 1992/93 the applicants for family legal aid assistance were 33.6% male and 66.4% female. The total number of referrals was 21,347, of which 30.3% went to male applicants and 69.7% went to female applicants.

In 1998/99 the applicants for family legal aid were 30.3% male and 69.7% female. The total number of referrals was 13,168, of which 26% went to male applicants and 74% went to female applicants. It would appear that there was previously a tendency in the system to provide proportionately more family law referrals to female applicants than to male applicants, and this tendency continues and is strengthened after the cutbacks.

VII. An Overview of the Survey

A. Background

The tightening up, restructuring and ultimate reduction of legal aid services took place over a period of years, from 1994 to 1997. At the same time, and up until the present, changes were taking place in the rules and services that govern the resolution of family disputes in the court system.

New legislation governing child protection matters came into force in January, 1996[10] and corresponding new rules of court followed. The Gove Report (1995)[11] seriously questioned the integrity of the child protection system in British Columbia. This resulted in a new Ministry of Children and Families and in many changes to practices and

10 *Child, Family and Community Services Act*, S.B.C. 1994 c. 27; now R.S.B.C. 1996 c. 46.

11 Government of British Columbia, *Report of the Gove Inquiry into Child Protection (B.C.)*, 1995.

procedures of child protection staff. More children are being apprehended and each case requires a higher level of professional assessment and supervision, which results in more court cases and more evidence to present in court cases.

Amendments to the *Divorce Act* included the introduction of mandatory Child Support Guidelines, which were also adopted at the provincial level for child support applications under the *Family Relations Act*. The Supreme Court rules changed in ways that allow more avenues for settlement-focused or expedited procedures that can be used in family cases, most noticeably, the early intervention hearing. In New Westminster, a pilot project of using case management in family cases was instituted.

The Provincial Court rules and services have also been changed in ways that are intended to make its processes more accessible to the public. Judges are empowered to hold case conferences with the parties in both child protection (CFCSA) and family relations (FRA) cases.

Partly because of transfers of personnel and responsibilities related to the creation of the new Ministry of Children and Families, the long-standing Family Court Counsellor service was partially dismantled and given a new name and new focus. The re-visioned service is referred to as the Family Justice Counsellor (or Family Justice Worker) program. All of its staff have received mediation training and are to make this service available to clients referred by L.S.S. or by the family division of the Provincial Court. A "Parenting After Separation" course was developed for parents involved in family break-up, and Child Support Clerks were put into place to assist with the implementation of the Child Support Guidelines.

In five locations in the province, the Provincial Court has been designated as a Family Justice Registry, or "Rule 5" court. This designation is part of a pilot project in which the provision of alternative services is a focus. In Vancouver, which is one of these registries, for the past year all family law applicants have had to meet with a Family Justice Counsellor (FJC) before being able to put their application onto the court list. The legislation allows for a party to apply for an exemption from this requirement in certain limited circumstances, e.g., urgency, violence. The "Parenting After Separation" program is also mandatory, and the position of Child Support Clerk is retained.

The Attorney General has stated that a portion of the funding for these initiatives has come from the P.S.T. on legal services; his remarks have been understood to mean that these initiatives are intended in part to alleviate the demand for assistance from Legal Services Society. This is some of the context in which changes to legal aid have occurred and must be assessed.

B. The Scope of the Study

The interviews were carried out in October, November and December 1999. The questions were designed to gather information and observations about the following subjects:

- the direct impacts of the reductions in legal aid services as observed by service providers, with a particular focus on women and children;
- the impact of people not being able to have counsel to represent them;
- the efficacy of certain programs designed to support family law processes: the Family Maintenance Enforcement Program (FMEP), the Child Support Guidelines, the Family Justice Counsellor program;
- the impacts of court-based family dispute resolution initiatives;
- a review of service delivery issues in specific types of cases: family violence, access to assets, child and spousal support, CFCSA;
- delivery of family law services by the tariff bar and staff lawyers.

Responses are reported at some length in Part II of this report. Interviewees offered a wealth of thoughtful commentary and interesting suggestions. On some issues there was a wide divergence in perceptions; on others there was a high level of agreement.

C. A Summary of Responses

This brief summary sets out the major subjects about which the study participants were asked to comment and highlights areas of strong agreement or strong concern. For more complete discussion, reference must be made to the in-depth reports of the interviews.

1. Priority Services for Women and Children

Legal aid administrators were asked, based on their experience with applicants, to identify what types of legal services seem to be most fundamental to the interests of low-income women and children. First priority was given to the stability of children's lives: custody and access, and child apprehension matters where applicable. Second priority was given to personal safety for women and children: restraining orders and appropriate access arrangements. The third area of high priority was shelter and income security: support, housing issues and income security.

Asked to specifically consider disadvantaged or minority women and children, legal aid staff pointed out the need for public legal information services to ensure that people are aware of their rights and the services and options that are available to them.

2. Financial Eligibility

There was unanimity among legal aid administrators, and concurrence among many tariff lawyers in identifying the following impacts from the tightened financial eligibility requirements:

- the working poor are no longer eligible; most people who are eligible for legal aid are on public assistance;
- many of the people who are being refused are in circumstances where they cannot afford to pay for legal services;
- financial eligibility tends to be more of an issue for men because they are more often assessed as single-person households and have some form of employment;
- there are many problems concerning assets and eligibility.

3. Coverage Limitations

Legal aid administrators noted that in order to decide coverage they are required to apply "risk of harm" tests, which are difficult.

Lack of coverage for variations was identified by all of the offices as a serious problem area, and was also mentioned by the majority of the family lawyers. There is a high demand for variations in matters of access and support; these are major issues for people and need to be addressed as they arise.

Many lawyers mentioned that lack of coverage for division of assets is particularly problematic for women. It was suggested that L.S.S. should take security for recovery on assets rather than deny coverage.

4. Impact on Service Delivery under the Tariff

It is becoming increasingly difficult for all legal aid clients to find suitable counsel. In three of the four subject communities lawyers said that their willingness or capacity to take legal aid files has been affected by the changes in legal aid funding and administration. They generally said that they take fewer cases and are more selective about the ones they take. In three of the communities most of the lawyers agreed that there is a reduction in the number of senior lawyers taking legal aid cases. Many lawyers who do provide legal aid service spoke of feelings of conflict between their desire to provide a high level of service and the constraints of legal aid.

Asked to comment generally on the impact of the legal aid cutbacks on the practice of family law with respect to low-income families, the lawyers from all the communities frequently commented that there are more unrepresented people in court and those parties who are provided with lawyers receive a restricted level of service.

Many lawyers voiced opinions about the Family Case Management Program. This program requires lawyers to write opinion letters requesting authorization to proceed with their cases beyond basic services and eight hours of prep time. It also enables lawyers to get coverage for their clients on a wider variety of issues, and to obtain approval for additional hours where this is required by the nature of the case. A couple of lawyers pointed out that total hours now can exceed what was available before this system was put in place, if the lawyers use the system properly.

The Family Case Management Program does therefore significantly affect service delivery. Many lawyers find the program to be reasonable in its demands for accountability, but some find it too burdensome or too slow and choose not to participate. The result is that either the lawyer does not get paid for many hours of work or the clients do not get all of the services to which they may be entitled.

Upon review of the information and material provided by Legal Services Society, it appears that there are significant differences between the stated policies of the organization with respect to coverage available under the Family Case Management Program, and the beliefs or experiences of tariff lawyers. This discrepancy may also be contributing to the dynamic of lawyers not getting paid for all of the work they do for legal aid clients, or of clients not getting all available services.

In Vancouver and Chetwynd, as part of the changes to legal aid, staff lawyers are now doing some of the work formerly done by tariff lawyers. In both locations the Provincial Court judges place great value upon the service provided by staff lawyers, primarily because of their availability as duty counsel.

5. People Representing Themselves in Family Court Proceedings

Legal aid administrators all agreed that the resources they could offer to people without lawyers were generally limited to information brochures and referrals to Family Justice Counsellors or other agencies. Those locales that have duty counsel noted the usefulness of this resource for lay litigants. Staff in the Vernon office are working on a project to develop a self-help kit for variation applications in Supreme Court.

Lawyers from all four communities agreed that self-representation is happening in both levels of court to a noticeable extent in family matters. There was a common perception of the following basic problems:

- many people who are not represented just give up. Some respondents felt this is especially true for women because of the intimidation factor;

- more of the people unrepresented in court are men;

- judges spend a lot of time explaining the process and telling people what information is needed by the court since the people do not know law, procedure or how to present their case;

- there are particular difficulties at the Supreme Court level due to the procedural and written requirements of the court. The Supreme Court is the only forum available to claim for household assets;

- a lack of trust by the unrepresented towards the opposing lawyer makes it more difficult for negotiations to occur;

- in some instances the unrepresented party may not be treated fairly. They may enter into consents they do not understand, or be misunderstood by the judge;

- parties do not receive the benefit of protection from the highly charged emotional atmosphere of their dealings with their spouse, which court is supposed to provide;

- there is a reduction in evidentiary standards.

6. Language or Literacy Problems

Difficulties with language and literacy were not uniform among the four communities. In Chetwynd, literacy was identified as an issue for many legal aid applicants. The legal aid administrator, registry staff and lawyers provide as much assistance as they can. Vancouver was the only community in which language difficulty was identified as a major issue.

Vancouver registry staff noted that they have no resources if the applicant has language issues. They give people information and forms in English, and tell them to get someone to help them with it. There is provision in the family tariff for translation services, but both lawyers and registry staff stated that unrepresented people who do not speak English face real difficulties accessing the legal system.

There is provision for criminal coverage on the basis that the person suffers from a mental disability or is unable to read and write or to understand the nature of the proceedings, but this coverage is not available for family clients.

Many lawyers in Vancouver, and some in Vernon and Courtenay, noted that the level of literacy required to participate in court proceedings effectively is very high, especially Supreme Court. Many people cannot cope with the paperwork involved in starting a court application, or do not understand legal documents or what is being said in courtrooms.

7. Impact of Cutbacks Among Poverty Law Services

Many of the issues that arise at the time of separation are poverty law issues, such as access to public assistance programs, tenancy problems, debt, wills, loss of employment. One particular interaction between family law issues and poverty law issues is around eligibility for B.C. Benefits. Women may have Benefits limited or denied if they cannot

get their family issues resolved. For example, if a woman does not have custody of her children, she may not be eligible for public assistance.

The cutbacks to legal aid have also affected the availability of these services for low-income people. In Chetwynd, a poverty lawyer who served the area out of Dawson Creek was eliminated to meet the need for a family lawyer. In Vancouver, Courtenay and Vernon, the services have not been reduced, but the demand for services has increased substantially without growth to meet the demand.

8. Family Violence Issues

The identification of family violence as a factor in a family case is very important. If it is identified at the application stage, three decisions will follow from that:

- the applicant (almost always a woman) will not be diverted to the FJC; she will be given a referral for a lawyer immediately;

- if the applicant is over the income limit for financial eligibility, but not by more than $150, a referral can be issued to at least provide coverage for a restraining order and support, and for custody and access if there is demonstrable risk of harm;

- the applicant will be given an emergency services referral. The significance of this is that the lawyer is given more options about what services can be provided for the client.

The issue mentioned by all legal aid administrators is the difficulty in identifying the existence of family violence during the intake session, given many women's reluctance to discuss the issue.

Even if family violence is identified, if the applicant is not financially eligible, no service will be provided. If coverage is provided to the fullest extent possible, the client may still be on her own with respect to division of assets, variations (in the common situation where the abusive spouse uses access to harass her), and divorce.

At least half of all lawyers interviewed in all four communities stated that there has been some level of negative impact for women and children in situations of family violence.

9. Service Issues for Aboriginal People

There is a need for more native lawyers, and/or more culturally informed lawyers, to do CFCSA and family legal work for native people. Often lawyers doing CFCSA cases do not appreciate the cultural component of the need for placing native children within the extended family. Also, native women face different issues at the time of separation; they need lawyers who are informed about housing on reserve lands, and other such issues.

Family violence is a very difficult issue for native women; there is a great fear that if they report, they will lose their children. The reduced access to counsel for women in such situations was identified as a significant problem in northeastern B.C. The worker in Fort St. John also noted that, in the absence of counsel, there are no alternative resources there to assist people, and that some people on benefits are not getting legal aid because they cannot afford to pay a contribution.

There is a general lack of education among the native population about legal rights and obligations, and about how the legal system works; in the absence of public education at the community level, many legal issues of aboriginal people do not get addressed. The need for a more visible aboriginal presence, in both L.S.S. and the court system, was identified.

The Executive Director of the Native Courtworkers noted that all over the province native people are finding it more difficult to find lawyers to take family cases on legal aid, and more difficult to go to court unrepresented because the system has changed and there is no information at the community level about the new procedures and initiatives.

10. Access to Assets

Lawyers were asked whether the inability to obtain access to assets at the outset of litigation is a problem. Many thought it is not a problem, that usually assets are frozen, and often the mother gets exclusive possession of the matrimonial home, or that legal aid clients usually only have debts, or not enough equity in assets to enable them to fund litigation.

Those who did see it as a problem made several observations:

- that this is very often a significant issue for women from traditional marriages because they often have no knowledge about the family's assets and no title to any of them;

- that there are usually more women than men seeking access to assets related to basic household needs, e.g., vehicles, furnishings, income-producing assets, RRSPs;

- that there is a problem at the very basic level of needing to obtain basic furnishings and personal belongings in order to set up a new household;

- that coverage should be provided with a repayment obligation where assets have significant value;

- that these are difficult kinds of cases for self-representers because of disclosure and valuations.

11. Support Orders: Child and Spousal

Most lawyers agreed that more child support orders are made by consent now because of the Child Support Guidelines. However, most also said that the guidelines are quite complex once you get beyond the basic table, and that most people cannot use them properly without assistance.

Legal aid administrators observed that the payors, usually men, respond well to the guidelines. It has eliminated men's focus on "how the ex is spending the money," has made support payments more consistent and less emotional.

Most lawyers agreed that claims for spousal support are generally contentious and do not settle. A number of lawyers said that this issue only arises if there is anything left over after child support. One spoke of it as a "declining right." At least one lawyer in each community, and seven out of the twenty-two lawyers in Vancouver noted that men deeply resent spousal support and do not want to pay it. Many lawyers also said that women are ambivalent about it and do not think of it as an entitlement.

12. Maintenance Enforcement

Recipients of maintenance, usually women, are represented by FMEP. The payors can only be covered by legal aid in enforcement proceedings if there is a serious possibility of incarceration as a result of the hearing.

Whether lawyers felt that the FMEP works reasonably well or not very well, the majority stated that it is very slow to get started, which results in large arrears and, therefore, enforcement difficulties. Several lawyers voiced the opinion that some avenue for earlier intervention would make the system work better.

13. Diverting Clients to Family Justice Counsellors

This diversion has been mandatory in Vancouver for the last year unless judicial exemption is obtained. The lawyers were not conclusive in their assessment of this initiative. Many pros and cons were presented.

One area of significant agreement was that people should be getting legal advice before seeing the FJCs (nine out of twenty-two lawyers made this comment). The main reason for this view was that people have very little information when they have just separated. They do not understand their options or what they are entitled to. They are not really equipped to negotiate on their own behalf.

In the other communities, diversion might happen at intake as an alternative to a referral to a lawyer, or the courts may refer the parties to the FJCs. Seven out of the eight lawyers in Vernon expressed real concern about this initiative as it is presently implemented. In Courtenay, four out of six lawyers said that this was a formerly valuable service that has all but disappeared. They can no longer get custody and access reports on a timely basis,

and the mediation services are not readily accessible in the Comox Valley. In the Chetwynd area, there is no FJC service at the present time. The person who was in that position is on leave and has not been replaced. One of the lawyers said that the FJC had done some positive work on straightforward consents, but sent anything contested to counsel. The legal aid administrator noted that being diverted to the FJC meant a two-hour drive to Fort St. John; no one was required to do it against their wishes.

14. Impact of Family Dispute Resolution Initiatives.

Lawyers were asked whether the new court-based initiatives were having a significant impact on their clients. Responses to this were quite diverse.

A few lawyers in each community—several in Vancouver—spoke very highly of case conferences in CFCSA matters and in FRA (to the extent that they are being done). No one spoke badly of the "Parenting After Separation" course, but most lawyers did not see it as having any significant impact in terms of assisting to resolve disputed issues. It is presented only rarely in Chetwynd.

The Child Support Clerk has been removed from all of the communities except Vancouver, and all of them except Vancouver see their communities as having very limited access to the FJC program.

The early intervention hearing in Supreme Court was seen by Vancouver lawyers as generally positive, depending upon the attitude towards it by the presiding judge. Some saw it as occurring too early in the process to be widely useful as a settlement forum.

In discussing these judicial initiatives, one of the recurring positive statements was that the parties seem to benefit from getting direction and feedback from a judge.

Lawyers were specifically asked about whether the settlement-focused initiatives have had an impact on the need for low-income people to have legal representation. Responses here were also very diverse. Some of the common themes expressed were:

- in a very straightforward case, these initiatives can assist a person to get what they need on their own, but in most cases legal representation is needed;
- lawyers should be participating with the parties in these judicial settlement activities to provide advice and to offset any imbalance in bargaining power;
- many legal aid clients have fairly low levels of skills or confidence, or are in crisis because of the family separation; they need an advocate;
- family legal issues and family court systems are actually very complex, more so than they used to be.

Some lawyers were of the opinion that the settlement focus tends to disadvantage women because they are more likely to "give things up to obtain peace," and because the more dominated partner—more often the woman—is at a disadvantage in a bargaining session. The presence of counsel can offset this disadvantage.

15. Accessing the Legal System

Interviewees were asked to identify obstacles for low-income women and children who need to use the legal system to address family law issues. Financial eligibility as an essential factor in blocking access was identified by legal aid administrators, six of the eight lawyers in Vernon, eleven of the twenty-two Vancouver lawyers, three of the six Courtenay lawyers and three of the five Chetwynd lawyers. Many noted that large segments of the population are getting no assistance.

The need for coverage of variation applications was identified as a major problem by legal aid administrators in all offices. Many lawyers emphasized the need for the legal aid program to retain and foster a competent tariff bar, and to reassess coverage limitations.

Lawyers and legal aid administrators were invited to sum up by discussing suggestions or concerns about legal services or access to justice. The comments were rich and widely varied. A few of the highlighted issues were:

- concern that many women are walking away from their rights because they are too intimidated to use the courts without a lawyer. The result for them and their children is poverty;

- concern that many men are feeling left out by the legal aid system, which is resulting in a hostile approach to compliance with the legal system, which ultimately has a negative impact on women and children;

- the need for a proper recovery system to enable expanded coverage;

- concern about the relationship between L.S.S. and its service providers, and concern about the high level of frustration tariff lawyers expressed about administration, disbursements and payment;

- concern about access enforcement and variations.

Certain members of the Vancouver bar identified issues of particular concern to minority groups:

- aboriginal women feel uncomfortable because of the lack of an aboriginal presence, or aboriginal cultural awareness, among lawyers or other service providers in the legal system;

- many immigrant women and other women in traditional marriages are unlikely to achieve financial independence, and require adequate coverage with respect to support and property issues;

- the unique needs of lesbian and gay parents with respect to relationships with their children are inadequately addressed in the current system;

- immigrants face significant barriers, both language-based and cultural, in addressing family law issues. They need more community-based resources and public education to encourage and assist them to access the legal system.

16. Interviews with Registry Staff

In all 4 communities, registry staff who deal with family matters say that the new Provincial Court Rules and forms have resulted in more need for assistance at the counter. People have difficulty understanding the new financial forms, and have a lot of questions about process. Registry staff are not supposed to help people fill out forms. All registries except Vancouver Provincial Court noted the absence of a Child Support Clerk as a real gap, and that there is also very little access to Family Justice Workers.

In Vancouver, there is duty counsel in Provincial Court which is an important resource for unrepresented people. Registry staff report that the mandatory referral to Family Justice Counsellors produces many consent desk orders; there is no requirement for independent legal advice before these orders are sent to the court for approval.

During the course of a family case, staff have noted various impacts from unrepresented litigants: they phone in often to ask questions about process; their paperwork is often not done properly and adjournments are required; they do not understand what happened in court and ask registry staff for explanations; they cannot prepare their own court orders.

Supreme Court staff in Vancouver, Chetwynd (Dawson Creek) and Vernon say the increase in unrepresented people is noticeable. Both registry staff and judges have to take extra time to provide assistance, especially regarding financial information. Staff in Vernon have noted that the lay litigants usually have a hearing; cases with lawyers are more likely to settle.

Registry staff do not receive any training about screening applicants for family violence, but they are all aware of this issue. Staff from Courtenay, Chetwynd and Supreme Court Vancouver have noticed women with violence issues going into court unrepresented.

Registry staff in Courtenay, Chetwynd and Vancouver noted that managing the logistics of coming to the courthouse and getting an application started is a significant obstacle for low income women with children. They usually have no transportation and have to bring the children with them; the new Provincial Court procedures require a minimum of 3 trips to the registry office to start a court action.

Staff in Courtenay and Vancouver stated that people come to the courthouse with no information about the legal process; they do not know their legal rights or what the family law system can do for them, they do not understand the court process, and they have difficulty coping with the paperwork they are given. Both offices identified a need for more educational resources, and Vancouver noted especially the need for more information about the legal process for people who do not speak English.

One of the Supreme Court registries noted that they seem to have become the point of entry for people into the system, and they do not have the resources to meet the demand. People are looking for legal advice, or FJC-type assistance, neither of which is available.

17. Interviews with Judges

There were some common themes identified by the Provincial Court judges:

- when a party is unrepresented by counsel the court may not be getting all the evidence needed or considering all the relevant issues for making a good decision;

- in support cases, the issues with respect to self-representation are obtaining disclosure and preparing proper financial information;

- all judges agreed that there is a shift towards more family matters going by consent. Major contributing factors to this phenomenon were identified as the Child Support Guidelines and case conferences. The Vancouver judges also mentioned the FJCs;

- a couple of judges highlighted the need to provide a voice for children. Possible options would be a child advocate or a return to custody and access reports.

There were also several common themes mentioned by the Supreme Court judges:

- seven of the nine judges emphasized the loss of availability of custody and access reports as a significant negative effect of recent changes;

- eight of the nine judges agreed that having people without counsel makes things more difficult for the court, for a variety of reasons; several mentioned a concern about making mistakes or unfair orders because lay litigants may not know how or what to present in that forum;

- five judges commented on the difficulty of continuing to appear neutral while having to provide assistance to the unrepresented person;

- four judges mentioned that it appears that most of the unrepresented people are men;

- six judges identified custody and access issues as particularly difficult to manage when there is an unrepresented party;

- several of the judges saw some serious problems for litigants who have to represent themselves on matters of spousal support and division of assets, depending on the complexity of the particular case;

- most judges agreed that, in general, people have more difficulty representing themselves in family law cases than other civil cases. People's perceptions of what is relevant in a family dispute are often very different than the requirements of the law, and members of the public may not present the information which the court seeks;

- several judges noted that it is difficult to get the parties to negotiate where one or both are unrepresented, and these cases are less likely to settle. The unrepresented person often does not trust the process or the opposing lawyer, they are very emotional, they are not able to assess the downside of proceeding to trial.

VIII. Disproportionate Impacts for Women and Children

A. Approvals for Legal Aid

Within the overall context of legal aid services, the first disproportionate impact has been for family law: the rate of referrals as a percentage of total applications has declined from 71.3% to 53.7%, a decline of 17.6%. By contrast, the rate of referrals for criminal law applicants has declined by 11.5%, from 82.5% to 71%. Because the majority of women within the legal aid universe are applicants for family law services, this steep decline in the rate of referrals has a disproportionate impact for women.

With respect to financial eligibility, both the L.S.S. data and the information provided by legal aid administrators suggest that the current financial eligibility criteria may have a disproportionate impact for male applicants. It was reported that a very common pattern when a low-income family separates is that the mother and children go onto B.C. Benefits. The father then is in a single-person household; even if his job is low-paying, he will not be eligible.

It was suggested by some of the legal aid staff and some lawyers that the place where women particularly run into trouble on eligibility is when they are among the working poor. If they are single parents with enough income to push them over the financial cut-off—for example, if they have a part-time job and a support payment, or a low-paying job—they nevertheless have no disposable income and no possibility of paying for a lawyer if they are refused legal aid.

B. Family Violence

The term family violence is used here to refer to violence in the home directed against women, and sometimes against children. Impacts that were identified in the study include:

- if the woman is not comfortable disclosing this very personal information in the intake interview, she will not get the benefit of: (a) immediate referral to a lawyer, without diversion, (b) the flex test for financial eligibility, (c) an emergency services referral, which provides a greater level of coverage;

- there is a "risk of harm" test applied at the application stage: the women must show not just a history of violence, but a present possibility of actual danger to personal safety;

- many women are getting no assistance at all because they are not financially eligible under the tightened standard;

- if a woman has to appear unrepresented to apply for a restraining order, she may encounter two difficulties: the first is that some judges are now requiring a higher level of independent evidence before granting such an order on an *ex parte* basis; the second is that these orders are not enforceable unless they are very carefully worded, and she may not get the assistance at the courthouse that she needs to address this requirement;

- if a woman is financially eligible because of the operation of the flex test, she receives only limited coverage (restraining order, support, maybe custody and access if she can satisfy one of the "harm" tests);

- unless authorization is granted under an emergency services referral, she may receive no coverage for property issues and divorce; these matters are particularly difficult for an abused woman to have to handle without a lawyer because of her fear of the behaviour of the other party;

- lack of coverage for variations and for access enforcement has a particular significance for these women: there is a common phenomenon of abusive husbands using access as a tool to continue to try to control and/or harass their spouses. The woman is left in an extremely vulnerable situation, with her children in the middle of it, if she cannot address this problem if it arises. Often she will need to apply for restrictions on access, which is a very difficult order to obtain even with the assistance of counsel;

- the trend in the system toward settlement-focused procedures may place abused women in a disadvantaged situation, especially if they are not represented;

- the reduced availability of experienced counsel, and the disincentives in the tariff to take on cases that require extra time, mitigate against these clients getting the type of representation they need; these cases require commitment and expertise;

- an unrealistically low disbursement rate for expert reports may have a negative impact on the ability of counsel for abused women to obtain the kind of evidence that is required to support their cases.

C. Custody and Access—Original Order

Custody and access are clearly issues that have enormous impact upon children. Custody issues can be seen in many instances as also having a disproportionate impact on women, because many women are the primary caregivers for their children and this is the most significant issue on their minds in the event of a separation: can the children stay with me? A major issue for them is that they may bargain away almost anything else to obtain custody of the children, and their spouses generally know this.

There are many other families in which the desire for custody of the children is equally important to the father, and where the parents have an equal stake in either developing a co-operative "parenting plan" or winning the custody battle.

The resolution of the type of ongoing relationship that parents will have with each other after separation, because of their children, is a central issue both emotionally and legally. Many other aspects of the post-separation arrangements flow from this: possession or sale of the matrimonial home, support obligations, division of assets, etc. It is this conjunction of the emotional and the legal that can make this issue so difficult to resolve, and that has one group of judges saying "Send them to mediators" and another group saying "They need lawyers." (There is, incidentally, a third group of one or two judges and several lawyers, who say "Send them to lawyer/mediators.")

With respect to legal services, custody is an issue that legal aid staff are directed to divert to alternative services whenever possible, unless there is a "risk" issue involved. Many of the lawyers have noted that there is a risk involved in sending someone off to the FJC to negotiate an agreement about custody and access with no legal advice about the meaning or consequences of the various options.

One of the Provincial Court judges who sees parents unrepresented on custody matters in case conferences expressed two concerns: that if people are not going to be represented, they should be provided with basic information and legal advice before they are launched into the court system, and that what is needed is some system to identify those cases in which there are legal issues or other dynamics which would make it advisable to provide legal representation.

There is no doubt that if these cases "blow up," the impact for the children can be devastating. One of the issues raised by several members of the judiciary and some

lawyers was that there is presently no effective mechanism for giving voice to the children in these proceedings, if the parents do not have the emotional capacity to do that. Providing counsel for the parents will not necessarily address this gap. Almost all of the Supreme Court judges and several of the Provincial Court judges spoke of custody and access reports as one of the most valuable tools to assist in addressing this situation, and noted that the fact that they are no longer readily available is a major loss to the system. A few members of the judiciary also expressed the wish that they had the option of appointing counsel for children in appropriate cases.

D. Access—Variation and Enforcement

This is an issue that is equally important for men and women, and which certainly has a disproportionate impact for children. Once an access scheme has been put in place, it is very important for children that it be reliable, that they receive consistent information about it from both parents, and that if problems come up they are addressed promptly and effectively.

It is important for the custodial parent that the child be picked up and returned according to the schedule; it is equally important to the access parent that the child be available and expecting to be picked up for access occasions. It is also important for both parents, therefore, that if problems arise they are addressed promptly and effectively. This is an important issue, one where the assistance of counsel could make a significant difference for people.

E. Child Support

Assuming that the mother is either the custodial parent or primary caregiver, child support is a critical issue for her and the children. The problem of getting the original order has generally been made simpler by the Child Support Guidelines.

Women who are on B.C. Benefits will be represented by the Ministry's lawyer. There are some concerns about this: this lawyer does not really represent the women as clients, and the Ministry's interests may not be identical with those of the mothers. Having a separate lawyer for maintenance often interferes with the resolution of other family legal issues.

The issue for women who are not represented on the original application is that they may have no source of assistance with the guidelines; the Child Support Clerks have been removed except for in Rule 5 courts. Also, if any of the complicated concepts in the guidelines are raised, issues of disclosure and assessment of financial information will have to be dealt with; these are difficult for a lay person.

Once the order is in place, the main problem is collection. The only source of assistance for the recipient is the FMEP program. The failure of this program to be able to activate quickly and begin enforcement proceedings promptly can have serious consequences for a single mother and children who are not on B.C. Benefits. This is an example of a

situation in which the lack of flexibility on legal aid coverage has a disproportionate impact. A single parent family that relies on child support to meet basic household expenses can be moved into poverty, even onto public assistance, in a situation where three or four hours of coverage for maintenance enforcement might be able to prevent that from happening.

It should be noted that one of the issues raised in the interviews was that the payors of support, usually men, are now up against the state when FMEP brings enforcement proceedings against them. As an arm of the government, FMEP has been granted powers to penalize defaulters in ways not available to any private party, e.g., cancelling drivers' licenses. The lack of coverage to assist men in this situation to bring applications to vary their orders, or to defend enforcement actions unless they could result in a jail term, would seem to have a disproportionate impact on men.

The other coverage issue related to child support is that of variation. The child support payment may be absolutely critical to the financial integrity of a single-parent family, but there is no assistance to either apply to have it raised if the circumstances of the payor change in a way that should be a benefit to his child, or to defend an application to vary downward. In either case, the difficulty for the unrepresented women has been amply identified by both lawyers and judges. Obtaining full disclosure about the payor's circumstances and testing the quality of the financial information he submits are technical tasks difficult for a lay person. The forms are complex, and there are tax factors to be considered.

F. Spousal Support

Inasmuch as women are usually the recipients of spousal support, this is an issue of particular concern for women. The survey responses indicate that, at the Provincial Court level, the majority of judges see this as a non-issue because spousal support applications are so rare. This was supported by several lawyers who noted that, in low-income families, there is nothing left after the order for child support is made.

One Supreme Court judge took the view that these applications occur infrequently, but several others spoke of it as a problematic issue for an unrepresented person, for much the same reasons discussed above regarding variation of child support orders. One of these judges also noted that the law is actually very difficult in this area; there is no consistency in the case law and the statutes create a set of complicated variables that a court must consider, which would be difficult for a lay person to work with.

One lawyer, who regularly brings spousal support applications on behalf of her women clients, noted that the recent *Bracklow*[12] decision may put spousal support back onto the front burner amongst the legal profession.

The reports from the lawyers described a high degree of antipathy towards spousal support by many men, and a fair degree of ambivalence about it among women. Some women see a bit of a stigma attached to spousal support, many are not aware of it as an entitlement, many do not want to apply for it because it will just make their husbands angry.

Virtually all of the lawyers agreed that when claims for spousal support are made, they do not settle. They are always contentious. One lawyer observed that the Child Support Guidelines seem to be having an adverse impact on spousal support, and added that spousal support seems to be a "declining right." It would appear that a very interesting public policy debate, one of major significance for women, especially older women and women without children, is being played out in lawyers' offices and courtrooms.

Coverage is provided for a spousal support application only if the person cannot be diverted to alternative services, which includes representing herself. Any woman who would need assistance for a spousal support claim from legal aid would not be on Benefits (if she were, the Ministry's lawyer would be representing her); she would be in a position of having to rely for a portion of her basic income on the support payment. Given the descriptions of the prevailing atmosphere surrounding these cases, one wonders if many women would carry through with spousal support applications if they did not have the assistance of counsel.

G. Access to Assets

While either the husband or wife in a marriage can be guilty of refusing to disclose or release assets, the lack of coverage for division of assets is seen as having a disproportionate impact for women because it is believed to be more common for women than for men to be seeking assets related to basic household needs: e.g., pensions, vehicles, furnishings, housing. Problems that were identified in the study include:

- there is no coverage provided for dealing with property issues unless it is approved by FCMP as a necessary adjunct to resolving other covered issues, such as maintenance. If a woman has already settled issues about her children, or does not have dependent children, she is very unlikely to get coverage for this issue;

- if assets are more than minimal, the woman may not be eligible for legal aid, but the assets may not be actually accessible, or sufficiently substantial, to fund her

12 *Bracklow* v. *Bracklow* [1999] 1 S.C.R. 420; Reasons for Judgement on Quantum New Westminster Registry S.C.B.C. File No. S011381 Date: 1999/12/24.

litigation. A legal action to obtain an interim distribution is not a simple matter for a lay person, and there may not be enough assets to provide security for a private lawyer's retainer;

- the claim for division of assets is particularly important for the long-term security of the low-income woman. Her share of the family assets will probably be her only savings base and source of adequate household furnishings; her ability to bring this claim may save her from slipping into poverty. This is also particularly true for women with any chronic health problem or disability;

- if the marriage has been one in which the husband controls the finances, the wife will often have very little information about what assets there are or where they are; obtaining full disclosure in circumstances like this without the assistance of counsel would be very difficult;

- lawyers who represent many women from multicultural and religious communities reported that the issue of hidden assets is a significant problem for their clients. Often the social structure of the extended family or cultural hierarchy will assist the man of the family to hide assets; the woman who seeks her rightful share of the assets is up against a powerful social structure and requires the assistance of counsel and the court.

H. CFCSA Cases

It was reported by lawyers who do a lot of work in this area of family law that most of the parents coming before the court to deal with child protection matters are women; obviously these cases also have a profound impact upon the lives of children.

The study highlighted two problems related to coverage for clients with CFCSA cases. The first is that often the parent does not get legal advice at the earliest stage of the proceeding, which is the Presentation Hearing. Lawyers who represent parents, and one of the Provincial Court judges, commented on how important it is that people have advice before consenting to any order in these proceedings. This is not actually a coverage problem, it is a timing problem: the Presentation Hearing must be convened within a few days of a child being apprehended, which means that it often happens before the parent has applied for legal aid. This issue has been alleviated in Vancouver by the provision of duty counsel by staff lawyers on CFCSA days; perhaps in other locations consideration could be given to some systemic means of providing early advice.

The other issue related to coverage is that the CFCSA tariff does not reflect recent changes in the way these matters proceed. Because of the new models of service in the practice of child protection, the Ministry now produces reams of documents that counsel must review, and trials tend to be much longer than they used to be. It was reported that lawyers are not given prep time to the level that this work now demands, and there is no mechanism to apply for additional hours.

I. Lack of Representation

The study reports numerous observations about the number of unrepresented people in court. While the point has been made quite consistently that most of these self-representers are men, there are also many women in this position. Some lawyers have suggested that women are less equipped than men to appear in court unrepresented for a variety of reasons: they are not as experienced at negotiating the larger world; they are more reticent, etc. Some judges who commented on this have also observed that women are probably less comfortable in the courtroom setting than men, but none said that women are less able to represent themselves than men and several said that they cannot identify any pattern here related to gender.

It is interesting to note, given the general agreement that most of those appearing in court without a lawyer are men, that in terms of absolute numbers, far more women than men are refused by legal aid. This may support the concern expressed by several lawyers that women are more intimidated by the court process and simply will not participate in it without the support of counsel. Several interviewees believe that, because of this dynamic, women are staying in or returning to bad relationships because they cannot leave without the support of the legal system. Others are leaving but slipping into poverty because they do not advance their claims for legal rights.

Several members of the judiciary commented about the unknown numbers of people who just do not make it into the door of the courthouse because they are not able to retain counsel to represent them. Legal aid administrators are aware of this issue at another level: the people who don't even apply because they know that coverage has been cut back. The data shows that the number of applications declined by 12.9% from 1992/93 to 1998/99. The only other rough gauge provided to the study were the figures from the Vernon office, which kept a record of phone calls inquiring about family law services where, at the conclusion of the call, the person decided that there was no point in applying. In a six-month period during which they dealt with 245 applications for family service, they recorded 160 of these calls. This is not a statistically reliable ratio, but it may provide a hint of the kind of numbers of people who have family legal problems but are not even getting close to the door of the legal system.

IX. Access to Justice

Many access to justice issues have been raised by the participants in the study. At the heart of it all remains the question that was posed at the beginning: is access to counsel synonymous with access to justice? Many of the participants seemed to be saying Yes, our system works best when both parties are represented, but if resources are limited and counsel cannot always be provided, how do we target resources to prevent injustices from occurring?

Some suggestions have been made:

- provide legal advice before unrepresented people go into settlement forums;
- examine possibilities for assisting people who are not eligible for legal aid but really cannot afford to retain a lawyer;
- develop checkpoints in the system to identify cases where representation is needed, because the issues cannot be adequately dealt with by unrepresented people;
- custody and access, and variation and enforcement of access orders, are some of the most emotionally charged and difficult issues; need for counsel should be assumed if conflict arises on these issues, and other appropriate resources, including some means of providing a voice for the child, may also be required;
- explore new ways to facilitate the ongoing need to review, update and enforce post-separation financial arrangements;
- provide more public education resources about the family law system, especially to native communities and minority-language communities, and more information and support for people who are not represented by counsel;
- seek ways to mitigate situations where reductions to legal aid funding are having a disproportionate impact on disadvantaged litigants.

PART II
THE COMMUNITY INTERVIEWS

I. Overview of Communities and Interviews

A. Courtenay

Courtenay is the largest of 3 residential/business centres that serve the population of the Comox Valley. Courtenay has an estimated 1998 population of 19,592; the adjoining city of Comox is estimated at 11,847 and Cumberland at 2,825. The surrounding region, which is also serviced by Courtenay for purposes of the legal system, had a 1996 Census population of 36,787. Thus, the legal aid office and the courts in Courtenay are serving a population of approximately 71,000 people.

Legal aid is administered in Courtenay by a branch office of Legal Services Society. This office is staffed by one poverty lawyer, one criminal lawyer and two legal assistants. The interview in this office had input from the poverty lawyer, who is also the managing lawyer, and the two legal assistants.

There is a combined Registry for Supreme Court and Provincial Court. There is no local Supreme Court Justice; service is provided by a variety of members of the Supreme Court. The Provincial Court is served by a resident local judge, and several judges from nearby communities, who do the family court sittings. Interviews with Registry staff had input from the Manager of Court Services, the Family Court (Provincial) Clerk and the Criminal Court (Provincial) Clerk. A Provincial Court Judge who does primarily family matters was interviewed, as was a Supreme Court Justice from Nanaimo who often sits in Courtenay and a Supreme Court Master who also attends regularly in Courtenay.

Interviews were also conducted with 6 members of the private bar whose practice includes family law work on the legal aid tariff.

B. Chetwynd

Chetwynd has a population of approximately 2,900 people, and is a centre of services for a large surrounding rural area including approximately another 5,000 people. It is located within about an hour's drive (100 km.) of Dawson Creek, and within about 2 hours' drive from Fort St. John. These two cities provide many services that are not available in Chetwynd.

Legal aid in Chetwynd is administered by an Area Director: a private bar law firm that maintains a full-time office in Chetwynd to carry out the intake functions of legal aid. A legal assistant takes applications, makes eligibility and coverage determinations and

makes referrals. The supervising lawyer, who is based in Dawson Creek, attends regularly and sees clients to give some free basic legal advice when possible.

The Court Registry in Chetwynd serves only the Provincial Court; generally all Supreme Court matters are referred to Dawson Creek. Some may go to Prince George, which is 310 km. to the south-west. There is no resident Judge in Chetwynd; the Provincial Court judge from Dawson Creek usually attends for the weekly court sitting, and the judge from Fort St. John also attends as necessary. The Supreme Court in Dawson Creek is served by a rotation of a Master and Judges, mostly based in Prince George.

Interviews with Registry staff had input from the Court Administrator in Chetwynd and the Manager of Court Services in Dawson Creek. Interviews with judges included a Provincial Court judge who sits in Chetwynd, and a Judge and Master from the Supreme Court who often attend in Dawson Creek. In addition, input was obtained from 2 staff lawyers who provide family law services as employees of Legal Services Society, and 3 members of the private bar who do family law work on the tariff. Information was also obtained from a Legal Information Officer who is funded by L.S.S. and works at the Fort St. John Friendship Centre.

C. Vancouver

Vancouver is the central municipality of a large metropolitan area with a total population of about 1.8 million; however, each of the surrounding municipalities has its own services. Although there is overlap, it can be generally assumed that the services based in Vancouver are more or less confined to serving the population of the city itself, which is about 600,000 people.

Legal aid services are provided through a number of sources in Vancouver. There is one office that provides the intake service for the whole city. It is staffed by a managing lawyer, a switchboard operator, 2 intake supervisors and about 11 intake legal assistants. The other location for intake is at the Vancouver Aboriginal Law Centre, which recently opened in its present format and is staffed by 2 paralegals (one the co-ordinator) and 1 intake legal assistant. Although this office can accept applications from anyone, its mandate is to develop a more approachable intake service for the Vancouver urban native population.

There are 4 other clinics in Vancouver that provide legal services to people by way of lawyers and support staff who are employees of L.S.S.

The Community Law Clinic, which is confined to non-family civil law services, otherwise known as poverty law services, is staffed by 3 or 4 lawyers, 3 paralegals, an articling student and 3 legal secretaries. They focus on issues related to disability benefits, income assistance programs, shelter and general poverty law issues. They are also involved in educational and communication work, and support a network of poverty advocacy groups around the province, partly through an Internet initiative, Povnet.

The Criminal Law Clinic provides criminal law services to clients who are eligible for coverage under the L.S.S. criteria and who do not express a particular choice of counsel when they make their application. This office is staffed by 7 or 8 lawyers, an administrator and 2 or 3 legal secretaries. It also supports the Brydges toll-free line, which provides 24-hour access to legal advice for people around the province who are taken into custody.

The Family Law Clinic provides family law services on the same basis: clients who are eligible for coverage and do not express a choice of counsel. The office has 5 or 6 lawyers, an administrator, a receptionist, and 4 legal secretaries. Lawyers from this office provide duty counsel in family court on days when CFCSA matters are on the list, and also provide regular family duty counsel one day a week.

The Immigration and Refugee Law Clinic provides the same type of service as the family and criminal clinics. It is staffed by 3 or 4 lawyers, a receptionist, a paralegal and 2 legal secretaries.

Apart from these L.S.S. staff clinics, there are other clinics in Vancouver that tend to have a specialty focus, generally supported by non-profit community agencies, which are also funded by L.S.S.

D. Vernon

Greater Vernon, located in the northern part of the Okanagan Valley, has a population of 43,870; the adjoining community of Coldstream has a population of approximately 9,340. This urban centre also provides services to Enderby and area (population of 7,300), Armstrong and Spallumcheen (population of 9,610), Lumby and district (population of 4,400). Thus, for 1998 the total estimated population served out of Vernon was 74,520.

Legal aid is administered in Vernon by a Community Law Office, a non-profit community agency that contracts with Legal Services Society to carry out the intake function of legal aid and also to provide other legal services. The office in Vernon is staffed by 2 full-time paralegals with a mandate to provide legal information and some poverty law services, and 2 intake legal assistants. Interviews were conducted in this office with the 2 paralegals.

There is a combined Registry for Supreme Court and Provincial Court in Vernon. Interviews with Registry staff had input from the Family Court (Provincial) Clerk, the Criminal Court (Provincial) Clerk, and the Family Court (Supreme) Clerk. Although there are resident judges of both the Provincial and Supreme Courts in Vernon, the courts are actually served by a variety of members of the courts who rotate through Vernon and other Interior courts.

Interviews were conducted with 8 members of the private bar whose practice includes family law work on the legal aid tariff.

II. Interviews with Courthouse Registry Staff

The registry is the administrative centre for court cases. Court applications are started by filing documents at the registry, the ongoing files for the court actions are located and maintained there, documents such as court orders get to the judges for review and signature via the registry. Registry staff have a supervisory role with respect to all of the documentation they receive, to check that it includes the necessary information and meets basic requirements. They are also present while court is in session, to make sure that the judge receives all of the relevant file information for the cases, and to record what happens with respect to each file.

A. Basic Court Services Structure

Courtenay is served by a joint registry for Provincial Court and Supreme Court matters. It is not a Family Justice registry. As a result, the Family Support Clerk position has been cancelled and referral to Family Justice Counsellors is not mandatory. There are two scheduled family court days a month in Provincial Court, one for remands and one for CFCSA hearings and case conferences. Other hearing days are scheduled as needed. Supreme Court has Chambers days twice a month, and a court sitting one week a month.

Chetwynd is served by two separate registries. The Provincial Court registry is in Chetwynd and Supreme Court matters go to the Dawson Creek registry. Provincial Court sits one day a week; family cases are heard along with criminal cases on that day. The Chetwynd registry is not a Family Justice registry, and there never have been a Family Justice Counsellor or a Child Support Clerk in Chetwynd. Both of these resources, when they were available, were based in Fort St. John, which is a 2-hour drive from Chetwynd. The Child Support Clerk position has been cancelled, and the Family Justice Counsellor is on leave and has not been replaced. In Dawson Creek, the Master comes in for a Chambers day once a month if necessary, and a Supreme Court judge sits one week a month, which includes another Chambers day.

Vancouver has a separate registry for Provincial and Supreme Courts. The Provincial Court is a Family Justice registry. It has been mandatory since December 1998 for the applicant to see the Family Justice Counsellor before a court date will be set. It has also recently (November 1999) become mandatory to attend a session of the "Parenting After Separation" program in order to obtain a court date.

Vernon has a joint registry for the two levels of court. The Provincial Court is not a Family Justice registry; access to the FJC services is limited and the Child Support Clerk position has been cancelled. There are family "list days" twice a month in Provincial Court, and generally there are two Chambers days a week in Supreme Court, and very regular availability of a Supreme Court judge for hearings.

B. Impact of Changes and Initiatives on the Registry

1. Courtenay

Registry staff did not note any significant changes impacting upon the registry for Supreme Court family matters. The new rules for family matters in Provincial Court have made fundamental changes for the court registry. In Provincial Court matters the applicants have to fill out the forms themselves to start a court action; the registry staff are directed that they should not fill out these forms for people, but they noted that more explanation is needed at the counter when people come in to file an application. Also, the sheriff does not serve the application on the other party any more; that is the responsibility of the applicant. Therefore, the registry staff have to explain how to do that and what documents have to be returned to the registry to prove that service has been performed.

Courtenay registry staff noted that most of the applicants for family court are women. The cases for which men are at the counter seeking assistance tend to be applications to vary maintenance and maintenance enforcement proceedings.

There is no policy of diverting applicants from the registry to Family Justice Counsellors. If people ask for help filling out the court forms, they will be referred, although registry staff have been known to help people who have literacy problems. (The registry staff know that the FJCs do not have time to help people fill out forms, but they have been told to refer people who say they can't fill out the forms.) People might also be referred if they phone the court office and seem to be looking for some advice, or if they come in to start an application but are confused and don't really know what to apply for. The other circumstance in which a referral to the FJC would be made is where a woman comes in and says that she and her husband have an agreement and she just wants to get an order.

2. Chetwynd

The Chetwynd registry staff reported that the new rules have resulted in a lot more work, in part because the new procedures are more confusing for the public. The requirement that the applicant take responsibility for serving the court application on the other party is difficult: people do not understand what they are doing, they don't follow the correct sequence and don't return the correct documents.

It is fairly rare for the Chetwynd registry to send anyone to Fort St. John to see the Family Justice Counsellor; there is a long waiting period for service. If they need help, the registry staff provides it; there are no other resources except the legal aid office.

The Supreme Court registry staff stated that there is no real impact from new initiatives. There are no forms that the court can provide to people to start a court action; they have to know how to do it themselves. The registry relies quite heavily on the family staff lawyer from Fort St. John to give people advice about how to proceed. There are not

actually very many family cases in Supreme Court in Dawson Creek; the registry has not noticed any difference in demands upon them since the reduction in levels of legal aid services.

3. Vancouver

The major impact noted by the Provincial Court registry staff was that all of the work at the counter takes much longer. They have to spend a lot of time explaining the new documents and processes to people, and often this is made more complicated by language or literacy issues, or mental health problems. The paperwork itself also takes more time; all of the documents and confirmations have to be in order before an application can be set down for court. There are definitely more demands on the registry staff related to the preparation and filing of documents and need for basic information about procedures when people do not have lawyers.

The men at the counter tend to be looking for assistance about maintenance and access issues, and the women about custody and enforcement. It was noted that access enforcement is a problem: an access order cannot be enforced in Provincial Court; registry staff send people to the police.

The Supreme Court registry staff noted that they have limited access to new resources. They can refer people to the Family Justice Counsellors over at Provincial Court, and there is also a self-help package put out by the Provincial Court, which is of some assistance to people on variation applications in Supreme Court. It is very helpful both for the registry staff and for the clients to have written materials available; it helps the parties to manage better on their own.

4. Vernon

The Provincial Court registry staff reported that people are not happy about being responsible for the service of the documents. The registry directs them to return the affidavit of service right away, and the registry in Vernon does diarize the 30-day waiting period, notifies both parties and sends out the Notice of Hearing. Registry staff reported a noticeable increase in the number of requests for general information. People often say that they need help because they cannot afford a lawyer.

The Family Justice Counsellors are available to a limited extent to help people with forms, answer questions and work with people on agreements. There are only 2 FJCs for the whole Okanagan Valley, so they are rarely actually present at the courthouse. The registry clerk said that she tells people to see them if they are unrepresented and she doesn’t have time to help them, but she never requires anyone to meet with them before starting their court action.

Although there have not been significant changes for the Supreme Court registry, staff do spend a lot more time at the counter with people than they used to because of the

reductions in legal aid services. People come in complaining that they were refused; they are very frustrated trying to figure out Supreme Court by themselves. The registry staff cannot help with their paperwork, but they do spend a lot of time explaining and guiding them through the various aspects of the documentation for their cases.

There are definitely more people coming to Supreme Court in Vernon unrepresented, and it seems to just keep getting worse. The registry has prepared some precedent material that they can give to people, and they can suggest that they meet with the FJCs. They miss having the Child Support Clerk as a resource.

The Supreme Court registry does not screen for family violence at the counter, and suggested that if a client raised it they would probably send them to the Family Justice Counsellor.

C. Impact of Changes and Initiatives on the Public

1. Courtenay

One of the changes that has made things more difficult for the public is the new Financial Statement. It is so complicated it looks like an income tax return, and everyone asks how to fill it out. The registry staff are directed not to help, the Child Support Clerk is gone, the only possible resource is the FJC. Basically, people are on their own with the forms.

The registry staff also reported that they receive many questions from the public about the FMEP program. Apparently there is no source of information available for the public about FMEP, and no way to contact them by telephone to obtain information. The public rely on the registry staff.

The observation was also made that the child support guidelines have reduced the numbers of applications to vary, because the only basis for variation is a change in income.

2. Chetwynd

The registry staff in Chetwynd also reported that the new Financial Statement is very difficult for members of the public. The new forms in general are confusing for people, and the process of filing, serving, and waiting 30 days for reply is too complicated for most people. The registrar reported that often he has to lead people through the process by the hand because that is the only way to get it done properly.

The child support guidelines result in more settlements. The registry reported that people use the table, although they think the amounts are high. At Supreme Court, they reported that often people need some assistance to figure out the guidelines.

3. Vancouver

The registry staff stated that at first it was hard for people to deal with having to do service of documents, but both registry staff and applicants seem to be more adjusted to that change now. There is often an initial reaction against the required meeting with the Family Justice Counsellor, because many people have already seen counsellors. However, most of them agree when they are told that this is about exploring possibilities for settlement. The mandatory "Parenting After Separation" session was too new for the staff to have much experience with it, but they have been told that the statistics from other centres (Burnaby, New Westminster) where this has been in place for a while show high satisfaction levels by clients.

It was pointed out that the applicant can meet the requirement for the FJC and the parenting program sessions during the period of 30 days allowed for the Reply to be filed, so this need not cause delay. Also, if the case is urgent the applicant can see a judge immediately, and the court will decide on the appropriate process. If someone contacts the court office for information, there is an off-site service in Vancouver where they can be referred for basic information about the resolution of family issues, and for mediation and the preparation of agreements where possible. If the only issue is child support, the person will be referred to the Child Support Clerk.

The registry reported that the Child Support Clerk is bombarded with work; there is a long waiting list for service. This is a very good resource, because in many cases the amount of support is the only contentious issue. The registry does have booklets about the guidelines to give to people. The new Financial Statement form is very complex, and almost everybody finds it difficult to understand.

The Supreme Court registry noted that they no longer have access to the Child Support Clerk. The registry staff now have to check to make sure that the orders correspond to the guidelines. They will not help people fill out the forms, but they give them two large packages of information to take away with them, and applicants seem to figure out how to do it. In cases where both parties are content to be governed by the formula, it works well; it creates certainty and fairness. However, where the parties prefer to set things up differently, the guideline regime creates problems.

4. Vernon

The Provincial Court registry refers people to the FJCs for assistance with the child support guidelines, now that there is no specialized clerk available. People are provided with the table and the information package. There seem to be more consent orders because of the guidelines; there are also many applications to vary to bring orders up to the level of the guidelines. Registry staff observed that the guidelines seem to have established a common framework for people.

D. People Representing Themselves

1. Courtenay

There are quite a few people representing themselves in Provincial Court. If unrepresented people appear, the judge will often have a quick little hearing to see if things can be resolved. It makes for long days in court, but it works. If there are no lawyers involved in a court case, it is up to the registry staff to prepare the court orders, which is an addition to their regular workload. One of the noticeable things about people who are not represented is that they do not know they should talk to each other before court to see if they can work things out. Often the judge just tells them to go outside and try to come to an agreement.

When people are not represented, they phone often to get information about procedures, adjournments, etc., creating demands on registry staff. It is very difficult if both parties are unrepresented and phoning in. Another difficulty is that the parties are not properly prepared when they arrive for court, as far as financial information and documents are concerned, and then when court is over they don't understand what happened and are back to the registry staff for explanation.

Many of the applicants are now represented on financial issues by either FMEP or the Ministry lawyer. These lawyers do not take instructions from the women, however; the lawyers do not really represent them.

2. Chetwynd

The Chetwynd Provincial Court has always had a lot of unrepresented people, and the registry staff have not noticed much change. It does slow things down when people are not represented, and now some matters have to be adjourned because the new documents are often not filled out properly.

The Supreme Court registry has noticed an increase in the number of unrepresented people; even people in the lower middle class cannot afford lawyers. The judges have to provide a lot of assistance, and this can cause delays.

3. Vancouver

There have always been a lot of unrepresented people in Provincial Court; there is duty counsel available, which is an important resource. The registry staff observed that there are more unrepresented litigants since the reductions in legal aid services. There are also, however, fewer cases going into court, which is believed to be attributable to the FJC initiative (there will be an evalution of this in the Spring of 2000). It was also noted that there are more dead files, meaning files where nothing was done after the application was filed. The FJC process does produce many consent desk orders; there is no requirement that the parties get independent legal advice before these orders are sent to the court.

The Supreme Court registry staff stated that the increase in lay litigants is having an impact on the registry. They have to ask a number of questions to figure out what kind of application the person wants to bring, and then have to describe the kind of written information that is needed by the court: affidavits, financial statements, etc. They have put together some precedents that they can show people, but they noted that people can't just fill-in-the-blanks in Supreme Court. The level of demand at the counter is high, and they have to spend more time with people than they used to.

In the last couple of years a noticeable number of people have come in saying that they couldn't get a lawyer through legal aid. The registry staff will sometimes refer people to the Salvation Army *pro bono* clinic if they need advice. They also regularly give out the telephone number for Lawyer Referral Service regularly; the usual issue that people need help with is assets, and occasionally contempt.

4. Vernon

The registry staff were uncertain whether there has been an overall increase in people representing themselves, but there does seem to be an increase in women appearing unrepresented, mostly on applications for custody and child support. They also see a lot of people unrepresented on maintenance variations.

The impact of unrepresented people in the courtrom is more noticeable at the Supreme Court level. Both men and women are seen representing themselves, but most frequently it is payors of maintenance on a variation application who are unrepresented. Often their paperwork is not done properly. However, the judges are very good about dealing with them, and often they are successful. The registry staff have observed that the do-it-yourselfers usually have a hearing; the cases with lawyers are more likely to settle.

E. Special Issues: Language/Literacy and Family Violence

1. Courtenay

The Courtenay court deals with both language and literacy problems from time to time. They have to bring in interpreters for court appearances for members of the Vietnamese community, but that is mainly for criminal court. There is a local literacy agency that will help people.

Registry staff were asked whether they have received any training about screening applicants for family violence. The family clerk in Courtenay said that although there has been no training she is aware of this, and if there is any suggestion that it may be a factor she will point out the section on the application about how to apply for a restraining order. She also treats any potential child abduction as urgent, and will send these cases into court on an *ex parte* basis.

If a woman comes to the court registry wanting to apply for a restraining order, there is no information available to provide to her about family law restraining orders as compared to criminal law peace bonds. With respect to enforceability of restraining orders, ensuring that the wording is correct so that the police are properly authorized to act on the order is up to the party and the judge. The role of the registry, once the order has been prepared and signed, is to send it immediately to the Protection Order Registry so that it will be on file if enforcement action is required.

The registry staff in Courtenay believe that there are more unrepresented women dealing with family violence issues since the cutbacks. The family clerk cited instances where women have told her their spouse is violent, but have expressed uncertainty about whether going to court is the right thing to do; some women in that situation do not return. She also described seeing one particular woman alone in court on several occasions, involved in proceedings against her husband, who has a lawyer. The clerk said that this woman loses a little more ground in each court appearance.

2. Chetwynd

Language is not an issue for the registry in Chetwynd, but literacy definitely is. It causes problems with understanding forms and following processes. Generally the registry deals with this by either writing for applicants or asking them to bring someone in to help them.

At Supreme Court, the registry noted that they will provide interpreters for family matters if there are language problems, but literacy is more of an issue. People just do not understand what is going on in the courtroom.

There has been no training for Provincial Court registry staff in Chetwynd about screening for family violence or other issues. Staff will tell people how to do the forms, but not what information to put down. In appropriate situations the staff point out the section about applying for a restraining order, but would neither encourage nor discourage the woman to use that section.

If applicants want a protection order, depending upon what they are saying, the registry staff may suggest that they talk to the police. If they want to proceed in family court, they would be put on the list for the next available family court, or sent to Dawson Creek or Fort St. John court to be dealt with on a priority basis if immediate action is needed. If they obtain an order, it is prepared by the registry, the applicant is given a copy of the signed order the same day and a copy is sent to the Protection Order Registry.

The registry staff have noticed that some women with allegations of family violence are going to court unrepresented.

3. Vancouver

The people working at the counter in Vancouver have no access to support services if the applicant has language issues or other communication problems. They give people

information and forms in English, and tell them to get someone to help them with it. Often, applicants have someone with them to help. The staff have requested material in other languages, but it does not exist at this time. The staff are aware that this is a problem; sometimes people say they understand but it is quite apparent that they don't. The mandatory parenting program is presented in four languages, and interpreters can be provided for sessions with the Family Justice Counsellors.

If the registry staff are aware that people have mental disability or mental health issues, they will either ask for the Family Justice Counsellors to assist, or put any consent orders into court so that a judge can review the situation.

There has not been training about family violence, but the registry staff are quite experienced with this issue. The rule of thumb tends to be that if the applicant is there in response to a recent incident of violence, they will be sent into court immediately. However, if the violence is in the past and there is a fear of a possible recurrence, for example because the spouse is due to be released from jail in a few weeks, then the case can follow the normal process.

The registry does not have any information to give to applicants about the different options for protection orders, although there is some information about family violence in the public area of the courthouse. If restraining orders are obtained in family court, a copy is sent to the Protection Order Registry.

The Supreme Court registry also noted that language is an issue, but they very rarely deal with illiteracy. Where English is a problem, they will tell people to either bring someone in to help them, or to take information away and have someone else have a look at it. However, cultural stigma may make it difficult to talk about relationship breakdown with a friend or family member, and the cultural agencies are very cautious about being seen to be giving legal advice.

The registry gives women as much information as they can about how to get a protection order in Supreme Court, and what they can do with it if they get one. Sometimes they suggest that they talk to Crown Counsel because it may be a criminal issue rather than a family issue. The place where they see women unrepresented, and dealing with family violence issues, tends to be on variations.

4. Vernon

The need for assistance because of language issues or other communication issues is more pressing with criminal court matters than family matters. It is fairly rare to need interpreters for family court, but they are brought in if needed. At the counter in both levels of court, people with language issues have to either bring a friend, or take information away to get help with it. But this is not a frequent occurrence in Vernon.

Staff expressed the view that it is not the function of the registry to screen for issues such as family violence. If a woman comes in wanting a restraining order, the registry staff

gives her the forms and gets her into court as soon as possible. They will explain the general framework of orders available in criminal court or family court, and ask questions to enable them to assess the degree of urgency. Staff noted that many women are sent to family court by the police to get a restraining order.

If the application is going into court, it is flagged so that it will be dealt with as soon as the order is made. Sometimes if counsel are involved it takes them two or three days to get the order typed up. If possible, the registry do it themselves because they like to have them out to the Protection Order Registry that same day, with a copy to the applicant.

At Supreme Court, applicants for a protection order would be referred to the Family Justice Counsellors, or to the police if there was an urgent threat or recent incident. If orders are made, the same basic procedures are followed as in Provincial Court.

F. Obstacles or Concerns Regarding Access to the Courts

1. Courtenay

The family registry staff believe that the system of pursuing a remedy in Provincial Court has become much more complicated than it was. The forms are harder, the new rules are complex, and in general the public needs more information and assistance than they used to. This puts the registry staff in an awkward position.

One of the greatest obstacles for low-income women who need to use the court system is just managing the logistics of coming in to the courthouse: they have to bring their kids with them, they generally don't have transportation. This is compounded by not having any contact person to follow up with after their first visit to enquire about starting an application.

The other obstacle identified by registry staff is the lack of public education material about what the family law system can do for people, and about how to do what needs to be done to use the system.

2. Chetwynd

The registry in Chetwynd also reported that the recent changes have increased the need for people to have assistance in family law matters. The new forms are very complicated and much harder for everybody; this is especially true if people are not very well educated or not literate.

In terms of obstacles for low-income women with children, the registry staff noted that a minimum of 3 trips to the courthouse are now required to start a court action: one to pick up the forms, another to file them and another to return the served documents. This is costly and difficult.

Furthermore, under the new system it is up to the applicant to follow up after 30 days to see if the other party has filed a Reply. If a Reply is filed, the registry takes responsibility for setting a court date, but if no Reply is filed then the file just goes dormant unless the applicant takes further action. Many people do not understand this, and their applications never proceed.

The Supreme Court registry indicated that they would have great difficulty meeting the needs of people for assistance were it not for the regular presence of the family staff lawyers, who give a lot of advice to people and also do a lot of cases.

3. Vancouver

The experience at the Vancouver registry has been that the average person is overwhelmed by the amount and complexity of information that they have to deal with at the beginning of the court process. People need advice and assistance at this stage.

One of the major obstacles for low-income women is that they are often so distraught when they first approach the court system that they do not know what they want. The last thing they can cope with is complex paperwork. This is particularly true in the case of abused women. Having duty counsel available is important, both to help them figure out what they should be asking for, and also to speak for them if they are unable to do this for themselves. Many women in this situation can't handle going into court on their own.

Another observation made by the Provincial Court registry was that people have no idea what their legal rights are when they first come to the courthouse. They need legal advice initially; they also need information, help with their paperwork and a better understanding of the court process.

The Supreme Court registry identified the time required to attend court as the worst obstacle for low-income women. They are required to be at court at 9:45 a.m., and may spend the whole day and not get heard. Some days the waiting area is like a daycare, because all of the mothers have to bring their children with them. This is very difficult for the working mother.

They also identified a need for more community assistance for people who do not speak English, and in general a need for more public education about the legal process in the minority communities.

4. Vernon

The Provincial Court registry in Vernon stated that people are more able to handle the preliminary aspects of a family court action by themselves now; they can get by without counsel until a legal battle erupts. The case conferences are playing a positive role; they are less formal and intimidating than court. Staff did not identify any particular barriers to access for low-income women, although they noted that it would be desirable for legal aid to have a presence in the courthouse.

The Supreme Court registry observed that people want lawyers and cannot get them; there are very few other resources for assistance. This is the major obstacle for low-income women needing to resolve family legal problems. There is also a need for more support resources at the courthouse e.g., FJCs. The registry seems to have become the point of entry for people into the system, and there are not enough resources to meet the demand.

The Supreme Court registry also pointed out that lack of representation is particularly problematic regarding variations with respect to support, custody and access.

III. Interviews with Community Legal Aid Staff

These interviews were conducted with lawyers, paralegals and intake legal assistants who work in the offices which administer legal aid at the community level. They all deal with applicants for legal aid services and may make the decisions about eligibility and coverage.

A. Priority Services for Women and Children

The first question posed was, based on their experience with applicants, what types of legal services seem to be most fundamental to the interests of low-income women and children.

All respondents made reference to family law services, and many also included some poverty law services. First priority was given to stability for children: custody, and child apprehension matters where applicable. Second priority was given to personal safety for women and children: restraining orders and appropriate access arrangements. The third area of high priority was shelter and income security: support, housing issues and income assistance.

Asked to specifically consider disadvantaged women and children, for example people from visible minority groups, or suffering from mental or physical disability, First Nations families or minority sexual orientation families, a few other types of services were mentioned. The main ones were public legal information services, to ensure that people are aware of their rights and of the services and options which are available for them, and protection from discrimination in public life: employment, housing, etc.

B. Financial Eligibility

The legal aid staff, most usually the intake legal assistants or paralegals, are the people who have to administer the tightened financial eligibility requirements. They were asked what flexibility they have, what impacts they see. There was virtual unanimity among the respondents in identifying the following concerns:

- the new financial standard is very low: many people are being refused in circumstances where they absolutely cannot afford to pay for legal services;

- the working poor are no longer eligible; you have to be on public assistance to get legal aid;

- financial eligibility tends to be more of an issue for men, because they are more often assessed as single person households and have some sort of employment;

- the extra medical allowance for people on disability benefits usually puts them into a category where they have to pay a contribution for legal aid, which they cannot afford to pay;

- people cannot or should not have to liquidate assets to the extent which is now required. They are being disqualified even though assets would not yield any real financial benefit;

- an agreement or order to pay maintenance will often mean the recipient is ineligible for any further services.

The Vancouver Intake Office, which deals with a much larger volume than any of the other subject offices, noted several important dynamics regarding women applicants. Firstly, they are more likely than male applicants to be in a somewhat desperate situation. The Vancouver experience is that women are the vast majority of the applicants seeking emergency services related to violence or to income. Secondly, the application process itself is more difficult for women for a variety of reasons: they have to bring their children with them to the office; they are often in temporary housing situations; there is often a fear of violence.

A couple of other observations from these administrators of the system are worth noting:

- the L.S.S. asset limitations are stricter than those of the Ministry for people receiving social assistance;

- the contributions requirement tends to be a real hardship, and for some an absolute deterrent to receiving legal aid;

- if people are refused, the result is often that they either compromise in what may not be their best interest, or they do nothing;

- many women who are single parents will tend to have a part-time job plus receive maintenance; this combination will usually mean they are not eligible.

C. Case Coverage[13]

If a person is financially eligible for legal aid, the next hurdle in the area of family law is with respect to coverage: only certain kinds of legal problems, or people in certain circumstances, are covered.

Where the issue is child support or spousal support, and the applicant is on B.C. Benefits, the Ministry provides a lawyer who handles the maintenance applications. Because one generally has to be on benefits to be eligible for legal aid, this disqualifies the great majority of applicants. Also, if maintenance is the only issue, L.S.S. policy directs intake staff to divert the client to alternative sources of assistance, such as the Family Justice Counsellors, or community advocacy groups, if possible. However, taking this into account, legal aid coverage should be available for a limited number of support applicants who are not on benefits and not diverted, and for support respondents in situations where the applicant is represented by a lawyer. This is the stated policy; however, some of the administrators stated that in practice representation is seldom provided for maintenance respondents.

Where the issue is child custody, the administrators noted that they are required to consider a number of tests before deciding to issue a referral. One of the tests mentioned is a guideline which applies to all family law referrals: intake staff are directed to "consider whether the resolution of a case is likely to provide an *immediate tangible benefit* to the client and/or his/her children, and whether the legal action proposed is what a reasonable person would pursue, if paying for his/her own lawyer."[14] The staff person in the field translated this to mean: Will a custody order make a difference? Is an order really needed?

The other directive to intake staff is to consider whether there is an appropriate alternative service in the community to assist with the matter. This could mean diversion to Family Justice Counsellors, it could mean sending people to the Court Registry to represent themselves if they seem capable of doing that. Only if these tests are met, and alternatives considered and determined to be unworkable, can a referral be issued.

Where the issue is access, it will tend on the first instance to be folded into the custody application, and is governed by the same rules. The big problem area noted by the administrators regarding access is on variations. It is not unusual for access orders to have to be changed or "fine-tuned," but there is no coverage for variations except in 3 circumstances: if there is a risk of losing contact with the children because of repeated denial of access (must be shown over a period of 6 to 8 weeks); or if there is a substantial risk of harm (can be verified by independent witnesses) to the children or to the applying

13 In this section, information derived from interviews is supplemented by a review of the Family Coverage Policy in L.S.S. *Operations Policy & Procedures Handbook,* 1999.

14 Ibid, Coverage—Family (Case Management), p.2.

parent; or if the person is a respondent to an application to vary, and his or her established relationship with the children is in jeopardy if the change is granted.

Where the issue is child protection proceedings under the CFCSA, full coverage is granted subject only to financial eligibility.

Where the issue is enforcement of an existing order, very limited coverage is available through legal aid. The Family Maintenance Enforcement Program does all maintenance enforcement work; legal aid provides no coverage here. Legal aid can provide coverage for enforcement of an access order if the test is met with respect to demonstrated denial of access.

The issue of variations has been discussed with respect to access. This was identified as a serious problem at all of the offices interviewed. Firstly, the intake staff are not comfortable having to essentially determine a test of risk of harm to the child. Secondly, there is a great need for this service with respect to both custody/access and maintenance; the absence of coverage is a great source of frustration for clients. The staff did point out that the revisions to Family Coverage Policy in October 1999 introduced some coverage for variation of Supreme Court child support orders. However, in the difficult area of custody and access, the "risk" tests stand and approval for coverage is exceptional.

Where the issue is protection orders, or orders restricting access, and **where there are allegations of family violence**, coverage is generally good provided that two conditions are met: the first is financial eligibility, the second is that intake staff are made aware that violence is an issue. The other point that was noted by staff is that here, too, there is a requirement for a "risk of harm" assessment. It is not enough for the applicant to show a history of violence; she must show an imminent risk.

The final question put to the administrators was **whether any of the issues trigger flexibility with respect to financial eligibility**. The general answer to this question was no. The only exception is that, for certain defined emergencies, intake staff can activate a "family flex" in the amount of $150 in order to issue a referral. What this means is that, in these circumstances, an applicant can have income up to $150 above the standards and still be eligible. The emergencies are generally defined as situations when legal services are necessary to ensure the immediate safety or maintenance of the client and/or children. This category can include applications for restraining orders regarding physical safety, disposal of assets or removal of children from the jurisdiction, for maintenance orders, and for custody and access where there is a demonstrable risk of harm. If a referral is issued under this flex eligibility, it only extends to obtaining initial orders and then no further legal work can be done for the client.

Administrators were also asked about the **relationship between assets and eligibility**. There are definite asset guidelines in the L.S.S. financial policies. Staff have discretion to override these amounts where the asset in question is the subject of the litigation, or where the client can produce a letter from the bank saying that there is no capacity in the asset to support a loan. If a client is found to be eligible by one of these means, they will

be informed that they may be subject to repayment or conversion to a private retainer after determinations are made about the client's equity in the assets.

Where the legal issue is division of assets, coverage is provided only if the asset is pension credits and there are circumstances which make it urgent (e.g., pending retirement), or where the asset is a family home and the applicant is not married to the opposing party and is not registered on title. Also, there can be coverage to get an order restraining the disposition of assets.

The final question on coverage concerned the situation where the **client has several linked legal problems and only some of them are covered**. The first thing pointed out by the administrators is that if one problem is covered it will trigger a referral. Then the lawyer has the option of presenting an opinion to the Family Case Management Program as to why the referral should be extended to include other aspects of the client's situation. One person noted that there are fewer coverage options to get in the legal aid door, but once the person gets in, if their lawyer is prepared to work with the system, they can generally get most of the work done that is needed. For example, the lawyer can present a case arguing that division of property is needed in order to utilize the resources of the family to provide for child support.

Nevertheless, some problems in this area were identified. The inability to address maintenance often complicates resolution of the custody issue. In one case the court refused to grant an order on custody in the absence of a resolution of child support. The difficulty for the client of completing an action for division of property once the initial order restraining disposition of assets has been granted was noted. Also, one administrator noted that if a woman comes out of a violent situation and has no children of custodial age, she can get assistance only with a restraining order and support, but will have to deal with her spouse directly if there are property issues, or in order to get a divorce, or if there is a need to vary the support order.

D. People Representing Themselves in Family Proceedings

The legal aid administrators were asked about the assistance they can provide to people representing themselves in family court proceedings. All agreed that the resources they could offer were generally limited to information brochures and referrals to the Family Justice Counsellors or other agencies. Those locales that have duty counsel—Vancouver formally and Chetwynd informally—note the usefulness of this resource for lay litigants. The paralegals in the Vernon office used to attend family court to assist people to prepare their cases, but had to withdraw that service. They are presently working on a project to develop a self-help kit for variation applications in Supreme Court matters, and hope to train people in other agencies about how to assist clients to work with the kit.

E. Language or Literacy Problems

The question was raised as to whether the administrators have any flexibility when applicants in family matters would be unable to represent themselves because of language, literacy or learning problems. The Chetwynd office noted that, in that area the issue tends to be literacy, not language; the office has provided referrals a couple of times on the basis that the person was not capable of self-representation. All offices noted that there is provision under the tariff for translators, but this doesn't apply unless a referral is issued. At the application stage, offices tend to rely on the person to bring someone with them to interpret, although there is authority to pay for translators during this process. One of the administrators in Vancouver advised that the need for interpreters has been identified as an "access to legal aid" issue in Richmond. It was also pointed out that there is now a provision to provide coverage in criminal matters on the basis that the person suffers from a mental disability or is unable to read and write or to understand the nature of the proceedings, but this coverage is not available for family law clients.

F. Impact of Cutbacks—Poverty Law Services

Respondents were asked about access to poverty law services in their respective communities.

There is no poverty lawyer in Chetwynd; clients have to go to the L.S.S. branch offices in Dawson Creek or Fort St. John. The Chetwynd area director said there is a real need for poverty law services. Clients have applied for help with a wide variety of problems: government programs (B.C. Benefits, W.C.B., E.I.), rental housing issues, I.C.B.C. claims, adult guardianship, debt, native issues, wills and estates. The Dawson Creek office had its lawyer position changed from poverty law to family law 3 years ago, so in this region of the province there is a reduced capacity to provide poverty law services.

In Courtenay, there has not been a reduction in poverty law personnel, but the demand has grown and there is no capacity to grow to meet that demand. The poverty lawyer is also the managing lawyer for the office so has to spend a certain amount of time on administrative duties; there is no paralegal. This office noted that as well as a continuation of demand with respect to traditional poverty law services, such as government programs, rental disputes and debt, they are noticing a strong new demand for assistance with foreclosures and C.P.P. disability applications (B.C. Benefits requires that people apply). This office gives summary advice to all poverty law applicants.

In Vancouver, the main poverty law services identified as being sought by women are related to housing and income assistance. The managing lawyer of the poverty law clinic noted that many of the income assistance issues arise out of the desire of the woman to become independent of a spousal or sponsorship relationship, and the state pressure placed upon women to continue to be financially dependent on those relationships. Another big issue, again related to the quest for financial independence, is loss of employment, especially for women who are from a disadvantaged minority.

This office noted that, for many women, poverty law issues are compounded by unresolved family law issues. For example, the Ministry may deny or limit benefits to a woman if issues of custody, access and child support have not been resolved. If the woman does not have legal custody of her children, she may not be eligible for public assistance for them.

Other clients have difficulties with the Ministry about assigning their right to support; they do not want to pursue support if they are physically in fear of their spouse, but if they refuse to do so they can be cut off benefits. Women's groups have noted that this requirement for maintenance assignment, similarly to the jeopardy faced by a woman if her immigration sponsorship breaks down, may prevent women from leaving abusive relationships.

Another issue that causes difficulties with respect to unresolved family matters is ownership of the matrimonial home: if a woman leaves her relationship but is still on title to the house, she may be ineligible for income assistance. Some women are abandoning their claim to a share of equity in the matrimonial home, in order to qualify for benefits.

The Vancouver Community Law Clinic has had no change to coverage, and no loss of personnel, but they are faced with a huge demand, and no possibility of growth in the present atmosphere of restraint. The cutbacks in other public agencies all tend to create more demand for poverty law services, and the clients who have family or criminal problems and are not able to get legal assistance are under a high level of stress. There have been cutbacks with respect to PLE and legal information services, which also affects the demand for poverty law advice.

In Vernon, the office also noted the prevalence of demand on income assistance and housing issues. In order to meet the demand for poverty law services, this office has had to cut out paralegal support in the family law area. The tightened financial eligibility has impacted on poverty law services in the same way as tariff services—referrals are only available for clients who are on benefits of some sort. Other clients can be given a limited amount of summary advice but no file work can be done for them.

G. Impact of Cutbacks—Criminal Law Services

Legal aid administrators were asked to describe the impacts of the legal aid cutbacks in the criminal law field. The financial eligibility cut-off is even lower for criminal law applicants; it is $830 for them as opposed to $941 for a single family law applicant. However, in the opinion of the legal aid offices the coverage test for criminal law services has not changed significantly. The test is "likelihood of jail," which is a judgement call that the office makes depending upon the sentencing patterns in the community, the position of the Crown, the particular circumstances of the accused and the crime, etc. There has been no change at all for legal aid for Youth Court—there is no financial test and all offences are covered. One office noted that the newly-of-age offender gets a rude awakening when he is turned down for legal aid for his first case in adult criminal court!

One office noted that they are less concerned about refusals in the criminal law arena because people seem to either get the money to hire lawyers, or lawyers will accept payment arrangements. Lawyers are less likely to do this for family files, because they are more time consuming and tend to involve high disbursements. The administrators reported that the changes to legal aid have had no impact in the criminal law area with respect to the seniority or availability of counsel.

H. Impact of Cutbacks—Family Law Services

Some offices reported a definite drop in senior lawyers taking family legal aid files. In Chetwynd, with one exception, senior members of the bar have never taken legal aid files and there has always been a shortage of family lawyers willing to take referrals. Courtenay reported that many files are going to junior counsel, fewer lawyers are willing to take files and those who do are taking fewer files. Vancouver reported a distinct loss of more senior counsel, more refusals to take referrals and more clients reporting that they can't find a lawyer to take their referral. Vernon did not see a significant impact as far as lawyers taking family referrals, except they have some difficulty placingCFCSA cases.

The offices were asked about other problems with respect to delivery of family law services on the tariff. Courtenay reported a number of client complaints about coverage. Women are very frustrated about the lack of coverage for property division; the house has to be sold because she cannot afford to maintain it, and she needs help to recover her share. Men are very frustrated because they are usually not covered as respondents, whereas their wives will be covered as applicants—for the same proceeding, they both should get a lawyer. The offices reported many more unrepresented men in family court. Vancouver emphasized that the financial cut-offs are so low as to be draconian, and Vernon raised the issue of what is happening to the large number of people who don't even bother to apply any more.

The Vernon office has tried to document this issue by keeping track of telephone calls for information. They record all calls in which the person is asking about legal assistance for family law matters, including calls where the person realizes—based on the information provided—that they will either not be eligible or not get coverage, and therefore decide not to come in to apply. Between 1 April 1999 and 30 September 1999, the office recorded 160 calls of this nature. L.S.S. statistics show that, during the same time period, the office processed 245 applications for family lawyers.

Legal aid administrators were asked whether the cutbacks have affected the way that service is being provided by lawyers doing work on the tariff. The general response to that was no, lawyers complain more but work very hard for their clients. However, there were some notes of caution. They see some instances where choices are being made based upon economics or what the tariff is structured to pay for, rather than upon the best interests of the client.

Two of the locations where interviews were done have staff lawyers doing family law work. The intake offices for Chetwynd and Vancouver view this as a very valuable resource for them. In Vancouver, the Family Law Clinic is in the same building as the Intake Office, and if a person arrives at Intake in a real emergency situation, they can take the application and send them straight upstairs to see a family lawyer, unless the client prefers to choose a private bar lawyer. The staff lawyers also tend to handle many the files that private bar lawyers could not afford to do on the tariff.

In Chetwynd, the staff lawyers act as ad hoc duty counsel to assist unrepresented people in family court, and also take on the more time-consuming cases that are difficult for lawyers on the tariff. In general, they help fill in the gaps in the service caused by the shortage of family lawyers in the area. Staff lawyers pointed out that they also have to go through FCMP when they need extra time, but one of them noted that their requests are both made and received somewhat differently because they have no financial interest in the outcome of the request.

I. Impact of Cutbacks—Legal Aid Administrators

Next, administrators were asked to look at the impact of the cutbacks on the work of their offices. One of the recurrent observations was that the intake interview takes longer, because a lot of work is required when the applicant is just over the financial limits. In general, there has been an increase in pressure upon the front-end staff. If they have to refuse people, there is a real effort made to give them something—other resources, basic information, help with procedures, etc. One office noted that the intake procedure is more bureaucratic and requires more from clients in the way of documents and verification.

These interviewees were then asked about the impact of the cutbacks on them personally. One respondent, who works as a family staff lawyer, noted the impacts on his practice. He felt that decisions are being made at head office based on finances, not the merit of the case. He gave as an example a request he made which he felt strongly needed to be done but was refused; he saw no basis for the refusal other than cost. He also noted that disbursements are a big issue, most noticeably funding for custody assessments. He hesitates now to even ask, yet feels that these assessments are of critical importance. Another respondent, also a lawyer, spoke of a very high daily stress level, the difficulty of maintaining personal balance, the inability to keep up with the workload except by working lots of extra hours.

The intake staff spoke of the experience of working with a lot more angry people, the difficulty of having to refuse people who really need help, the generally high level of stress and frustration. They also noted that the work is much harder: the application process involves more prying into people’s lives, more realization of how difficult their situations are, and then having to say no. Another lawyer spoke of the huge silencing impact that has fallen over L.S.S.; the agenda is restraint and as a long-term staff person there is a feeling of detachment from having any meaningful input or even from voicing any opinion about what is going on. L.S.S. feels increasingly bureaucratic, to the extent

that it feels as if one's job could be in jeopardy if issues about quality of service are raised.

J. Diverting Applicants to Family Justice Counsellors

The legal administrators were asked about the policy of diverting applicants to the Family Justice Counsellors. The policy directs them to consider diversion in any situation where the person is eligible, where there is no history of violence, there is no need for urgent court action to ensure the immediate safety of the applicant and children, and where the issues could be heard in Provincial Court. In practice, this means that the offices are encouraged to divert cases dealing with custody, access and support unless there is a safety issue.

Each office seems to have a slightly different interpretation of how this is to be implemented. In Chetwynd, going to the Family Justice Counsellor requires a 2-hour drive to Fort St. John, and people are not diverted against their wishes. In Courtenay, where there has been a lot of experience with diverted people coming back if there are contested issues, they have their own secondary test: is there any real possibility of these people talking to each other? Vancouver pointed out that when the policy first came in, they had to divert if there was no safety issue. Now they can ask clients if they are willing to try this service, unless the only issue is maintenance, in which case they must either divert or refer the person to the Ministry lawyer if they are on B.C. Benefits.

Many people do not want to be diverted; it is just another hoop they have to go through in order to get a lawyer. All offices emphasized that they encourage the person to come back if it doesn't work out. A couple of the offices reported anecdotally a fairly high number of returnees from the diversion. L.S.S. and the Ministry of the Attorney General are planning to carry out a joint evaluation of the diversion initiative in the coming months; more reliable information will be available through that process.

The observations of legal aid administrators about the Family Justice Counsellor services was mixed. In the outlying areas, they reported that the service is under-resourced and stretched very thin. Although it can be a very valuable service, it is often not really available. A couple of offices observed that the FJCs can do up an agreement if the couple are basically agreeable, but don't have the time to actually mediate if there are differences to resolve.

It was proposed by one office that orders prepared by this service should not be able to be received by the court unless the clients have had independent legal advice, because Family Justice Counsellors do not have legal training and may not be aware of consequences or omissions from their agreements. The general consensus seemed to be that this could be a very valuable service for some clients if it were properly resourced. However, one office pointed out that many people are quite desperate by the time they apply for legal aid; they know that things are beyond the point of amicable settlement.

K. Family Violence—Screening and Coverage

The next question dealt with screening for family violence, in order to determine if diversion is appropriate. All offices rely on the intake interview to try to determine whether there is a safety issue. Intake staff have received training through L.S.S. about how to approach these issues in the interview. One worker stated that she relies substantially on such indirect communication as body language and side comments. The others all described a relatively blunt approach of asking outright about violence, abuse and risk of harm to children. They also make reference in the interview to restraining orders and peace bonds, or will say that mediation is not appropriate if there is a history of violence, and then ask if it seems appropriate for the client.

There was a general recognition that, in the space of a fairly busy and short interview, unless the person is comfortable about speaking outright about violence, it may not be communicated to the intake worker. In some cases, the client may not recognize that the partner's behaviour is abusive. Therefore, although awareness is high in all of the offices about this issue, and strong efforts are made to get at it, they are not satisfied that they are always able to pick it up in the intake session. Some workers recounted instances of diverted clients coming back because the Family Justice Counsellor had identified that this was a potentially violent situation.

Turning to the issue of legal assistance for women and children leaving situations of family violence, all offices agreed that the new financial eligibility criteria mean that some women in this situation will get no help. Other impacts were also identified. Even if they are financially eligible, if they do not disclose the violence at the intake interview, they may be diverted or may not get the proper level of coverage that their circumstances warrant. Also, in the present climate where very little time is allowed on the initial referral and lawyers have to submit opinion letters to get additional time for their files, these time-consuming files may not get as much attention as they should.

Some of the time that is required to serve these clients properly is simply not funded. For example, it takes a lot of advocacy work to get the necessary level of response and protection from the police and the criminal court system. On a very time-limited referral, lawyers are less likely to make this effort. And, for many women in this situation, access is the avenue by which the abusive partner seeks to continue the dynamics of the relationship. If any problems arise about access, it is very difficult to get coverage for a variation application unless there is an independent witness who can establish risk of harm, which is unlikely.

L. Maintenance Enforcement

With respect to maintenance enforcement proceedings, the recipients are represented by FMEP. The respondents can only be covered by legal aid if there is a real possibility that they will be incarcerated as a result of a hearing. Neither party will be covered for a variation application, which would often be the appropriate way for a payor to deal with a

change in circumstances. It was noted that if the payor does bring such an application, legal aid will not cover the recipient to defend, and it is the practice of FMEP not to defend these applications.

M. Child Support Guidelines

Legal aid administrators were asked for their observations about clients' experiences with the child support guidelines. They had many positive things to say. They see men, most often the payors, responding well to the guidelines. It has made them see that they have to pay, and introduces more of a sense of regulation and consistency. It has eliminated men's focus on "how the ex is spending her money." It is all less emotional, and the same rules apply to everybody. It is also very handy for intake staff to have an authoritative guideline to refer to.

However, the general sense among these offices was that interpreting the guidelines is not as simple as it seems. For anything beyond the basic table amounts, the formula is too complex for the clients to be able to use the guidelines themselves. Most people, unless they have assistance, just go by the table and don't consider any of the variables. Just filling out the new financial statements is too intimidating for the average person. Each of Chetwynd, Vernon and Courtenay had a Child Support Clerk for a period of time, but no longer have this resource. That is a big loss; the clients need someone to help them, and someone with access to the guideline software. In the opinion of some of the administrators, if the situation of the payor is anything other than completely straightforward, it is more complicated than it used to be. It would require a very sophisticated client to be able to handle the calculations involved with extraordinary expenses or hardship issues. This is out of reach for most legal aid clients.

N. Impact of Family Dispute Resolution Initiatives

Each of the legal aid administrative centres was asked about new family dispute resolution services or options in their community, and how they are impacting upon clients with family disputes. There is very little available in Chetwynd. The "Parenting After Separation" course is offered out of Prince George; they present it locally occasionally. There is one Family Justice Counsellor to cover a huge geographic area. Case management has not yet been introduced, but it is scheduled to be implemented in the near future. The office anticipated that there will be conflict problems because there are only 2 family court judges.

Courtenay did not see any of the new initiatives as having a significant positive impact for their clients. Vancouver observed that it just makes it a lot tougher for poor people to get into the legal system. Vernon saw little benefit for their clients from these initiatives. Clients come to legal aid because they have decided things cannot be settled amicably and they need a lawyer—diversions are a frustration. Parenting courses are only effective if both parents are receptive; they do not assist with resolving disputed issues.

Asked whether the new programs and judicial initiatives have had an effect on the need for counsel, the offices generally thought not. One of the staff lawyers in the Chetwynd area noted that for the system in general it is good to have options that are non-adversarial in nature, but in his experience low-income clients are less able to use these programs successfully. It requires the ability to prepare documents, fill out complicated forms and articulate complex issues. Vancouver staff noted that it just seems to be more confusing for their clients, and there are more steps to go through. They saw no reduction in people seeking lawyers to help them deal with the system. Courtenay also observed that the main impact has been to make everything more complicated. Vernon noted no overall change for their applicants, probably because people do not know or understand what is available.

O. Accessing the Legal System—Problems and Suggestions

The administrators were asked to identify which aspects of the legal aid system are most problematic for low-income women and children who need to access the legal system. All of the offices identified financial eligibility as a key factor in blocking access. One office mentioned that people should not have to collapse their RRSPs and use all their savings to pay for a lawyer, when they are in a very low-income category. The working poor are in a terrible situation; large segments of the population are not getting any assistance at all.

The need for coverage of variation applications was also identified as a major problem by all offices. First orders are often unrealistic, and people in low-income situations are subject to frequent changes in circumstances. There was a general appeal for more discretion with respect to both eligibility and coverage, and a recognition that some of the refusals are quite arbitrary and have nothing to do with whether or not a legal problem is serious.

Concern was expressed by one office that things in Provincial Court have actually become much more complicated, and that the self-help approach is for a different stratum of society than the clients served by legal aid. It is also unfair to send people in to represent themselves in negotiations or in court when they have no information about their basic rights.

Offices had a few suggestions about how to improve access. One is to restore wider eligibility and coverage, but also implement a proper recovery system so that people who have assets or have some room in their income would pay at an appropriate level. On the other hand, people should not be paying contributions out of their medical benefits.

Another suggestion was to use PLE and paralegals properly to provide information and support, so that lawyer time can be utilized on legal representation.

Other suggestions:

- to have more of a focus on children, and to provide coverage structured around that focus;

- if reduced access to counsel is to continue, to implement adequate supports to assist people in handling things themselves. The present situation is a bit of a fraud;

- to address the emotional and practical issues that come with separation—housing, daycare, income assistance, debt, counselling, job training. A more integrated approach with strong community services and poverty law services is required;

- to strive to make the courts less intimidating for women. Some women are walking away from legal rights because they have been humiliated in their attempts to self-represent. The result for that individual is poverty.

P. Services for Aboriginal People

None of the communities chosen for interviews has a Native Community Law Office to provide a full range of legal aid services under the direction of aboriginal people. However, there is an L.S.S. intake and referral office in Vancouver with a mandate to develop a more approachable intake service for the Vancouver urban and reserve native population, and there is a funded position at the Friendship Centre in Fort St. John to provide legal information services for native people in the area.

1. Northeastern B.C.

The Legal Information Councillor (L.I.C.) at the Fort St. John Friendship Society does not do intake and referrals; she sends people to the L.S.S. branch office in town. She gives people information and assistance with a variety of issues specific to native people, such as status applications, and also provides basic information to native people about family, criminal and poverty law issues.

One of the areas of particular concern to her clients is CFCSA matters. Many native children are being apprehended, and complaints are made that the lawyers who represent the parents tend to just agree with the Ministry, and will not stand up for the rights of aboriginal children to stay within their culture.

Families are subjected to very broad supervision orders which impose conditions which seem to go beyond the reasons for intervention in that family; there does not seem to be any process to review the conditions of these orders. The L.I.C. reports some success from referring some of these complaints to the Office of the Child Advocate and the Children’s Commissioner. She has also been told that the social worker who insists on

the supervision order is never seen by the family during the supervision period; what is the real level of concern if they don't provide any services or supports?

Native women who are trying to escape situations of family violence desperately need the assistance of lawyers. It is viewed as a major setback that the financial eligibility standards and coverage limitations have reduced the level of service for these women.

For some women on benefits, the contribution requirement is a deterrent to obtaining legal aid services. The amount of money is so small for L.S.S., but very significant for a single parent family on benefits.

There were a few suggestions about how access to the legal system could be improved for aboriginal people. First on the list was more outreach to the communities, with public education and prevention programs. For example, people need to be told what kinds of behaviour and conditions may initiate Ministry intervention into families. A lot of native parents believe that they are losing their children because of issues related to poverty, not mistreatment of children.

Another suggestion was that there should be a visible aboriginal presence in the L.S.S. system in northeastern B.C., and the whole system of applying for legal aid should be less bureaucratic and more friendly. The present system feels like applying for B.C. Benefits.

Also, the L.I.C. pointed out that the same rules about reduced access to counsel should not apply in regions like hers where there are no alternative services or resources.

2. Vancouver

The Vancouver Aboriginal Law Centre, which opened in March 1999, shares space with the UBC First Nations Legal Clinic near the criminal courts in Vancouver. The Centre is staffed by 2 paralegals (one the Centre Co-ordinator) and 2 intake legal assistants, supported by a supervising lawyer who is available on a consulting basis. The UBC Clinic has its own Director, and is a separate program, but it is a very valuable resource for the Centre as a place to refer native applicants who need assistance but are not eligible for legal aid.

The Aboriginal Law Centre is an L.S.S. office that provides intake and referral service for anyone who comes in, but the services of the paralegal staff are allocated with a preference for aboriginal people. The paralegals provide service on basic poverty law issues, but also on native law issues: membership, status, housing on reserve, Band benefits. Issues of particular importance to women are reinstatement of status (Bill C-31) and the related off-reserve voting issue.

The Centre has noted that a very large proportion of the families in CFCSA court are headed by native women. The need for early advice has been identified, and an arrangement is being made to have Ministry staff in Vancouver tell native parents about

the Centre at the time of apprehension, so they can arrange for legal representation before the first court appearance.

Native women face some different issues than other women when they separate from their spouse, particularly to do with housing. Often they have no claim to the house they lived in with their husband, and no right to alternative housing on the reserve. There is a general lack of education in the native population about their legal rights and obligations, and a mistrust of the mainstream legal system. Because of these factors, many of these types of issues remain unresolved.

Family violence is a difficult issue in the native community. Women may be reluctant to report because they are afraid that if they contact any authorities, the CFCSA people will come after their children. The Centre has had reports of women obtaining peace bonds, but not being able to get them enforced by the police.

Native people in Vancouver who go to court unrepresented can get assistance from the Student Clinic (criminal court) and the Native Courtworkers (family court). Resources are much more scarce in the suburban Lower Mainland courts. The Centre noted that 1/3 of their referrals are coming from the Native Courtworkers.

There is a problem finding enough native lawyers to take on the work that is available in the area of family/CFCSA law. Many non-native lawyers do not pick up on certain issues of importance, for example the cultural component of the provisions for placement of native children with the extended family in CFCSA cases. It would be helpful if L.S.S. could provide family law articling positions for aboriginal lawyers, and also if L.S.S. staff lawyers were better informed about the cultural issues for native clients in family law and CFCSA matters. Native people would be more comfortable participating in some of the new initiatives, for example CFCSA case conferences, if they were informed and accompanied by an aboriginal advocate.

A major obstacle for native people who need to use the legal system is that they are both fearful and mistrustful of it because of past history. There is a need for education and empowerment about the system, but also a need for more visible aboriginal presence at the courthouse and in L.S.S.

Another major obstacle is that the clientele coming in to the Centre are extremely poor. For example, many of them don’t have telephones and can’t afford bus tickets. The Centre is striving to create an open, welcoming atmosphere and to be aware of the needs of the population it is trying to serve.

3. Native Courtworkers—a Provincial Perspective

The Executive Director of the Native Courtworkers at the provincial level reported that their workload increased by 11% after the legal aid cutbacks. Their family courtworkers have reported that it is difficult for native people to find family lawyers to take their cases on legal aid, and that it is more difficult now than before for people to go through court

on their own because it is more complex and there is no information at the community level about the changes to the court system. Many clients would be completely without assistance were it not for local lawyers in many communities around the province who are willing to work *pro bono*.

The courtworkers have observed that there is a huge communication gap in many instances between white lawyers and native clients. This could be broken down if lawyers were willing to interact more with native communities, offer public legal education sessions and establish a better level of trust.

IV. Interviews with Vernon Lawyers

Interviews were conducted with 8 lawyers who do family law work on the legal aid tariff in Vernon. The experience level of these lawyers was mixed: three have been doing this kind of work in B.C. for 8-12 years, two for 4 years, one for 6 months and two for over 18 years. Seven out of the 8 do both FRA and CFCSA cases. They all do cases in both levels of court, although three say their work is primarily in Supreme Court.

A. Impact of the Cutbacks on Tariff Lawyers and Services

Four of the 8 lawyers said that their practice with respect to accepting family law cases on legal aid changed as a result of the changes to the legal aid system in the past few years. The 4 all stated that they are more reluctant to take legal aid cases and more selective about the ones they will take. Their reasons included not being paid for prep time, very slow payment, high levels of frustration, and annoyance about dealing with difficult clients in difficult cases and then not being paid for it. These 4 lawyers had all been doing family work for legal aid for at least 8 years.

The 8 Vernon lawyers all agreed that there is a reduction in the number of senior lawyers taking family legal aid files. The only ones who do it are sole practitioners with low overhead. One lawyer noted that legal aid has effectively become pro bono work.

They were asked to comment in a general sense on the impact of the changes to legal aid on the practice of family law with respect to low-income families. The lack of coverage for applications to vary orders was identified a couple of times as a specific change that has had the most significant impact. For example, if a father applies to vary support, the mother cannot get assistance to defend her order and often simply gives in. Or, because of a change of circumstances in the family, a father should be applying to get custody of the children and he simply can't do it.

Several respondents noted the general effect that many low-income people can't have lawyers any more, and more people are representing themselves in family court matters. Those who are getting lawyers are getting a reduced level of coverage. There seems to be a preponderance of men being refused coverage, even if they are financially eligible,

because many of their issues tend to be variations, or they tend to be respondents. The lawyer who noted this, one of the most experienced of the Vernon bar, said the result he sees is that many of these men are trying to address maintenance situations where the order is completely out of their reach. If they can't get help, they tend to just give up. Nothing gets paid and the people feeling the impact are the women and children.

Asked whether there are types of cases that lawyers don't want to take because of how the system operates, a few case types were noted more than once. A couple of lawyers identified CFCSA cases, because there are problems built into the tariff and they tend to be long and difficult. Three lawyers also identified custody matters because of the time involved, and specifically noted the difficulty in getting the approval for necessary disbursements, especially assessments.

Lawyers were asked whether the reduction in payment level or the administrative changes for legal aid files was affecting the way that service is provided to clients. All agreed that it is not, in the sense that the lawyers who take the files work very hard on them. One lawyer pointed out that this is not where the problem lies; the issue is that lawyers are simply dropping out. Others mentioned ways in which the specifics of a case may be affected by the legal aid scheme. One lawyer is taking legal aid matters through Provincial Court because disbursements are smaller, and is using a legal assistant do more of the preparatory work on these files. Another mentioned that the economics of these files simply doesn't work. One way to address this would be to introduce a paralegal rate into the tariff. Another noted that while lawyers do the best they can with the time and resources they are given, you have to settle for a lower quality of evidence because the disbursement rates do not reflect actual costs of retaining experts.

Asked about any personal impact from the legal aid cutbacks, lawyers mentioned financial impact, and the prevalence of difficult cases or problem clients in legal aid matters.

There are no staff lawyers doing family law work in the courts in Vernon. One of the lawyers mentioned that, until they had to withdraw the service, the paralegals from the Community Law Office had been a presence at family Provincial Court, providing basic legal information, referrals to community or advocacy agencies, and assisting people to negotiate settlements. He felt this had been a valuable service.

B. Financial Eligibility

When asked about the impact of the tightened eligibility standards, all of the Vernon lawyers commented in one way or another that the income threshold is too low, and that the working poor can no longer get legal aid. Four of the 8 noted that under the new system, men seem to be less likely than women to get accepted for legal aid. One lawyer noted that the only male legal aid clients he sees now are those unable to work because of disability or education issues; if you have a job and don't have the kids, you are not going to be eligible. A couple noted that the eligibility system is unfair to men.

Lawyers noted a variety of other impacts: more unrepresented litigants in court; more clients who are not able to pay their legal bills or who are borrowing from their families to pay. Several of the lawyers pointed out that there are problems around eligibility and assets: sometimes asset disqualification seems unfair because the assets could not really be divested, and there seems to be inconsistency in the application of the asset rules, so that some people with lots of assets do get covered. One lawyer noted that women will be cut off if they succeed in getting an order for interim support. Other recurring comments were that the gap between cut-off and affordability is too large and some sort of sliding scale is needed, and that more discretion or flexibility is needed to consider people's real financial situations: needs, obligations and expenses.

C. Case Coverage

The lawyers were then asked to consider areas where the new coverage limitations were proving to be problematic. The lack of coverage for variation of orders was noted by almost all of the lawyers. Several comments were made about why that is significant. One is that the first order tends to be interim, made on a somewhat summary basis. If that order cannot be varied, then the parties have no access to the trial process, where the full range of issues could be presented and considered. With respect to access variation, one lawyer commented that the "risk" test that must be met in order to get coverage is not realistic. Day-to-day access problems usually are not at the level to meet the test, but are nevertheless very important for children and parents. With respect to maintenance, lawyers pointed out that old orders are often inadequate, and that circumstances do change. In a general sense, one lawyer noted that the coverage limitations do not allow the lawyer to complete the file; he wonders if there could be future liability issues arising out of some of these situations.

A couple of other types of comments were made about the coverage limitations. One is that if they are eligible, people want to get a lawyer; they don't want to be shunted off to counsellors, advocacy groups, etc. One lawyer discussed the lack of coverage for division of assets. He described a case from his firm where the client had no children and therefore no issues other than division of assets. She was refused legal aid; they represented her on contingency, but he feels strongly that, had they not been willing to take on this file with no retainer, it would have sentenced this woman to poverty. He questioned why legal aid would not take security on assets and provide coverage, rather than refusing and leaving a person in such jeopardy. He felt that the message to women in this situation is "Walk away, you can't win."

Vernon lawyers identified a few situations where coverage problems arise in cases of multiple legal issues. A couple of them pointed out that often FRA matters must be addressed in order to resolve a CFCSA file. Three others mentioned the asset—or, more commonly, debt—issues that arise in the resolution of matrimonial matters: sale or transfer of property, re-drafting of wills, foreclosure, arrangements with creditors. One lawyer commented that for people who are on benefits, one lawyer should take care of all legal matters.

D. People Representing Themselves in Family Proceedings

The lawyers were asked to comment about the situation of people representing themselves in family court proceedings. They all agreed that this is occurring in Vernon in both levels of court. Some described it as happening much more than it used to; others didn't see that much of a change. Most mentioned that this involves more work for the judges, and it slows things down. The judges have to spend time explaining the process and telling people what information is needed by the court. There may be a perception by an opposing party who is represented that the unrepresented party gets more attention, patience and understanding from the court. Four out of the 8 lawyers thought that men are more often unrepresented in court than women.

The lawyers identified these problems:

- because the self-represented do not know the law and do not trust the opposing lawyer, negotiations do not work;
- because people don't know what to bring to court and the court tries to accommodate them, matters are frequently adjourned;
- the many shortcuts that lawyers usually take cannot be employed and therefore things proceed very slowly;
- many of these files could be resolved very quickly if two lawyers could address the issues.

While the lawyers generally agreed that this phenomenon is more frequent in Provincial Court, they see it as being more noticeable in Supreme Court. One lawyer noted that the self-represented get less help from the judge in Supreme Court, another described an unrepresented person in Supreme Court as a disaster, feeling that it is a completely inappropriate forum for them and that they don't get treated well and do not get a just result. Another said that people can muddle through on their own in Provincial Court, but they really can't in Supreme Court. It was his observation that in 9 out of 10 cases with a self-representer in Chambers, the matter won't proceed because the materials are not ready or available. This leads to unfairness, which the judge will try to offset, sometimes by giving legal advice.

One of the concerns this lawyer raised was that many people who are not represented just give up and don't deal with whatever their problem is. His observation from his own files was that if he must tell clients that he can't do something for them because he isn't covered for it, those issues just sit for years. He had two suggestions: duty counsel for family law matters, and a unified family court so that people would not have to deal with different law applying to the same issues under different statutes. Another lawyer noted that the experience men have trying to represent themselves in Supreme Court fuels their feeling that they are being victimized by the court system. Still another observed that people don't do well on their own in court; they don't know what to ask for.

E. Language or Literacy Problems

Lawyers were asked about clients needing assistance at the courthouse because of language or literacy problems. Most agreed that this is not a big problem in Vernon. However, a couple of lawyers commented that while there may not be many illiterate people, many do have literacy-related issues if they are not represented. For example, they may not understand letters they receive from FMEP, don't have the skills required to do written work for Supreme Court Chambers or to articulate their positions. They may not have the capacity to represent themselves properly in either criminal or CFCSA hearings, where the language is very technical.

F. Family Violence Issues

Asked about women dealing with family violence issues unrepresented and having difficulty obtaining protection orders or orders restricting access to children, most of the Vernon lawyers commented that this is very rarely seen. Usually women are able to get legal aid coverage if there is a risk of violence, and if they do appear unrepresented, the courts will tend to grant restraining orders. One lawyer noted that the success of such women in dealing with their legal problems seems to hinge on the support of women's services: those who go to the women's centre seem to get advice and usually legal counsel, while those who do not may not make it into the court system.

Four out of the 8 lawyers saw the cutbacks having resulted in negative impacts for women and children who are victims of family violence. The main reason cited was ineligibility under the current financial criteria. Other problems were coverage only for a restraining order, with no follow-up to get these women back into the house, or do their divorce, or even to do custody and access, unless there is medical evidence of risk to the children.

G. Access to Assets

The lawyers were asked whether inability to obtain access to assets at the outset of litigation is a problem they see. Two said they did not see this as a problem, another two noted that the custodial parent will tend to get exclusive possession of the matrimonial home and this is usually the mother. Another said it is not a problem because no one in that part of the province has any liquid assets any more—at most there will be a house and maybe some work-related equipment.

Those who do see some problems in this area made observations on several levels. One noted that the woman will tend to leave the house as a first step, and then has to take steps to either get back into the house to live, or get into the house to remove basic furnishings and personal items in order to set up a new household. It was mentioned that this may be more of a problem for older women; women with minor children can more easily get coverage to deal with pressing issues of access to assets. A couple of lawyers noted that assets are a big problem, more often for the woman, but not exclusively, and

that people need assistance dealing with this but should then have to repay legal aid in appropriate situations. One of the lawyers noted that the court in Vernon seems to take the approach that no interim distribution of assets is granted except by agreement.

Lawyers were asked for their views about what billing arrangements should apply where a family legal aid file will probably culminate in the sale of the only asset, the family home. Many of the lawyers mentioned the importance of informing the client up front that there is a duty to report any sale of assets to L.S.S., and that there would be the possibility of full or partial repayment to legal aid, or conversion to a private retainer. One lawyer thought that in all such cases there should be conversion to private retainer. All of the others supported a system much like the one in place now, with cases being assessed on an individual basis and there being a sliding scale with respect to amount of equity/obligation to repay. Having expressed general support for this approach, most of these lawyers also acknowledged that the issue of assets is problematic.

One of the problems is that, if the client knew from the outset that legal fees were going to have to be paid out of the sale of the house, the client might give different instructions during settlement discussions. On the other hand, more than one lawyer described situations where L.S.S. instructed them to bill on a private retainer, and they didn't get paid because there really wasn't enough equity there, or they had difficulty collecting because there was no security against the asset.

H. Support Orders—Child and Spousal

Lawyers were asked for their opinion as to whether a high percentage of maintenance orders are being made by consent now. There was general agreement that this is true for child support but not for spousal support. The child support guidelines have assisted significantly where the financial circumstances of the payor are straightforward, although a few lawyers saw the exceptional circumstance cases as being quite difficult under the guidelines, maybe even more difficult than they were before. The contested cases may tend to show up more at the Supreme Court level.

All the lawyers agreed that spousal maintenance claims do not settle, and one lawyer offered the opinion that men never want to pay spousal support no matter what the age of the parties or the circumstances of the marriage. His observation is that male clients feel that their wives should be out working within 6 months, and they lack an appreciation of the costs of running a household. He felt that men take a win-lose approach to these issues, whereas women take a maintain-the-status-quo approach. Another lawyer noted that spousal maintenance only arises if there is anything left over after child support.

Six out of the 8 lawyers gave a conditional positive rating to the child support guidelines. Those who were negative saw the guidelines as creating additional complexity, a lot of fighting about definitions and very complicated calculations if the payor is self-employed or has circumstances constituting undue hardship. In general, they felt that the

documentation requirements are such that an accountant is needed as well as legal expertise.

Those who felt positively about the guidelines agreed with some of these criticisms, but placed them in the overall context of the guidelines creating a good solid starting point, with more of a base of certainty than there was in the past. Where income is self-evident, which one lawyer estimated to be in about 80% of the cases, the guidelines have simplified things and result in many more consent orders. Most lawyers agreed that the guidelines are only a do-it-yourself option for clients if things are very straightforward. If the case had any factors that took the parties beyond the basic table, then some level of assistance was required.

One lawyer noted that the input of counsel assisted both the parties and the court to recognize and properly address special factors, and it also made the discussion less adversarial and made it easier for the payor to respond. Vernon had a Child Support Clerk for a period of time but that resource has been removed; this is a loss. The majority of the lawyers felt that, if complicating factors were raised, legal representation should be provided. Other comments included:

- there is some built-in lack of fairness to the payor in the system;
- the tax changes are a detriment to a low-income custodial parent;
- men do not accept the figures regarding the cost of raising children;
- the whole scheme is not as easy to apply as was hoped;
- applications to vary support payments turn on the legal concept of "material change in circumstance," and representation is needed.

Lawyers were asked whether, where unrepresented parties are proposing a consent order, there is any review to ensure that the legal position of children and dependent spouses is protected. There seemed to be agreement that this would likely happen with respect to child support under the *Divorce Act*. In general, the courts would take some responsibility for this, but it would vary by individual judge, and in most cases would not go far beyond the question of basic income.

I. Maintenance Enforcement

Asked specifically about the efficacy of the FMEP system for enforcing maintenance orders, 6 out of 8 lawyers mentioned that the system is fundamentally slow. A couple of lawyers noted that if early intervention were possible, the system would work much more effectively than it does now. One lawyer commented that part of the problem is that judges are constantly giving payors second chances and seem reluctant to impose any consequences. Another noted that the payors almost always show up for a contempt

hearing with a cheque. If they were made to realize sooner that enforcement measures are serious, they would respond to that.

Another lawyer made the suggestion that legal aid lawyers should be given 3 hours paid time for enforcement, which would allow them to initiate enforcement proceedings immediately (when necessary), get a garnishing order or other appropriate mechanism in place, and then pass the file on to FMEP for ongoing monitoring and action. One lawyer who felt that the system is, overall, very good noted that two very positive features are that by law FMEP is given "longer tentacles" than any private lawyer has, and that the cost of individual enforcement is prohibitive. However, he noted that because of the volume of cases, FMEP often makes deals with payors that are not necessarily in the best interests of the individual recipient.

Within that overall context, most of the lawyers agreed that in the long run the system works fairly well, but that there are inconsistencies and it is less effective if the situation is complicated. One lawyer felt that the inconsistencies are because of an absence of any duty to provide fair treatment and proper investigation of circumstances. The result is that some cases with miniscule payments are strictly enforced while other major debtors are not being pursued at all. Increasingly, men are becoming rancorous and feeling that they will get treated badly even if they have a good case.

The next question dealt with whether arrears of maintenance are being cancelled by the courts because orders are not enforced promptly. The responses to this were mixed. Some lawyers agreed that this happens; others felt that it is very difficult to get arrears cancelled; still others saw it as an issue where different judges tend to have very different approaches. There was general agreement that the slowness of FMEP tends to create high arrears, and that this results in enforcement difficulties.

One gap in the system that was identified by a Vernon lawyer is that FMEP will not represent a recipient if a payor brings a variation application to reduce maintenance and cancel arrears, and legal aid will also not cover this person. If people represent themselves on maintenance applications, problems arise with the accuracy of the information that the courts receive. One lawyer noted that it is very easy to hide your income unless you are a person with a regular paycheque, and the average lay person does not have the expertise to examine someone in court about the financial statements they have filed. It was also noted that this type of hearing with an unrepresented party often does not proceed because proper documentation is not there to allow the court to make a decision.

Other issues raised were the reluctance of the courts to take any firm action against a debtor unless the case is cogently made by counsel, and the inability of a self-representer to implement any kind of payment order if she succeeds in getting the court to make one. The observation was made that many people who would have to represent themselves don't go to court because they are too intimidated.

J. Diverting Clients to Family Justice Counsellors

Lawyers were asked about the diversion of family law clients to the Family Justice Counsellors prior to the commencement of legal proceedings. Seven out of the 8 lawyers expressed serious reservations about this initiative as it is presently implemented. Concerns expressed were as follows:

- referrals are being made in inappropriate circumstances—e.g., abusive relationships, great inequity in relationships, situations where urgent legal action is required. Better screening is needed;

- parties are not properly informed before negotiating and are therefore entering into agreements that are prejudicial, unrealistic and very difficult to vary once made. Legal advice is needed prior to seeing Family Justice Counsellors;

- FJC service is very inconsistent in effectiveness, under-resourced for the volume they are getting and therefore not really doing mediation and no longer available to do custody/access assessment reports;

- diversion can result in delay, people getting lost in the system, people feeling pressured to enter into agreements they are not comfortable about because they are under the impression that this is their only alternative. Also, many people are under the impression that they are being given legal advice by the FJC;

- diversion often occurs too soon, before people are ready to settle the major issues. It is useful for an interim agreement on access and maybe maintenance, but often results in inappropriate and premature decisions on custody. It should be done with a qualified family law mediator and legal advisors, more like the case conferences in CFCSA matters.

K. Impact of Family Dispute Resolution Initiatives

Lawyers were asked whether the new initiatives regarding the resolution of family disputes seem to be having a significant impact for clients. Two lawyers identified the case conferences in CFCSA matters as very helpful, and suggested more use of this format in FRA cases. The “Parenting After Separation” course was commented on as being helpful, but not significant unless both parties are receptive to it.

Other comments included: the new forms are more difficult for people; pre-trial conferences have little impact unless members of the court are prepared to give the parties some direction and feedback; the loss of ability to get assessments from the FJC program offsets any benefits from the focus on mediation. One final comment was that it is misguided to push family disputants to settle. These issues have a life of their own, and people can’t resolve them until they are ready.

Lawyers were specifically asked whether the various initiatives have had an impact on the need for low-income people to have legal representation. The answers to this question covered a wide spectrum. One of the senior lawyers summarized the issues by saying that if a case is straightforward, such initiatives as the child support guidelines and case conferences can assist people in getting what they need on their own, but in any but the simplest of circumstances, legal representation is needed.

The more specific comments are instructive. One lawyer noted that Provincial Court is more suitable for self-representation because there are no filing fees and the procedures are simpler. Lawyers are more necessary in Supreme Court.

Three lawyers commented specifically on the child support guidelines. One said that they seem to be the only initiative to facilitate the settling of disputes. The two others said that people don't comprehend the guidelines except as a straightforward table, and that representation is needed if they are to be used properly.

One lawyer stated that people need to be adequately informed prior to and while they are participating in these settlement-focused initiatives. The suggestion was put forward for 1–3 hours of legal advice time during the process.

A couple of lawyers expressed the concern that these initiatives mislead people to believe that issues are simple. The use of plain language and the partial information supplied by the FJC service give people a false impression that they have been given all the information necessary to resolve their legal disputes. One respondent noted that the court system is a resource for people who cannot agree. As such, there are limits to what the system can offer an unrepresented person. The court cannot explain to a party all the options as to how a certain outcome can be achieved; that is the role of the lawyer, and there is no other participant in the system who can play that role. Another lawyer observed that many people are going into negotiations or proceedings quite blindly, realizing too late that it is complicated and they need a lawyer.

The final area of comment was that, because of the nature of family disputes, people are driven by emotion and often have unrealistic expectations. What is most helpful to them is a neutral assessment, a non-adversarial description of their situation. But the FJC program cannot provide this, because part of the role is to assess the legal issues and give the parties a reading on the reasonableness of their positions. This requires participation by lawyer-mediators or judges. The resolution of legal disputes requires legal expertise.

L. Accessing the Legal System—Problems and Suggestions

The lawyers were asked to identify aspects of the system that present barriers to access for low-income women and children who need to use the legal system. Six of the 8 lawyers identified the very low cut-off for financial eligibility as one of the major barriers. Within this context, specific comments were made about funding issues. One lawyer queried why filing fees should be paid on legal aid files or by low-income people;

it is an unnecessary expense and a real hardship for both lawyers and clients. Another spoke of the need to provide assistance to the working poor, perhaps by developing a more comprehensive contribution policy. Another noted the need for more flexibility and discretion in the eligibility assessment.

It was the opinion of one lawyer that lack of coverage for the working poor results in a particular disadvantage for women, because they are often in a situation where they have been supported in being the primary caregiver for the children, and have only worked part time, and are not experienced with negotiating the larger world on their own. One lawyer noted that there are two large groups in society who no longer have adequate access to the legal system: the working poor and the lower middle class, because the cost of services has become so high. It was proposed that while the working poor may be within the mandate of Legal Services Society, the Law Society should take responsibility for considering ways to address the needs of the lower-middle-class group.

One of the senior lawyers noted that the level of expertise required of family lawyers now is much higher than it was 20 years ago, and that family law has in fact become much more complicated. There is a genuine need for the legal aid program to respect and retain the services of skilled counsel in order to properly serve the clients who are eligible for legal assistance.

A couple of lawyers suggested that a positive improvement would be proper funding for mediation on legal aid files, and that mediation should be particularly promoted where both parties are on legal aid.

A few lawyers highlighted some specific problem areas. One noted that, even after separation, it is very apparent that women are often subject to control by their husbands, and they need the support of counsel. Another noted that women without minor children are basically “dead in the water” under the present regime; they are very unlikely to get coverage for their legal issues. Another lawyer emphasized the importance of providing coverage for all aspects of maintenance, as this is an issue that has enormous impact for the family.

Finally, the lawyers were given the opportunity to sum up with anything that they wanted to add or emphasize about legal services or access to justice. Many of them took this opportunity to express concerns about the administration of the legal aid plan from the point of view of the tariff lawyer.

A couple of lawyers mentioned that the long delay in payment after bills are submitted is a major problem; one of these lawyers may have to stop taking legal aid files because of it. One noted that the accounts are consistently questioned over minor items, which is extremely frustrating when the rate of pay is so low. A couple of other lawyers noted that the tariff is just too low; it doesn’t cover overhead. Others mentioned the inadequacy of payment levels on disbursements and the burden of carrying high family law disbursements for long periods of time. Another interviewee expressed a general concern that many good lawyers won’t take legal aid files any more and those who do are

disenchanted. This has a major impact on people's ability to get proper legal representation. Other comments included: lawyers should be allowed to use paralegals on their legal aid files; the P.S.T. should be used to fund legal aid, as was promised; delays in the Family Case Management Program can be a problem.

Looking more specifically at the access to justice problem, one lawyer recommended more access to legal information for the general public, using telephone information lines, the school system and PLE materials. This person also noted that there is virtually no voice for children in the system, and recommended counsel for children involved in family law disputes. Another observed that men are being left out of the legal aid scheme, and that this is leading to increased hostility and a feeling of victimization among men. A couple of lawyers raised the need to provide coverage for more issues, specifically for the division of assets, but also to recover from clients wherever that is appropriate. Another noted that unrepresented people need legal advice about how to implement an order in the event that they succeed in their court application. Finally, one lawyer proposed that everything to do with children should be handled at the Provincial Court level; the Supreme Court should be confined to dealing with spousal maintenance, property issues and divorce.

V. Interviews with Vancouver Lawyers

Interviews were conducted with 22 lawyers who do family law work on the legal aid tariff in Vancouver. The experience level of these lawyers is mixed: four have been doing this kind of work in B.C. for less than 4 years; four for 4–7 years; eight for 8–12 years; four for 12–18 years, and two for over 18 years. Fifteen of the 22 do both FRA and CFCSA cases. They all do cases in both levels of court, although 8 said their work is primarily in Supreme Court and 6 are primarily in Provincial Court.

A. Impact of the Cutbacks on Tariff Lawyers and Services

Nine of the 22 lawyers said that their practice with respect to accepting family law cases on legal aid changed as a result of the changes to the legal aid system in the past few years. Two of these lawyers have been doing work on the tariff for 6 and 7 years respectively, and the others for over 8 years. The 9 all stated that they take fewer legal aid cases. Problems with the tariff included: the hourly rate is less than half of the lawyer's rate; the number of billable hours is far too low; the billing system has become increasingly complex and difficult to work with; payment is very slow and it is generally not economically viable to do much tariff work.

Problems with administration, especially with the Family Case Management Program, were also mentioned. Some felt that FCMP lawyers second-guess the judgement of the lawyer on the case, often making the wrong call. (For example, FCMP said a client's case had no merit, the lawyer proceeded, won and got special costs.) Lawyers expressed frustration about waiting for answers, and the bureaucracy becoming more difficult with

each change. Supervision has been imposed on everybody, and senior lawyers bristle when their judgement is questioned by someone clearly their junior, or by a clerk who doesn't understand how the court system works. One lawyer has had such negative reports from clients about the way they have been treated in the intake process that, combined with the frustration of dealing with the administration and the low rate of pay, she has decided it is preferable to do as many cases as she can on a *pro bono* basis rather than require herself or her clients to deal with legal aid.

The Vancouver lawyers almost all agreed that fewer senior lawyers are taking family legal aid files. This was qualified by a few who said that there has always been a pattern of lawyers doing less of this kind of work as they become more experienced, so that it is difficult to know for sure, but there seems to be a decline even given that. Several of the mid-range (12 -18 years) lawyers described a distinct loss of a core group of senior lawyers who had always done a lot of legal aid work.

They were asked to comment in a general sense on the impact of the changes to legal aid on the practice of family law with respect to low-income families. Several lawyers noted that there is less access to experienced counsel for low-income people, and an overall reduction in the quality of legal services available to them. This takes many forms: aspects of the client's case are not covered at all, or are covered for a completely inadequate amount of the lawyer's time; the lawyers who will take legal aid files have very heavy caseloads and cannot give each case the attention it deserves—including L.S.S. staff lawyers. Many tariff lawyers cannot afford the proper infrastructure to support their practice, which also contributes to lower quality of service.

Another phenomenon that was noted is that lawyers work on a file until they have used up their hours and then they withdraw from the file. This is more likely to happen with the more difficult files, for example where there is family violence, and it has quite a devastating effect on the client. It was also noted by a few lawyers that there are more and more people who do not have a lawyer at all. They are attending court unrepresented and are also overwhelming support services with their search for assistance with their legal problems. Unrepresented people, or people who have been sent into mediation with no information about their rights, are entering into agreements or consent orders that are not in their best interests. One lawyer noted that because men don't get legal aid for family matters, more of them are taking things into their own hands, with negative effects for their wives and children. Other men, as well as many women who can't get coverage, just give up.

Asked whether there are types of cases that lawyers don't want to take because of how the system operates, a few case types were noted more than once. Although improvements have been made to the CFCSA tariff, it is still described by 6 of the lawyers as having major flaws that make lawyers stay away from these cases. Several lawyers also mentioned cases where the issues are going to require special effort (e.g., if there are allegations of sexual abuse), or where the client is likely to require extra time, such as people with disabilities or language problems, or battered women. Custody battles,

especially in Supreme Court, were noted as being too time-consuming or otherwise undesirable by 7 lawyers.

Other concerns noted by one or more lawyers included:

- L.S.S. may, very late in the day, reassess eligibility and cut off a client on the eve of trial, at a time when the lawyer feels an ethical obligation to continue;

- L.S.S. will give new hours to a new lawyer, which encourages the dumping of files, but won't give them to the current lawyer on the same file;

- any file that requires disbursement approval at a rate above the authorized level (e.g., expert evidence), is problematic.

Lawyers were asked whether the reduction in payment level or the administrative changes on legal aid files were affecting the way that service is provided to clients. Several lawyers replied that they know ahead of time that they will not be paid for what they do, and therefore they basically ignore the tariff and do what they, in their professional judgement, decide needs to be done. One stated that if you submit opinion letters, all you get is questions, demands or issues about forms; it is insulting and not worth doing. Another said that your real options are to "eat a huge number of hours," or beg for time. By contrast, two lawyers were of the opinion that if you are willing to write opinion letters and ask, you actually get more under the FCMP system than was possible previously.

Others suggested that the major impact is that lawyers are not willing to take cases; the combined effect of low pay and a rigid, unfriendly administration is not workable. Another respondent spoke of not being in control of the file: everything has to be pre-authorized; you have to answer questions on the merits, which you really don't know on a new file; the system takes away the capacity to make judgement calls as you go. An inadequate level of approval for disbursements, particularly for expert reports, affects the quality of the evidence.

A few lawyers provided examples of situations where the regulations of the legal aid plan definitely affect the conduct of the legal proceeding, varying from lawyers using up all their prep time and then unloading the file prior to trial, to clients consenting to orders in CFCSA hearings because the prep time doesn't even allow the counsel to read all the material provided by the Ministry in support of their application.

Asked about any personal impact from the legal aid cutbacks, lawyers mentioned financial impact, administrative overload, and feeling that they are not able to provide high quality of service. One counsel noted that his landlord does not accept promises to pay in 60 days. Many lawyers expressed profuse frustration about the time spent on administration, especially given that the rate of pay is $72 per hour. Lawyers spoke of a conflict between their duty to the client and the lack of funding. For example, in one situation a lawyer knew that a husband had large assets that were hidden, but L.S.S.

refused to authorize the costs of a search. Another lawyer was in a situation where the client and L.S.S. were in conflict about her eligibility on the eve of trial. The lawyer felt she could not back out, so she did the trial but was never paid. She felt badly not only because she did not get paid, but because in the past she had had confidence that she could speak to people at L.S.S. and get straight answers. In this case she was given conflicting advice and was not able to resolve the issue.

A couple of other lawyers expressed this same sense of a loss of constructive communication between L.S.S. and the tariff bar, and two noted that the people at head office seem to have lost touch with what their work is like. They feel support from the branch offices, but head office has become a faceless bureaucracy. One used the example of being asked to "itemize" an account for 900 pages of photocopying, which seemed a complete waste of time. Several lawyers reported having considerably less income to show for working considerably more hours. A few lawyers pointed out that not only is the rate of pay low, but the delays in payment make the work unsustainable. On the day of the interview, one lawyer was owed $35,000, much of it long overdue.

There are staff lawyers doing family law work in the courts in Vancouver and in some other areas of the Lower Mainland. The reaction of the tariff bar to this new way of delivering service to family law clients is mixed, with about 10 lawyers expressing primarily positive reactions and the others either having no opinion or negative responses. Positive comments included:

- they take on some of the toughest files, have developed real expertise and are good competent counsel;
- their role in providing duty counsel for CFCSA matters is a good contribution;
- they provide a safeguard in the system inasmuch as they can always make someone available for a client.

On the negative side:

- they are seen to be very overworked;
- some lawyers who have taken over their files on a change of counsel have felt that there was inadequate attention to file management and that clients reported a lack of attention;
- their presence has substantially reduced referrals to tariff lawyers and has not resulted in any benefit to the clients;
- they work on salary and are not as motivated as the private bar.

One lawyer expressed discomfort at dealing with staff lawyers as opposing counsel, since they are part of the same organization to which she is required to submit information and

opinion letters about her client's case. Most of the lawyers interviewed, whether their reaction was positive or negative, felt that they are, overall, just other lawyers doing the same work and that, in the Vancouver courts, the only specific contribution they make is with respect to duty counsel in CFCSA. A couple of people suggested that FRA duty counsel should also be a staff role, because the continuity and greater availability for advice on procedure would be a positive contribution. Two people voiced the opinion that they could not possibly be delivering service any more inexpensively than the tariff lawyers, who are subsidizing the legal aid plan with their regular practice.

A few lawyers made reference to the fact that, now, the only referrals that go to the private bar are those requested by clients. Thus, the well-known lawyers in family and CFCSA work are still getting lots of referrals from legal aid, but the less well-known are getting "squeezed out." One lawyer raised this as a bit of a class issue within the legal profession. Legal aid has, in the past, been a way for young lawyers who are not hired by large firms and do not have personal connections, to have a source of clients and develop their practice. The loss of this will be keenly felt by the more disadvantaged members of the bar.

B. Financial Eligibility

When asked about the impact of the tightened eligibility standards, almost all the Vancouver lawyers commented in one way or another that the income threshold is very low, and that many poor people are not eligible for assistance. Many noted that most of the people who get covered are on benefits. Certain groups were identified that used to be eligible but no longer are: people with low-income but some assets, and the working poor. Several dynamics were highlighted: that people who are at a very low-income level should not have to dispose of all their assets, for example RRSPs, because they will never be able to replace them; that men are less likely to get coverage because they are usually assessed on the basis of being single with no children living with them; that single working mothers usually earn low pay, so if they are refused legal aid they cannot possibly hire a lawyer privately.

Several lawyers noted the absence of discretion, the inflexibility of the system, and raised the issue of a sliding scale and a workable contribution system. They felt that there are many people who could pay at least a portion of their account, billed at the legal aid rate. A couple mentioned the ultimate impact of reduced eligibility: courts full of unrepresented people, as well as the uncounted people who just give up and do not pursue rights or remedies to which they may be entitled.

C. Case Coverage

The lawyers were next asked to consider areas where the new coverage limitations were proving to be problematic. The lack of coverage for variation of orders was noted by 13 of the 22 lawyers as having serious consequences for the parties involved. Problems with access or support need to be addressed when they arise; otherwise they tend to escalate.

While many lawyers gave specific examples of serious situations that required a court order be varied, one lawyer addressed more generally the emotional dynamics of separation. She observed that two conflicting emotions are in operation: a desire to get the legal stuff over with, and a level of emotional trauma that makes it difficult to assess the situation dispassionately. The result is that many people enter into agreements or consents that are not workable in the long run. This lawyer noted that especially where there is abuse, the woman will agree to almost anything just to get herself out of the relationship. It is very important that, a year or two down the road, when the parties are better equipped to set up a permanent regime, there be representation available for the necessary changes.

A couple of lawyers noted that there has always been a need to advocate for clients on coverage, because often they are not able to articulate the implications of a particular type of legal action. But the opportunity to do this type of advocacy has been nearly eliminated by the way the system is presently administered. Several lawyers mentioned that the lack of coverage for divorces leaves things ultimately unresolved for people. One suggested that to either waive or pay disbursements would significantly improve people's access to this remedy. The other issue that was noted several times was division of property, an issue which has major significance for women. Other individual observations included that there is basically no coverage any more unless there is an aspect of urgency or risk of harm involved, and that it is very difficult to get coverage if there are no children, or if the issues about children have been settled.

Vancouver lawyers identified a few situations where coverage problems arise in cases of multiple legal issues. For example,it is difficult to complete a custody and access case without dealing with maintenance, and sometimes also with property division. Also, FRA work may be an integral part of a CFCSA case, often requiring a variation of an FRA order. This type of coverage extension can often be obtained through FCMP, but it requires much time and causes delay.

Two specific situations were noted. One lawyer represents women who need to change their identity because there is no other way to ensure their personal safety from their spouse. She noted that they have to get a divorce before they can apply for a change of name, to avoid having to give the spouse notice of the Change of Name application. Another lawyer represents many battered women. She stated that the family lawyer must play an active role as advocate in the criminal process, otherwise it tends not to work properly to protect the client. For example, one of her clients went to court as a witness against her husband on a fairly serious assault charge, only to find that the Crown bargained for a peace bond and the trial never proceeded. The client had no involvement or say in that decision.

Lawyers were asked if they were aware of any reduction in services available to their clients with respect to non-family civil law coverage. Most of them knew nothing about this; a couple were aware of the high level of demand being placed upon a local Community Law Office and the Vancouver Community Law Clinic, and commented on

the desperate need for services to help people in poverty deal with issues such as benefits and housing.

One lawyer does a lot of *pro bono* non-family civil cases, many involving remedies for child abuse or sexual abuse inflicted in institutional settings, and commented on her experience as far as support for her work from L.S.S. The disbursements on these cases average in the range of $10,000–$15,000, which limits the number of cases she can do unless L.S.S. will pay the disbursements. The major issue is expert reports: the quality of this evidence is critical to the success of the cases, and the pay scale at L.S.S. is not adequate. This lawyer has to make a request for a higher rate on each file, she deals with a different person every time and is generally refused, which means that her firm has to carry the costs. Her frustration rests in her observation that her clients are almost always successful, she obtains an order for costs, and she repays L.S.S. Applying the rules therefore does not save L.S.S. any money, it just means that she is able to represent fewer such clients than she otherwise would do. The issue for her is that the L.S.S. approval process has become unresponsive and essentially unsupportive of the work that lawyers are trying to do to assist low-income people with their legal problems.

D. People Representing Themselves in Family Proceedings

The lawyers were asked to comment about the situation of people representing themselves in family court proceedings. Nineteen of the 22 lawyers were conscious of seeing an increase in both levels of court. It was generally agreed that this presents real difficulties for courthouse staff and judges. Unrepresented people do not understand the procedures, they do not know the law, they cannot get through their court appearance without someone, often the judge, having to give them information and advice. Interviewed lawyers generally believed that the Provincial Court environment is more user-friendly for lay litigants. In Vancouver, the Provincial Court has duty counsel, which is a resource not available in most of the courts in the province. One of the lawyers noted that, when doing duty counsel, he sees people who have come over from Supreme Court to try to get some assistance.

One of the lawyers who does most of her work in Supreme Court stated that it is not an appropriate forum for lay people, because the Rules of Court require procedural propriety and a very high level of literacy. She noted that the effect of this is that many people, and especially women, who are generally less well equipped to function in a public forum, will simply not pursue their claim if it must go to Supreme Court. This means that low-income women have no avenue to protect their interest in the household assets.

The lawyers almost all agreed that lay litigants cause delay in court proceedings, for many reasons:

- the court and opposing counsel have to really “go by the book”—none of the usual shortcuts are available;

- it may be more difficult to settle because the lay person doesn't trust the lawyer;
- they don't know the terminology, the process, what is considered relevant or reasonable;
- documents are generally not complete, and many adjournments are required;
- the judge has to take a lot of time to explain things and to ask questions.

A few lawyers commented that they see more men than women representing themselves. Several commented that women are more likely to be intimidated by the process and give up. Many reported that judges go out of their way to assist the lay person in court, sometimes to the point where the represented client may feel that the situation is unfair. On the other hand, some lawyers felt that some judges penalize the person, scolding them for not understanding or doing things properly. Lawyers reported seeing lay people consent to things that they did not understand, and seeing abused women having to deal directly with their abusive spouse in court.

In a more general sense, a couple of lawyers commented that one of the things people expect to get from the legal system is some sort of protection from the highly emotionally charged atmosphere of their dealings with their spouse. One of the things that counsel provides is someone who is on their side, who can advise them of their obligations and suggest that they tone down their emotions without arousing their suspicions or distrust. When people go into court unrepresented, the emotional level is very high and the system fails to provide the kind of buffer that people want and need in the resolution of family disputes.

Another reported effect of self-representation is a very tangible reduction of evidentiary standards. Also, if a litigant has no credible basis for their claim or dispute, it isn't possible to stop them from proceeding with their case, which can result in an enormous waste of resources. The bottom line, said one lawyer, is that the average person is not competent to handle a case of any complexity, and will usually end up feeling that the system was unfair to them. A couple of lawyers observed that all of the unrepresented are not refused legal aid recipients; some, particularly men, choose to represent themselves for a variety of reasons. Sometimes, as part of the dynamic in the family dispute, they do it primarily because it is frustrating and stressful for their wives. It works.

One lawyer who works closely with Battered Women's Support Services in Vancouver reported that since the cutbacks there has been very heavy demand for assistance from women who do not have legal representation and have to go to court. Early in 2000, BWSS expects to launch a pro bono clinic for women dealing with violence issues, which will rely on volunteer lawyers to give summary advice, assist with preparation of documents and sometimes represent clients in court.

E. Language or Literacy Problems

Lawyers were asked about clients needing assistance at the courthouse because of language or literacy problems. Language is certainly an issue in the Vancouver courts. Lawyers noted that legal aid does pay for interpreters if the person gets coverage, and that the courts can order an interpreter for a hearing. However, many people have to rely on a friend, family member or community support agency to assist them with the less formal aspects of going through the legal process. One lawyer who does a lot of CFCSA work felt that, even with the assistance provided, people who do not have the language capability of understanding the court process on their own, and who are unrepresented, are commonly consenting to orders that are not in their best interests. One of the lawyers expressed the view that if you don't speak English, and you are not represented, you effectively do not have access to the justice system.

Many of the lawyers expressed the view that literacy is also a serious problem, partly because it is hidden and because there are no structured services to provide assistance. Documents are given to people, with no way of knowing to what extent they understand them. One lawyer pointed out that people often "fake" what they can read; he feels there may even be a negligence concern here for lawyers. Literacy is less of a practical concern in Provincial Court because there is much less paperwork and more of the process is verbal. A couple of lawyers noted that mental disability or mental health is a difficult issue when it arises, although some support services are available in the community.

One lawyer made the general observation that the whole process of obtaining counsel has become much more difficult, and if a person has trouble filling out forms or responding to written material, or expressing themselves, or making telephone calls, that process is multiplied in its difficulty and frustration, to the point where many people with these disadvantages probably never make it into the system.

F. Family Violence Issues

Asked about women dealing with family violence issues unrepresented and having difficulty obtaining protection orders or orders restricting access to children, 13 out of the 22 lawyers confirmed some aspect of this scenario. Many thought that legal aid would provide some level of coverage, but probably not for everything. A lawyer who provides duty counsel services in Vancouver Provincial Court reported seeing women who have gone to legal aid and applied for coverage for custody, access and support but did not mention the abuse issue and did not know about restraining orders. Then, if there is an incident and protection is needed on an emergency basis, they are in court alone because the police or a community agency has told them that is what they need to do.

Many lawyers reported that it is likely that an unrepresented woman will be able to obtain a restraining order, but the issue is whether it will be enforceable. Unless they are worded very carefully, the police will not act on them; a lay person cannot possibly know this and is therefore reliant on either having an informed duty counsel available, or having the

judge take responsibility for ensuring that the wording is correct. A few lawyers stated the opposite: that the courts have become suspicious of applications for restraining orders, and will require a high level of supporting evidence before granting such an order on an ex parte basis to an unrepresented woman.

Many of the lawyers confirmed that an unrepresented woman would have trouble on the access issue; most of them said it is difficult even with counsel to get an order for restricted access, and it is less likely that the woman will be eligible for coverage on the access issue than on the restraining order. In order to get coverage, and then to succeed on the application, the woman may be required to produce independent evidence of risk of harm to the child. It is a hard test to meet to get restricted access, and one lawyer felt it would be virtually impossible without counsel.

While there may often be a direct threat to the child from an abusive husband, and there is certainly research to support that there is harm to a child from being in an environment where the parent is being abused, the other major aspect of the access issue for abused women is that the abusive spouse uses it as a tool to perpetuate the sense of threat and control that has governed her life. To prove that this is happening, and then to make the argument about its impact on the life of a child in her care is not an easy task. The two lawyers who addressed this issue most fully both advocated that the legal issues and the personal risk battered women face are so difficult that legal representation is necessary. If their safety or the safety of their children is at risk, they should be covered for all of the necessary legal work. Whatever recovery schemes that apply should be implemented, but they need legal representation.

Three out of 22 lawyers did not see the cutbacks having resulted in negative impacts for women or children who are victims of family violence. The others discussed a variety of ways in which these clients have been affected by the reduction in access to legal services. The most straightforward impact for many is financial ineligibility. Those who are eligible are affected by the reduced availability of senior counsel willing to do legal aid, and the reduced willingness of many counsel to take on cases that they know will require extra time. These are difficult cases that require commitment and expertise from the lawyer. The disbursements issue is also a factor here. The client may well need authoritative expert evidence in support of her position, which costs more than L.S.S. will generally authorize.

The lack of coverage for variations also comes up; in these cases it is quite important to get interim orders in place early, but then the variations policy may prevent coverage for the completion of the case once the woman is established and able to make more permanent decisions. Also, there will often be problems over access or support, which are part of a pattern of ongoing threat or harassment and which must be addressed. The lawyers who represent such clients see diversion to Family Justice Counsellors as inappropriate for them, but it may happen unless there is a lawyer to intervene on the clients' behalf. There is often an urgent need to address problems that arise in these cases,

and the factors that have created more delays than previously existed in the system result in more adverse effects on these clients.

It is worth noting that one lawyer reported that “people say” that women report family violence so they will be sure to get legal aid.

G. Access to Assets

The lawyers were asked whether they see inability to obtain access to assets at the outset of litigation as a problem. Some lawyers addressed this at the most basic level—women who run from the home with nothing and then need to get into the house to obtain personal belongings, kitchenware, etc. so that they can set up a household. These lawyers noted that there is a jurisdiction problem here, and that it would be helpful if Provincial Court could deal with household effects up to $10,000, for example. Currently, the Provincial Court will often grant an order that the woman can enter the house once, sometimes with the police present, to remove personal possessions for herself and the children, if they are with her. However, they get nervous about the removal of anything large, like a bed. So this is one area of difficulty.

The other area of difficulty is the larger assets—home, pensions, business assets, etc. Many lawyers noted that the existence of such assets might mean that the client is not eligible for legal aid, yet they may not really be accessible. For low-income families, usually there is only a home and some RRSPs. If those are the only assets, it is very difficult to get an order for interim distribution. Several counsel noted that if there is a legal problem over assets, it usually includes problems about disclosure, which is very difficult for lay people to address. These cases require lawyers. One of the dangers of not providing coverage with respect to division of property is that at the time of separation, many women will not realize the significance of protecting their interest in the family assets. They will tend to focus on the children, and the immediate need for income. There are very often not enough assets to provide security for a private lawyer’s retainer, but no coverage under legal aid, and perhaps no eligibility because of the assets.

Lawyers who represent many women from multicultural and religious communities reported that access to assets is a significant problem for their clients. There may be an extended family or cultural hierarchy that assists the man of the family in hiding assets, and unless a lawyer and approval for disbursements for investigation are provided, the wife will never be able to prove or claim for these assets. This same dynamic occurs in traditional families regardless of culture. If the marriage has been one where the husband controlled the assets, the wife will often have very little information about what they are or where they are.

Lawyers were asked for their views about what billing arrangements should apply where a family legal aid file will probably culminate in the sale of the only asset, the family home. All of the lawyers supported the approach of individual assessment on the basis of actual equity, but most also supported the need for the client to pay some or all of their

legal bill, at the legal aid rate, if the equity is there. It would be an unusual case where there would be enough equity to support conversion to private retainer. However, a couple of lawyers did note that, if the client is able to pay the bill at the legal aid rate, they should pay for actual hours, not legal aid approved hours.

Several lawyers voiced in various ways the need for L.S.S. to recover more than they do, the benefits of the client having some financial consequences from judgement calls made during the case about how to proceed, and the need for a workable contribution system rather than total ineligibility for people with assets. One lawyer referred to the Ontario legal aid scheme, where a lien is put on the house at the time a legal aid referral is made, and at the time of sale an assessment is made about how much should be recovered to satisfy the lien. Another lawyer, also supportive of the concept of more coverage coupled with more recovery, felt that the present system treats clients like children needing to be protected. They should know what time and resources are being spent on their behalf, and they should pay a portion of it if they are able to do so.

H. Support Orders—Child and Spousal

Lawyers were asked for their opinion as to whether a high percentage of maintenance orders are being made by consent now. Most of the lawyers thought that this was the trend in child support; no one would agree with that statement for spousal support. With a couple of exceptions, the lawyers interviewed thought that the child support guidelines have made it easier to resolve this issue, at least where the payor has a fixed income. Several also agreed, however, that while the guidelines provide a good starting point, there can be difficulty dealing with such issues as uncertain income, extraordinary expenses, shared custody and hardship.

Turning to spousal support, lawyers' comments ranged from "usually contentious" to "being fought tooth and nail." Seven of the lawyers stated that men just don't want to pay spousal support, and one stated that the courts don't seem to care about dependent spouses either. There were also many comments about women's attitudes on this issue: that there seems to be a stigma attached to it, so that some women view it as a hand-out rather than an entitlement; that it is receiving something for nothing; that older women expect it but younger women may not, depending on their socio-economic class; and most frequently, that women feel that paying spousal support will make their husbands angry so they will just try to get something for the kids.

A few lawyers noted that women are not aware that this is something they may be entitled to, and one said you simply don't see it often with legal aid clients because there is nothing left after the order for child support. Two lawyers noted that spousal support is completely unpredictable on quantum, which is one of the factors that makes consent orders unlikely; it is very difficult to advise a client on how to settle.

The lawyers were asked to comment in more depth on the impact of the child support guidelines. The overall impression, as noted above, is that the guidelines are very helpful

for establishing a basic amount for child support, but that the complexities can be challenging. It was noted that Vancouver has a Child Support Clerk and this is an important resource for people; unless the situation is completely straightforward, most people need some assistance to figure out how to use the guidelines. Five of the 22 lawyers stated that the guidelines are so complex that they are not very useful to clients except in the simplest of circumstances, and that legal assistance is required to use them properly in most cases. The result of this complexity is that often certain factors are ignored, and people who want to fight still do. Some of the lawyers felt that the guidelines make things worse than they were before for an unrepresented person, because the financial forms and the calculations are so complex.

Another aspect of using the guidelines is the issue of disclosure; this is another area where lay people have real difficulty and legal assistance may be necessary. A suggestion was made that the guidelines should have "more teeth" with respect to failure to disclose, or making false disclosures. One lawyer pointed out that if agreements are reached just on the basis of the table, without factoring in the parts of the scheme that consider people's personal circumstances, the results are unjust. Two lawyers felt that the guidelines go too far in removing discretion from the judiciary, but many noted that one of the positive features of the guidelines is that they create an element of certainty and consistency that had been lacking.

Lawyers were asked whether, where unrepresented parties are proposing a consent order, there is any review to ensure that the legal position of children and dependent spouses is protected. The overall impression of the lawyers was that the courts, to some extent depending on the individual judge, see themselves as having a duty to review settlements regarding children but generally not regarding dependent spouses. Some judges in Provincial Court, where often the parties have only seen a Family Justice Counsellor and have had no legal advice, will insist on hearing some evidence before making an order. In other cases the court may refer the parties to duty counsel, or recommend that they obtain independent legal advice. In Supreme Court, there is a duty under the *Divorce Act* with respect to children, but not spouses.

One lawyer addressed the issue of consent in CFCSA matters. A common dynamic here is that a social worker will advise the parents to consent to an interim order at the Presentation Hearing, where they are often unrepresented. The order will say that it is for 45 days, but actually it stands until a further order is made, and in reality it takes from 2–7 months to get a hearing date. The parents do not understand the implications of their consent. Similarly, when parents are advised by social workers to consent to a supervision order, they often do not have counsel and are not fully informed about the implications of the various conditions that the Ministry includes in the order. Some of these conditions are, in the opinion of this experienced CFCSA counsel, not legal. The issue he sees in these matters is that of *informed* consent.

I. Maintenance Enforcement

Asked specifically about the efficacy of the FMEP system for enforcing maintenance orders, 13 of the 22 lawyers mentioned that it is very slow. Six of the 22 gave a quite positive assessment, 5 gave a quite negative assessment, and the others assessed it as a system with flaws but trying to serve its purpose. For example, a number of lawyers described it as slow to get started, which creates an immediate problem of arrears, but fairly effective once it gets going. Some of the positive points noted were:

- the recipient doesn't have to deal with the payor personally about enforcement;
- FMEP has been given some special powers to facilitate enforcement;
- it works well if the payor has a steady job; it is much better than it used to be.

The most consistent negative comment was about being slow and allowing huge arrears to accumulate. Other criticisms were:

- it is very bureaucratic and difficult to deal with;
- the recipient has no control and is not viewed by FMEP as a client;
- it is not aggressive enough in situations where that is required;
- it does not use the powers it has; it does not follow through on serious enforcement (e.g., sell the house, track down hidden assets);
- it is not sufficiently rigorous on behalf of recipient families.

An example was provided of a situation where, after a mid-life separation, 6 years post-divorce, the husband is very well off, there are tens of thousands of dollars in accumulated arrears and the wife is living in very reduced circumstances in a basement apartment.

The next question dealt with whether arrears of maintenance are being cancelled by the courts because orders are not enforced promptly. With a couple of exceptions, the Vancouver lawyers said that this does not usually happen, that there has been progress in this area and it is difficult to get arrears cancelled unless there is a real basis in the payor's circumstances. It was noted that problems do arise from men not dealing with a change in circumstances promptly, by making an application to vary or to at least stop the accumulation of arrears, and that Rule 65 has made it much more complicated for an unrepresented payor to bring this type of application in Supreme Court. A couple of lawyers were of the opinion that the courts are much more inclined to cancel arrears in spousal support than child support.

A few gaps in the system were identified by Vancouver lawyers. FMEP does not act to vary orders, and generally does not act to defend orders against a variation application. They will not enforce any aspect of an order that is not expressed strictly in monetary amounts. If a client takes any action on her own to collect, she will be cut off, and FMEP will not enforce if there is a risk of violence. In that case, however, L.S.S. may provide coverage.

When people have to represent themselves in maintenance proceedings, the major problems concern the proper production of financial information, and a lay person's ability to properly scrutinize financial documents.

J. Diverting Clients to Family Justice Counsellors

Lawyers were asked about the diversion of family law clients to the Family Justice Counsellors prior to the commencement of legal proceedings. Most lawyers were not able to be conclusive in their assessment of this initiative, but discussed it in terms of pros and cons. Positive reactions included the following:

- the people it works for resolve things, and they never get into the system at all;
- it is a better alternative than court for people who are able to mediate (i.e., capable of dispassionate listening);
- it reduces the burden on the legal system and provides a mediation resource to people to try to resolve issues;
- men who don't like lawyers prefer to talk to these people—and the FJCs are mostly pretty good;
- appropriate guidelines have been established for this service.

Many reactions were critical of the service as it is presently implemented, or had suggestions for improvement:

- if the person feels an urgent need to get an order in place, the diversion is a frustrating delay for them;
- doesn't work if people are entrenched in opposition, or are not emotionally able to listen to the other person;
- there needs to be more discretion to go straight into court where the case deals with violence, an urgent need for money or urgent issues of access denial;
- there is often hidden or marginal abuse in domestic relationships, which will generally not be screened out, and in these cases the dominated partner will often enter into inappropriate agreements just to get things over with;

- people should seek legal advice before seeing FJCs. Most people don't know anything when they have just separated. They don't understand the implications of the various options or know what they are entitled to. The present policy denies access to basic information;

- they take on too much and have too few staff, so people get lost in this system too;

- people feel pressured to settle in mediation; it works against the interests of the disempowered person in the relationship;

- there is not enough professional direction about what issues to mediate at this stage in the dispute;

- it is not a good first step—people aren't prepared emotionally or properly informed to be entering into final settlement agreements;

- it would be very helpful if they could deal with furniture;

- people are being given incorrect information by the FJCs and are entering into inappropriate agreements;

- the FJC skill level is uneven, they are under-resourced and they cannot provide a proper level of mediation service. The level of commitment to mediation in family matters was questioned—the mediators in CFCSA are given 30 hours; under the family tariff much less time is allowed;

- this initiative makes people invisible to the legal system—they are making very important decisions on the basis of information provided by non-lawyers, and there is no review of the agreements by lawyers. Legal advice should be available prior to mediation, and ILA should be mandatory before any agreement is effective;

- screening for violence is ineffective and battered women continue to be diverted into a forum in which they are disadvantaged by the basic philosophy and are engaged in negotiations with abusive or violent spouses;

- mediators are often focused on getting agreement, and they tend to ignore matters that aren't agreeable, which means that the agreement may not be in the best interests of the weaker party;

- a blanket policy of diversion ignores the fact that mediation is often inappropriate, either because of the emotional state of the parties or because of events that have transpired that require an urgent and authoritative response.

I would note that 9 of the 22 lawyers commented that people should be getting legal advice before seeing the FJCs.

K. Impact of Family Dispute Resolution Initiatives

Lawyers were asked whether the new initiatives regarding the resolution of family disputes seem to be having a significant impact for clients. Nine of the lawyers spoke very positively of case conferences in the Provincial Court; another said that they are good in theory but noted that judges put enormous pressure on the parties. In CFCSA matters they tend to pressure the parents and not the Ministry, and in FRA matters they don't have enough information about the facts to be pressuring for solutions. Some of the positive comments were that the forum is less threatening and the parties are motivated to work towards resolution; that the Provincial Court judges are well trained in mediation, listen carefully and work very hard to assist people to resolve their issues; that the parties benefit from pro-active participation and a bit of a reality check by the judge.

The "Parenting After Separation" course was seen as a good thing, which often is a valuable educational experience for the client, but has very little impact as far as resolving difficult cases. In these situations, several lawyers viewed it as just a hurdle that lengthens the process. One questioned whether it is a legitimate requirement that people attend this course before they can start a court action; they could attend at a later date.

The reaction to the early intervention hearing in Supreme Court was similarly mixed. Nine lawyers spoke positively of it. Some saw it as a useful session;, others thought it too early in the process to be very useful. In general, the lawyers saw the judiciary taking two different approaches to this forum: some judges use it as an opportunity for judicial mediation and become quite pro-active in the attempt to settle the issues, others use it more as an opportunity to canvas the parties about disclosure, consents, etc. One lawyer noted that the time allowed for these sessions is quite brief, and works against enabling the judge and the parties to get into the issues and try to settle them. Again, one of the values to the parties is seen to be a reality check of hearing from a judge about what might happen if their case went to court.

A couple of other new initiatives were discussed by some of the lawyers. One lawyer pointed out that the main complaint from clients about referral to the FJCs is delay. She attributed this to the high level of stress that women clients are under until the custody issue is decided or settled. Discussing this, and the other new initiatives, she observed that the major challenge for the parties in a family dispute is coming to terms with the fact that they are going to have an ongoing relationship with the other parent, whom they would often like to exclude. A few lawyers mentioned Rule 65, which they see as helpful but very paper intensive—a stumbling block for unrepresented people and for young lawyers with no staff. One lawyer had good things to say about the system in New Westminster Supreme Court, where one judge hears all of the applications in a case up until trial.

Lawyers were specifically asked whether the various initiatives have had an impact on the need for low-income people to have legal representation. The answers to this question were very wide-ranging. Only one lawyer replied unequivocally that the initiatives have decreased the need for people to have legal representation. He also stated that one of the

positive features of the FJC initiative is that it provides a definite focus on the best interests of the child, which is not what lawyers tend to focus on. Another lawyer reported no decrease in the need for counsel in the short term, but did see the possibility of a decrease in the long term if the whole system becomes more settlement-focused rather than adversarial. If parties were represented by counsel who are ADR-oriented, the counsel could assist the clients to see reality and be reasonable in their approach to resolving the issues.

Six other lawyers talked about the role of counsel in the settlement process. One commented that mediation can be good, but people need lawyers in mediation. Another also said that lawyers should participate in judicial settlement events, but that in a system with that type of focus maybe the lawyer's role is different, and shorter (i.e. if lawyers assist in negotiating a settlement, then their services are not needed for a trial). One discussed the reasons for lawyer participation in the settlement process: because parties need to know their rights and obligations in order to negotiate, and because there is often unequal bargaining power.

Another group of lawyers talked about clients' need to have a person in the process who is clearly their advocate. One lawyer stated: "The women I see have a strong need for representation. Most are young, low income, low education, single mothers. They are traumatized, not coping well and having difficulty making decisions. Without counsel, there is a real power imbalance." Another stated: "The clients are not just financially disadvantaged, they are fundamentally disadvantaged, powerless in the system. They need representation." A third lawyer said: "Lower income people often have lower levels of education, don't learn anything about the system or the law. None of these initiatives educates the parties or meets the need for someone on their side to tell them to settle down, to tell them how to handle this situation."

Some lawyers mentioned a number of specific ways in which there is an increased need for legal representation. In CFCSA cases, parents are still often unrepresented at the Presentation Hearing stage; decisions are made in this hearing that have an enormous impact on the lives of their children. People need legal advice to use the child support guidelines properly, and it is the role of counsel to advance the law under the guidelines. The financial forms and general paperwork have become more onerous and are too complex for most people. The Early Intervention Hearing is designed for participation by lawyers; clients don't know how to use it.

Five lawyers spoke in more general terms about ways in which the system is more complex than it used to be, and more difficult for people to handle. One made the point that family law in general has become one of the most complex areas of civil law; lawyers have to keep abreast of the law of pensions, tax, business, trusts. A wide range of knowledge is required just to identify the issues that need to be addressed in the resolution of a family breakdown; these are not, in fact, simple matters.

Another respondent stated that lawyers have a tendency to solve problems by creating complex systems, and this has happened with respect to family matters in Provincial

Court. The cumulative impact of all the changes, including the very extensive new Rules, is that the system is more confusing and less accessible. It now can take 3 months before you can even begin to address the merits of a family dispute. In the meantime, the lay person has to wade through very technical language, see a lot of people, attend meetings and follow procedures quite strictly to get to the point where they will be given a court date.

The final thoughts on this issue came from a lawyer who mused that perhaps we have lost the focus of what is at stake for the people who are using the system, and who they are. She expressed the view that although both men and women have major interests to resolve after a family breakdown, the economic consequences for women are greater. She also stated that women are in a disadvantage in the settlement approach because they are more willing than men to give up things in order to obtain peace. And she commented that the clients are entering the system when they are experiencing difficulty managing their lives; they are at a low point. The new initiatives only work when people have a certain level of human resources available.

L. Accessing the Legal System—Problems and Suggestions

The lawyers were asked to identify aspects of the system that present barriers to access for low-income women and children who need to use the legal system. A few common themes emerged. Out of the 22 lawyers, 11 identified financial eligibility and 8 identified coverage limitations as barriers to access, and 4 spoke of the need for a workable recovery system as part of expanding eligibility and coverage. Six highlighted issues to do with retaining and fostering a competent tariff bar and 4 identified the need for more public education and community support services related to the legal system.

With respect to eligibility, it was noted that almost the only people eligible now are those on benefits. Single mothers who are working were identified as being in a particularly difficult situation because they earn too much to be eligible but have no disposable income to pay for a lawyer. It was recommended that more costs be considered in calculating eligibility, and that there be more flexibility in the assessment process. And it was recommended that all of the P.S.T. collected on legal fees go towards funding legal aid. It was also suggested that the situation of Young Offenders be revisited. Perhaps if they are not to be tested for financial eligibility, the only counsel offered to them through legal aid should be staff counsel. Those who choose to retain private counsel would have to pay for it.

There were many comments about specific or general coverage issues. Dealing with CFCSA, the major problem was not lack of coverage but completely inadequate time for certain parts of the process, especially the contested hearing. It was stated that the deficiencies in the system here are not gender-driven, but the fact is that more mothers are coming before the courts in CFCSA proceedings, so that problems with coverage are impacting primarily on women and children.

One lawyer stated that the quality of service to clients has been severely impacted by the coverage limitations. Access enforcement was identified as an area of limited coverage that has an enormous impact on all members of a family. It is a very difficult issue even for counsel, because the remedies available to Provincial Court for non-compliance are limited, and Supreme Court is described as "not willing to act strongly." Therefore, if people have to deal with this on their own, they are not likely to be successful.

Coverage for variations in general was mentioned by a few lawyers. One lawyer who represents many immigrant women stated that if these women live a traditional lifestyle, they are unlikely to become financially independent after marriage breakdown. For these women, and all women who have spent a long period of their lives being primarily homemakers, adequate coverage for spousal support and property division is essential.

The comments about retaining and fostering the tariff bar ranged from "pay lawyers more money" to "there is no effective choice of counsel." It was pointed out that if lawyers only do what they are authorized to do, clients will not get proper service. More flexibility on hours and more timely responses to the tariff bar would be helpful. It was proposed for consideration that the tariff scheme might have different pay levels to recognize seniority of counsel and the complexity of a case.

Those who spoke of the need for public education and community support services were concerned that many women do not have basic information about their rights, and need information and support to enable them to approach the legal system. Also, if women are given more information they will have a more realistic sense of what the system can and cannot do for them—their expectations will be guided by more information about what is possible. They should know ahead of time about what resources—or hurdles—exist: the "Parenting After Separation" course, the Family Justice Counsellors, the Child Support Guidelines. These clients may not be experienced with making their way around in society; information and supports will assist them to use the system more effectively.

One very experienced lawyer noted that the legal aid system has become much more institutionalized, too big and less flexible. He proposed that, in order to keep legal aid responsive to the needs of its clients, L.S.S. must be willing to receive and incorporate constant feedback. There are always unintended results from changes, and the way to identify and address this is to have a format for ongoing dialogue between L.S.S., counsel, clients and other actors in the delivery of family legal services.

One lawyer proposed a more formal requirement on the profession to do pro bono work, and also a system to facilitate lawyers taking on private cases at the legal aid rate in appropriate circumstances.

Another issue raised by one lawyer was the perception that the legal aid system does not give coverage to men. This lawyer felt that when men are not represented, or when they feel that the system is unfair, they create problems that very much affect women and children.

Finally, the lawyers were given the opportunity to sum up with anything that they wanted to add or emphasize about legal services or access to justice. One Vancouver lawyer who represents primarily aboriginal women noted that aboriginal people are heavy users of L.S.S. This lawyer stated that his clients tend to distrust anyone in authority, and they see L.S.S. in that light and are intimidated to approach the office for assistance. He suggested that an Intake Worker be present at Robson Square Provincial Court on list days, so that the intake process will be more accessible in general, and in particular so that women involved in CFCSA matters can get representation earlier in the process. He also suggested that both L.S.S. and the Law Society need to address employment equity. He suggested that there should be at least one aboriginal lawyer on the staff of the Family Law Clinic so that aboriginal women do not always have to educate their lawyer about their background. He also stated that there is a larger issue regarding the treatment of aboriginal lawyers by the big law firms and in the profession in general. This must be addressed so that aboriginal people needing legal assistance will have improved access to aboriginal counsel.

Several lawyers spoke of the critical importance of the issues that are dealt with in a family law dispute. It was noted that for most people, family break-up is the most significant economic occasion in their lives. To limit people at such an important time in their life to one application, often only interim, was described as cruel and wilfully ignorant. One lawyer stated that women and children need experienced lawyers doing legal aid work in family law matters because the issues are so important. Just trying to keep people out of court, which seems to be the focus of the new initiatives, is not an adequate response to the problems in resolving family disputes.

One lawyer voiced the opinion that there are two groups of clients that must be given assistance through legal aid: battered women and fathers who are not seeing their children. These cases involve very basic rights, and very difficult legal issues, and people need legal representation. Another lawyer highlighted the need for a process to begin immediate implementation and enforcement of maintenance orders. The time lag between making the order and enforcement creates a huge hardship for women and children who are dependent on this source of income, and results in a legal battle about arrears in most cases. In this situation the woman often agrees to accept a lower amount of maintenance so that the man will pay on a voluntary basis.

One of the more senior lawyers stated that it seems the L.S.S. offices in Vancouver have changed from being client-focused to being bureaucracy-oriented. She said that dealing with the Vancouver offices is now a markedly different experience than dealing with the smaller offices that still try to help both clients and lawyers. The intake procedure has become very difficult, time-consuming and unfriendly. This has greater impact on women, partly because they are generally more reticent and easily discouraged, partly because they usually have their children with them and just can’t spend the day sitting and waiting, or come back the next day with more documents. It was this lawyer’s impression that women applicants are simply giving up on the process.

A senior lawyer commented that the cutbacks and the trend towards encouraging people to settle family disputes without counsel tend to marginalize family law, reinforcing the notion that it is not really law. She noted that many members of the judiciary view having to do family law cases as a punishment.

One of the more experienced lawyers surveyed said that she has noticed strongly in the past 6–9 months that many fathers have concluded that the system is set up to accommodate wives. Their attitude is "Why bother? I can't win. The result will be that I have to pay a lot of money and won't get enough time with the kids."

A lawyer who represents many immigrant women observed that very often when these women make the decision to leave their husbands it is because of escalating abuse. They may be very reticent to speak of the abuse, but if they are not represented they may end up face-to-face with their husbands in court. He stated further that the cultural norms in the East Indian community are very biased in favour of men, so that an authoritative neutral third party is the only way to provide access to justice.

A lawyer who represents many lesbians and gay men in family matters said that coverage should be provided for certain types of legal matters that are necessary for, and unique to, these relationships:

- donor insemination agreements, which will affect financial and other critical matters for a child yet to be born;

- guardianship agreements to cover the legal status during the period of time that must ensue from birth until a lesbian or gay parent can adopt (re: travel, medical authority, etc.);

- adoptions for same-sex parents. These are not yet matter of course in the courts for same-sex couples (as they are for heterosexual couples); coverage is still needed;

- actions to challenge discriminatory rules. For example, if a woman conceives by A.I. and her partner is male, Vital Statistics will put his name on the birth certificate; if her partner is female, she would have to adopt to be considered the co-parent.

Several lawyers talked about some of the issues with the tariffs or the administration of the Family Case Management Program, which make it more difficult for them to represent their clients properly, or happily. Two lawyers who handle many CFCSA cases stated that the tariff is so inadequate for prep time for hearings (especially in the face of the huge amount of expert material and documents produced by the Ministry), that it creates a serious level of conflict between their duty to their client and what is even possible. One of them also noted that there is a crisis in court time, which is affecting the conduct of these cases. If the Ministry asks for a 3-month custody order and the client does not consent, they may wait 8 months for a hearing date.

Another observation was that the tariff tends to be structured around court time and court procedures; it does not adequately compensate lawyers for the time spent in negotiations. This would seem to run contrary to a more settlement-focused family system.

Two lawyers noted that the billing system is extremely complicated, and that it is very difficult to get paid. One spoke of a high level of anger among lawyers towards the legal aid system, and another said that they keep imposing more demands on the lawyers without any benefit in return. One senior lawyer spoke strongly about the FCMP administration being insulting and offensive. She felt that her integrity was constantly being called into question, as if they operate on the assumption that lawyers are lying. She also expressed discomfort about the issue of client confidentiality. Why, for example, should L.S.S. need to receive copies of psych reports? Is there any real justification for such a flagrant breach of the basic rights of poor people? She questioned the approval process for trials—on what basis is that authority being exercised? Are they in a better position than she is to exercise legal judgement on behalf of her client? She felt that these are fundamental questions about which the legal profession should be concerned.

The general need for greater flexibility in the legal aid approval process was mentioned a few times. One lawyer said that on balance things are getting better; people want to get things resolved, which is the direction in which the system is moving. He felt that lawyers should not be advocating for a return to the past; chances are that funding for legal aid will be cut back even further if there is a change of government. Instead, legal aid should put a cap on the amounts that lawyers can bill under the plan, and should make any arguments for funding based on legitimate usage.

A couple of lawyers discussed the situation of people feeling entitled to pursue their rights, but not having to balance that with any financial cost for their decisions. This was perceived by some to be an ongoing problem with legal aid.

VI. Interviews with Courtenay Lawyers

Interviews were conducted with 6 lawyers who do family law work on the legal aid tariff in Courtenay. The experience level of these lawyers is mixed: three have been doing this kind of work in B.C. for 4-7 years, two for 8-12 years, and one for 17 years. Three out of the 6 do both FRA and CFCSA cases. They all do cases in both levels of court, although 4 said their work is primarily in Supreme Court.

A. Impact of the Cutbacks on Tariff Lawyers and Services

Five of the 6 lawyers said that their practice with respect to accepting family law cases on legal aid changed as a result of the changes to the legal aid system in the past few years. Two of them said they cut back drastically, almost completely, and the other 3 said they take significantly fewer cases than they used to. The reasons they mentioned fell into 3 themes:

- varying levels of dissatisfaction and frustration with the FCMP were cited by 3 lawyers, 2 of whom were the most senior of the lawyers interviewed. One of these lawyers was particularly incensed; he found the demands from FCMP to be insulting and unnecessary, overriding of his judgement as counsel. He has concluded that L.S.S. no longer seems to be on the same side as the tariff lawyers. The other 2 said that the slow response time, the focus on administration rather than substance and the lack of responsiveness to the realities of a law practice were serious problems;

- 3 lawyers talked about the increased level of difficulty in acting on legal aid files: referrals are only provided for multi-problem families with urgent legal problems, and often the party on the other side is unrepresented, which also tends to make the case more time-consuming and stressful;

- 4 lawyers identified problems related to the finances of working on the tariff: the complexity of the new billing system and its stream of forms and manuals, the rate of pay, which is barely adequate to cover overhead, the long wait for payment of accounts.

The 6 Courtenay lawyers all agreed that more experienced lawyers do very little family legal aid work. One lawyer who has also practised in Ontario noted this was also a problem there, and it was addressed to some extent in Ontario by paying senior lawyers at a higher rate.

They were asked to comment in a general sense on the impact of the changes to legal aid on the practice of family law with respect to low-income families. A couple of lawyers spoke of the increasing number of unrepresented people in the courts, which is a difficulty not only for those individuals but also for the other side and for the system as a whole. It makes it harder to negotiate, or to defuse difficult emotions. Two lawyers mentioned that many people who really need service are not getting it, some because of financial eligibility criteria and some because of coverage limitations. The lack of coverage for variation applications was identified by another as having a huge impact; the system assumes that families are frozen, and leaves many people stranded at the stage of having obtained an interim order.

One lawyer pointed out that, as a part of this whole round of changes to the system, the Family Justice Counsellors are no longer available to do custody and access reports, and L.S.S. does not provide adequate funding for this function. The result is that one of the most useful and constructive sources of assistance for the resolution of family disputes is gone.

Asked whether there are types of cases that lawyers don’t want to take because of how the system operates, both of the lawyers who answered this question mentioned CFCSA cases and cases where there are allegations of sexual abuse.

Lawyers were asked whether the reduction in payment level or the administrative changes on legal aid files was affecting the way that service is provided to clients. Two lawyers said that they, and other lawyers, are more selective about the files they take on. A couple replied that they are much more frank with clients about the funding and time limits under which they work. One of these two indicated that she exercises more control over her clients than she used to do about what will or will not be done on the file. Another lawyer felt that the changes to legal aid have resulted in an overall reduction in the quality of service delivery to clients, partly because there are fewer experienced lawyers doing the work, partly because fewer clients are getting service, and they are getting a limited level of service. Lawyers are playing a more restricted role than they used to. However, he felt that, within these constraints, the lawyers doing the work are doing a good job.

Asked about any personal impact from the legal aid cutbacks, lawyers mentioned financial impact, and not feeling good about dropping clients when their legal work is not complete.

There are no staff lawyers doing family law work in the courts in Courtenay.

B. Financial Eligibility

When asked about the impact of the tightened eligibility standards, 4 lawyers said that the financial threshold is very low, and many people who are just over the limit have really been abandoned by the system. One explained that, in the Comox Valley economy, women fall out of the middle class when their marriages break up. The men are loggers and can earn $60,000-$70,000 a year, but most of the jobs for women don't pay much above $15,000. These women have been part of households that pay the taxes and support the system, but because of the eligibility criteria there is no assistance for them when they need it.

There has been an effort among the private bar in Courtenay to try to respond to the situation that these women face. There are a few lawyers who will agree to act for women at the legal aid rate, with arrangements for payment over time. The women's shelter and some other women's services assist by doing some of the prep work, helping women gather financial and other information.

Another lawyer mentioned that the new criteria seem to mean that only families in crisis get covered, so the cases involve more difficult dynamics. The lawyer must engage in extensive negotiations, much more general prep time is required, and it is not appropriate to just start a court action.

C. Case Coverage

The lawyers were next asked to consider areas where the new coverage limitations were proving to be problematic. Three lawyers noted the lack of coverage for property issues. People who are applying for legal aid generally cannot afford to hire counsel privately to

deal with this, but resolving issues about the family home is often central to establishing an affordable household for a dependent wife and the children. While it is possible to get coverage through L.S.S. as part of a bundle of legal issues, there will be no coverage if the parties negotiate an agreement on custody and access. It was also pointed out that property includes pensions, which will not result in any cash to pay a lawyer, and which people cannot do by themselves because it is too technical. Another lawyer noted that, in many legal aid cases, property means debts, which also must be sorted out as part of establishing appropriate financial arrangements for the restructured family.

There were a number of other issues raised by individual lawyers:

- it doesn't work to have one lawyer for maintenance and a tariff lawyer for all the other legal issues;

- tariff should provide proper funding for custody and access reports, mediation and settlement discussions—all of these facilitate early resolution of cases;

- people need divorces, and they need to be able to apply to vary orders.

One lawyer proposed that coverage should not be based on the type of case, but on some other criteria like seriousness or potential benefit. He mused further that, except in urgent situations, perhaps funding should be limited initially to mediation. After that, it would be easier to assess who really needs a lawyer.

D. People Representing Themselves in Family Proceedings

The lawyers were asked to comment about the situation of people representing themselves in family court proceedings. They all agreed that this is occurring in Courtenay in both levels of court. One lawyer commented that this is the inevitable result of the combined effect of the cutbacks to legal aid and the prohibitive cost of legal services through the private bar. This lawyer suggested that primarily because judges and clerks are patient, flexible and fair, in 6 or 7 out of 10 cases unrepresented people can manage adequately. It is the 3 or 4 others that are of concern, because of the nature of their situations, or legal issues that the unrepresented party is not equipped to address, or difficulties to do with opposing counsel. This lawyer wondered whether judges are not the best people in the system to identify cases where counsel should be appointed, based on the criteria that were discussed by the Supreme Court of Canada in the *J.(G.)* case, i.e., legal issues, basic unfairness.

A couple of lawyers said that appearances by unrepresented people are particularly complicated in Supreme Court. The person usually just comes in and starts talking; they are not under oath, what they are saying is not evidence, the opposing counsel has no avenue to respond. The other party may be, or feel themselves to be, disadvantaged by this—not at an actual trial, but on the preliminary matters in Chambers. There are delays, which increase the costs of the other party.

One lawyer felt, for a variety of reasons, that the unrepresented parties are probably not getting fair results. He noted that they receive very little assistance on process issues because the court clerks are too busy and the FJCs are no longer present in the courthouse. The Supreme Court judges are quite comfortable dealing with economic issues, but tend to be quite cautious on custody and access issues in the absence of counsel. And it is an adversarial setting; neither opposing counsel nor the judge may advise the unrepresented of legal factors that may be in their favour (e.g., limitation periods). This lawyer observed that, overall, there is reduced access for dispute resolution now, and many people are just throwing up their hands and walking away.

This lawyer also discussed the reasons why Supreme Court is actually more accessible in Courtenay, even though Provincial Court is supposed to be a more user-friendly forum. There is only one day a month for family matters in Provincial Court, and another day for CFCSA cases. Because the Provincial Court requires oral evidence rather than affidavits to support the granting of an order, it is necessary to book a hearing date on most cases. It can take 6-8 months to get more than a half-hour of time for FRA matters, which are seen as less urgent than CFCSA matters. Supreme Court time is more readily available.

E. Language or Literacy Problems

Lawyers were asked about clients needing assistance at the courthouse because of language or literacy problems. Only one lawyer had a specific comment on this situation. She noted that there are Asian people in the community, and that generally professional interpreters are provided for trial but not for other appearances. The issue that troubled her more is that she has noticed a pattern of seeing Asian women once to discuss separation, and then never seeing them again. She suspects that these women are staying in difficult situations because of the absence of support resources for them.

F. Family Violence Issues

Asked about women dealing with family violence issues unrepresented and having difficulty obtaining protection orders or orders restricting access to children, most of the Courtenay lawyers did not identify this as a major problem. One said that this is due to two factors: the local L.S.S. office is very flexible if there is any hint of violence, and the courts are very responsive on applications for restraining orders. Another also credited the local office for placing priority on safety concerns, and he also praised the local Transition House for the support they provide to women, and for their efforts to work with the sympathetic legal community. He mentioned the prep work they undertake if a lawyer is providing services to one of their residents on a pro bono or reduced rate basis.

Three out of the 6 lawyers had some concerns about the cutbacks having resulted in negative impacts for women or children who are victims of family violence. The main reason cited was ineligibility under the current financial criteria. One also mentioned that if a woman is not comfortable about telling L.S.S. intake staff about the violence, she may not get coverage.

G. Access to Assets

The lawyers were asked whether inability to obtain access to assets at the outset of litigation is a problem they see. Three agreed that it is a problem, mainly because the legal actions required to protect, reveal and obtain assets are difficult Supreme Court proceedings that most lawyers will not undertake without some kind of retainer. While either party to a marriage can be guilty of refusing to disclose or release assets, women more usually are seeking access to assets related to basic household needs, e.g., RRSPs, pensions, vehicles, income-producing assets.

Lawyers were asked for their views about what billing arrangements should apply where a family legal aid file will probably culminate in the sale of the only asset, the family home. One lawyer expressed the opinion that the amount of equity that most legal aid clients have is so small that they should not be subject to payback. If L.S.S. wants to protect its right to recover, he thinks they should put a lien on the property rather than requiring the client's lawyer to either report a sale to them, or collect monies on their behalf. Another lawyer expressed the opinion that the current system seems fair, with a threshold of $10,000 and after that a sliding scale of contribution depending on actual equity.

H. Support Orders—Child and Spousal

Lawyers were asked for their opinion as to whether a high percentage of maintenance orders are being made by consent now. It was agreed that the child support guidelines do result in more consents than before, particularly in situations where the payor has a regular job. They have not proven to be so helpful where the income is not certain, for example where people are self-employed.

With respect to spousal support, two lawyers said that there is a strong issue among men about not wanting, or seeing any obligation, to pay. One of them described this as a very difficult social and cultural problem: the men do not want to pay a cent; they hold deeply unrealistic attitudes about this issue. He suggested that guidelines to establish spousal support as an automatic obligation for 3 years after separation would plug a huge gap in the system and result in far fewer women ending up in poverty. A third lawyer observed that the child support guidelines seem to be having an adverse impact on spousal support, and that spousal support seems to be a declining right.

None of the lawyers in Courtenay were very positive about the child support guidelines. Three described them as having made this area of a family dispute more complicated than it used to be, another two said that they are too complex for lay people to utilize fully unless they obtain legal advice and the sixth lawyer said their main impact seems to be to introduce adverse tax implications for low-income families. Five of the 6 lawyers stated that people need at least summary legal advice with respect to the guidelines. One made a point of saying that this was true even when Courtenay had a Child Support Clerk. The reasons are many:

- the forms and calculations are beyond the capacity of all but the extremely literate;
- men have now been provided with a list of all the issues they can raise in opposition to child support;
- most people without a high level of education don't comprehend the guidelines and just don't incorporate the parts that can make the scheme more fair (e.g., even the B.C. Benefits Maintenance Workers do not account for many legitimate expenses);
- getting proper disclosure from the payor is an issue;
- the courts have to be persuaded to accept any agreement that does not comply with the guidelines (e.g., if the couple decided it would be preferable to provide the custodial parent with more assets but less support, the courts would require an explanation).

Lawyers were asked whether, where unrepresented parties are proposing a consent order, there is any review to ensure that the legal position of children and dependent spouses is protected. It was suggested that there would probably be some review regarding the rights of children, but probably not for dependent spouses. A couple of lawyers said that this would vary depending upon the judge; the pattern is inconsistent.

I. Maintenance Enforcement

Asked specifically about the efficacy of the FMEP system for enforcing maintenance orders, only one lawyer gave this system unequivocal support. The general observation was that FMEP works well for record-keeping about payments, and for straightforward enforcement activities, but it is not very effective if things are complex or if the payor is seriously resistant. It was noted that they will not defend applications to vary, and one lawyer has found that they will not register out-of-province orders in B.C. for enforcement. A couple of lawyers mentioned that the registration process is very frustrating for recipients: the program is short-staffed and they need plain language forms because people cannot fill them in by themselves. One lawyer's impression was that Supreme Court judges are reluctant to hear maintenance enforcement matters.

The next question dealt with whether arrears of maintenance are being cancelled by the courts because orders are not enforced promptly. Both of the lawyers who responded to this question agreed that this does happen. One of them stated that, in general, the expungement of arrears is too lenient and the tendency of the courts in Courtenay is to give the payor a break.

The FMEP program is limited to enforcement; they do not provide representation on applications to vary maintenance, nor do they defend applications to vary.

J. Diverting Clients to Family Justice Counsellors

Lawyers were asked about the diversion of family law clients to Family Justice Counsellors prior to the commencement of legal proceedings. Two lawyers said that custody and access reports, which used to be provided free of charge by Family Justice Counsellors, were an extremely important resource for low-income people and one of the most valuable tools in family law. They stated that this service has all but disappeared. Now, it takes several months to get a short report and over a year to get a full report, which means that it is not a useful resource. To get one done privately costs about $4000; L.S.S. does not provide that level of disbursement.

Another lawyer also noted that custody and access reports are no longer available, and added that in general the level of service to residents of the Comox Valley from the FJCs seems very limited. She used to utilize this service frequently and now never does. The fourth of this group observed that FJCs do provide some mediation services, but that they do mainly crisis work. The non-emergency cases have to wait for a very long time. Not only can you not get a custody and access report, you also can't send people to them to help work out an agreement in straightforward cases.

One of the lawyers said that he sees mostly positive impacts from this service and thinks FJCs are an important mediation resource.

K. Impact of Family Dispute Resolution Initiatives

Lawyers were asked whether the new initiatives regarding the resolution of family disputes seemed to be having a significant impact for clients. The general reaction was that there is not much happening in the Comox Valley courts in the way of new initiatives. One lawyer mentioned that the "Parenting After Separation" course is good but isn't mandatory in Courtenay. Another said that a more comprehensive program in parenting is needed, also anger management and counselling services for low-income people. Other initiatives were noted: some more use of the FJCs in FRA matters, CFCSA case conferences and pre-trial conferences on FRA matters in Provincial Court. These settlement-oriented forums in Provincial Court seem to be working well. There were no new initiatives reported at the Supreme Court level.

Lawyers were specifically asked whether the various initiatives have had an impact on the need for low-income people to have legal representation. Three lawyers made very specific responses to this question. One observed that one of the challenges in family law is to separate legal issues from emotional issues, and that the alternative services do assist people with that part of the process. He added that mediation can be helpful, and that it is probably better that it occur early in the process, as it does in the FJC model. However, it was his overall assessment that people come to see lawyers because they have decided that they cannot agree; he felt that this needs to be addressed, not diverted. He did not see that the need for judicial resolution has declined.

Another lawyer said that the noticeable changes are in the Provincial Court, and that the family conference is a good initiative. There are no real changes at the Supreme Court level. There was a Child Support Clerk for a period of time; this lawyer found that position to be ineffective.

The other lawyer who commented said that, in his opinion, the cumulative effect of the legal aid restrictions and the lack of access to the Family Justice Counsellors is a severe reduction in access to legal resources for low-income and lower-middle-income people. The system has become much more dependent on the good graces of lawyers than it should be. For example, he provides much more free summary legal advice. He noted that this is happening at the same time as other good, non-lawyer support services are also being reduced.

L. Accessing the Legal System—Problems and Suggestions

The lawyers were asked to identify aspects of the system that present barriers to access for low-income women and children who need to use the legal system. Three of the lawyers identified the issue of financial eligibility as one of the significant barriers. One of them suggested that eligibility should actually be determined by an asset-based test, because the earning level of applicants is never enough to run a legal case. Two of the lawyers spoke of the loss of good lawyers from the tariff bar, and the necessity of having access to lawyers who are competent and responsible. One of them pointed to the administrative burden as being the most difficult thing for lawyers to deal with; the other said that the current system contains disincentives for lawyers to take legal aid cases at all, and also disincentives for tariff lawyers to take a settlement orientation to their work. The tariff favours the adversarial approach.

A few other comments were made:

- lack of coverage for variations is a major problem;
- the system needs to provide service in a wide variety of ways, such as legal advice, mediation, agreements, ILA, more use of lawyer/mediators;
- “it ain’t all bad”—Courtenay has a top-notch local L.S.S. office, a good Women’s Resource Centre and a fairly accessible local RCMP.

Finally, the lawyers were given the opportunity to sum up with anything that they wanted to add or emphasize about legal services or access to justice. Three of the lawyers talked about the Family Case Management Program; each of them had different things to say. One commented that it could be much more responsive if it were not so over-centralized, and suggested that it be administered by the local office. Another said that it is not so bad once you get used to it, and the decisions she gets are reasonable. A third said that in general the FCMP system is OK, but L.S.S. should pay lawyers more, should recognize experience and provide more flexibility on coverage for variations.

Another lawyer said that for her, the most noticeable and discouraging change is that legal aid is now only "turning the revolving door." Before the cutbacks, assistance was provided to people who could use the service, get back on their feet and move forward with their lives. Now the only people getting legal aid are those with chronic problems who require constant assistance but cannot ever really change their situation.

The final lawyer to comment was concerned about the direction of the resolution of family disputes. He thought that more funding is needed for legal aid; he was outraged that all of the P.S.T. on legal services is not going to L.S.S. He noted that lawyers don't make a lot of money practising family law, even with paying clients. He did not see how he could make himself more affordable. There is also a general problem with access to court time. The solution seems to be to take a different approach for cases where that is appropriate. He suggested that there need to be more systemic ways of directing people into ADR.

He saw the Law Society as having a role to play in this. They should focus on access to justice, rather than lawyers' turf. They should be looking at new ways of resolving disputes. On a very practical note, he suggested that the Law Society require more training for lawyer/mediators. A 5-day session does not give lawyers enough of a grounding in basic mediation skills; there should be a requirement for a practicum or some level of co-mediation with an experienced person.

VII. Interviews with Chetwynd Lawyers

Interviews were conducted with 3 lawyers who do family law work on the tariff in Chetwynd; there was also some input from 2 staff lawyers from Fort St. John who do family law work in Chetwynd. Of the 3 tariff lawyers, one had been doing this work for less than 4 years, and two for 8-12 years. One of the lawyers works for legal aid clients in both levels of court; the other two work primarily in Provincial Court. Two do both FRA and CFCSA cases, the other only FRA.

The study will refer to this group as "Chetwynd lawyers," to distinguish them from lawyers from Courtenay, Vernon or Vancouver. In actual fact, the two more senior lawyers have their offices in Dawson Creek but provide service to family clients in the Provincial Court in Chetwynd and Chetwynd clients in the Supreme Court in Dawson Creek. The most junior of the lawyers did have his office in Chetwynd for 2 1/2 years, but he was just closing it as this study was underway.

A. Impact of the Cutbacks on Tariff Lawyers and Services

Only 1 of the 3 lawyers could really respond to the question as to whether her practice with respect to accepting family law cases on legal aid changed as a result of the changes to the legal aid system in the past few years. She stated that it has not, in the sense that

she is still committed to representing legal aid clients, but she added that she is more selective than she used to be.

The Chetwynd lawyers all agreed that in general senior lawyers in the north-eastern corner of the province do not take family legal aid files, but this is not new. One of the staff lawyers started in Fort St. John 8 years ago because there were not enough tariff lawyers to handle the referrals available out of that office.

The lawyers were asked to comment in a general sense on the impact of the changes to legal aid on the practice of family law with respect to low-income families. One of them commented about the number of unrepresented people. Another noted that it really only makes sense to do legal aid family work in Provincial Court; it is a "money loser" in Supreme Court, and the assets of low-income people are not worth the costs of that forum. This lawyer added that most legal aid family work can now be considered to be *pro bono* work.

Asked whether there are types of cases that lawyers don't want to take because of how the system operates, one lawyer mentioned that files are not welcome when you know that either because of difficult clients or difficult issues you are going to exceed your allowable hours. Another noted that, in deciding whether to take on a legal aid file, he would consider the complexity of the case, allowable hours of prep, travel time and the impact of the disbursements on his cash flow.

Asked about any personal impact from the legal aid cutbacks, one lawyer mentioned that the financial cutbacks combined with the administrative changes have had a severe impact. The only way that a lawyer can get paid for more than 8 hours of general prep time is to engage with the FCMP authorization process. This lawyer is not willing to do that (after some preliminary bad impressions), and therefore billable prep time on files is effectively capped at 8 hours. This is a significant reduction from the past, and it hurts. Also, this lawyer engages in a lot of unpaid work for legal aid clients that needs to be done but is not covered, for example, variations, and has had to pay necessary disbursements out of pocket because authorization was not given. These kinds of problems are magnified when the people at head office who are dealing with authorizations do not seem to have any knowledge about who the tariff lawyers are or any appreciation of their level of experience or years of service doing this work.

As has been mentioned, there are 2 staff lawyers doing family law work in the courts in Chetwynd. The tariff lawyers noted that they play a very helpful role in terms of handling a high volume of cases, especially a lot of the cases that lawyers do not want to do on the tariff. They also provide both formal and informal duty counsel advice services for unrepresented people in the courts. One of the lawyers noted in a positive way that they have more of a focus towards settlement and resolution than many members of the private bar do. One of the lawyers expressed concern that their caseloads are too large, and some clients may feel neglected because of the demands of their other work.

B. Financial Eligibility

When asked about the impact of the tightened eligibility standards, the main comment was that there seems to be a little more flexibility in CFCSA cases, but in regular family matters clients seem to have to be on welfare to be eligible. Even applicants on disability or employment insurance were refused.

C. Case Coverage

The lawyers were next asked to consider areas where the new coverage limitations were proving to be problematic. One lawyer noted that there has to be an element of urgency or risk of harm involved in the file, and that it is difficult to get coverage if there are not unresolved issues about children. Another lawyer focused on variations, saying that most people actually cannot do these applications on their own, without some level of assistance. With respect to maintenance, there are many self-employed people in the north who have fluctuating incomes; counsel are needed to address the issues this raises. This lawyer noted that criminal accuseds regularly get coverage for 2nd, 3rd and 4th offenses; why do family clients have access to counsel for only one order?

Chetwynd lawyers identified a few situations where coverage problems arise in cases of multiple legal issues. One lawyer noted the number of non-family law issues that arise in the resolution of a family separation: wills, remortgaging, land transfers. Another voiced the opinion that in maybe 20% of cases there were other family issues that should have been dealt with, e.g., divorce, property.

D. People Representing Themselves in Family Proceedings

The lawyers were asked to comment about the situation of people representing themselves in family court proceedings. Both of the more senior lawyers who were interviewed felt that there is an increase in self-representation. One noted that at the Supreme Court level this is most noticeable on applications to do with maintenance; in Provincial Court it is mostly access and maintenance. The unrepresented are able to do better in Provincial Court because the judges are more accommodating and the procedures are less formal.

Another lawyer agreed that the quality of the services provided by the courts for the unrepresented person depends a lot on the judges. People do not know what to say in court, a lot of patience is required and some of the judges become frustrated with people.

It was also noted that the number of unrepresented people slows the whole system down: forms are not filled out correctly, the judge has to spend time educating people, often in Provincial Court the judge will do a little mediation in open court. This can have the effect of making the party with legal counsel feel disadvantaged. The self-representing party is not bound by any code of ethics, they do not trust the opposing lawyer, they do not know the law and they usually have very little objectivity about the dispute. Often, the

judge will start giving advice to the unrepresented party. These are dynamics that are difficult for a junior lawyer to deal with.

E. Language or Literacy Problems

Lawyers were asked about clients needing assistance at the courthouse because of language or literacy problems. While language is not a frequent issue, it is problematic when it arises because there are no local agencies to provide interpretation services. There are a few local interpreters for the First Nations communities. In general, if people do not speak English, they have to bring someone with them who can assist with forms, interviews, etc. If an interpreter is needed for court, they will usually have to be brought in, sometimes from as far away as Vancouver. There are many clients who are not very literate; this is a more obvious problem in Chetwynd than language. Usually they have someone to help, and the lawyers are aware that this can be an issue for people.

F. Family Violence Issues

Asked about women dealing with family violence issues unrepresented and having difficulty obtaining protection orders or orders restricting access to children, one of the lawyers noted that most women will get some assistance where violence is an issue. He added, however, that if the woman is not eligible for legal aid she may not proceed with her application.

Another lawyer observed that the Provincial Court judges are very patient with people, and willing to provide a lot of information. Also, there is usually a lawyer available in court to provide advice, either one of the staff lawyers or a volunteer from the private bar. The pattern of one of the judges seems to be to err on the side of caution, to grant a restraining order *ex parte* (without notice to the other party) and then allow time for an application to have the order set aside. Other judges may take a stricter approach.

The major way in which the cutbacks have resulted in negative impacts for women or children who are victims of family violence is with respect to financial eligibility.

G. Access to Assets

The one lawyer interviewed who does family law tariff work in Supreme Court did not speak directly to the issue of access to assets, but did point out that full legal services on many family files requires that property issues be resolved, and often that property be sold or transferred.

H. Support Orders—Child and Spousal

Lawyers were asked for their opinion as to whether a high percentage of maintenance orders are being made by consent now. All of the lawyers agreed that the child support guidelines are helpful in arriving at consents in that area.

One lawyer observed that the guidelines are not only easier, they have also shifted the quantum of orders up, which is positive. The other lawyers noted that consents are more likely to occur where the parties are represented by counsel. Often if the payor is not represented, the financial information will be incomplete or other problems related to disclosure or establishing income will arise. It was noted that many of the payors in the area are self-employed, or have hardship issues, but they may not be able to use the guidelines themselves to advance those issues.

Opinions differed about spousal support. One lawyer commented that these applications are quite rare; he attributed this to resentment by the former spouse, and the fact that there is nothing left after child support is ordered. Another comment was that if a man has enough money to pay spousal support, he has enough money to hire a lawyer to oppose it. The third lawyer, who does work at the Supreme Court level, said that she sees no change as far as spousal support goes. She always canvases it with her clients; it is her observation that recent media coverage is assisting men to realize that spousal support is important, and women's attitudes vary - some do not want to pursue it but others do.

In general, the lawyers gave a conditional positive rating to the child support guidelines. All three observed that most people locally just go by the table amount; they do not even try to factor in the more complex variables in the scheme. One noted that, if the other issues are raised, they can be quite complex and difficult to resolve.

I. Maintenance Enforcement

Asked specifically about the efficacy of the FMEP system for enforcing maintenance orders, the consensus seemed to be that it works reasonably well. One lawyer qualified this by pointing out that it is very slow, and he is concerned that the power to cancel drivers' licenses may start to have an impact on insurance. Another lawyer also noted that the new enforcement tools are very powerful. Her concerns about the system are the lack of representation on applications to vary, and also that the courts are not always serious about enforcement. This comment was somewhat in contrast to that of her colleague, who said he had seen only one case where a payor had succeeded in getting arrears cancelled.

J. Diverting Clients to Family Justice Counsellors

Lawyers were asked about the diversion of family law clients to Family Justice Counsellors prior to the commencement of legal proceedings. It was pointed out that for a person from Chetwynd, a trip to the FJC involved a 2-hour drive to Fort St. John. Also, the one FJC covered a very large geographic area, and the position was not always filled. One of the lawyers commented that although the services of the FJC were very limited, some positive work was done. The FJC would try to facilitate discussions between parties, and did a fair number of straightforward consent orders. If it became apparent that issues were in dispute, the parties were referred back to court or to counsel. This service also provides some information and assistance for people who do not have lawyers.

K. Impact of Family Dispute Resolution Initiatives

Lawyers were asked whether the new initiatives regarding the resolution of family disputes seemed to be having a significant impact for clients. The lawyers noted that the initiatives external to court - i.e., Family Justice Counsellors, "Parenting After Separation" programs - are basically non-existent in Chetwynd. When there are FJC services, there is some positive impact, but their scope is limited to certain issues.

There is a positive impact for clients from the court-based initiatives. All of the lawyers mentioned that the CFCSA case conferences help review the evidence, narrow the issues between the parties, and result in some cases settling. Lawyers observed that the clients welcome the chance to speak directly with the representatives from the Ministry, and also it seems to be helpful for them to hear the judge's perspective on the case, and what the court is looking for. The Provincial Court in Chetwynd is also doing some "mini hearings" in FRA matters, which can be very helpful when people are not represented.

One of the lawyers noted that the judges are very rooted in the community and make an extraordinary effort to work with people in the court system to resolve their cases. A concern was expressed that these new procedures do cause delays in a locale where court time is already very limited.

Lawyers were specifically asked whether the various initiatives have had an impact on the need for low-income people to have legal representation. One of the lawyers expressed the view that there are two ways in which the judicial dispute resolution initiatives have the potential to make a real impact on the need for legal representation: first, in this type of less formal environment, people are more able to manage without lawyers and the judge can balance the playing field fairly effectively; and second, with the participation of counsel probably a large percentage of cases could be settled in these sessions, thus eliminating the time and expense of trials.

Another lawyer said that these initiatives could make some impact upon the need for counsel, or the role of counsel, but noted that legal aid clients tend to be some of the most vulnerable in the system. They need the same access to legal resources as any other person, and they should not get sent to alternative resources just because they are on legal aid i.e., just because they are poor. This lawyer noted in passing: "Why should my clients get only half service from the legal system just because I get only half pay?" These clients are often more in need of an advocate than other clients who have more resources and supports.

L. Accessing the Legal System—Problems and Suggestions

The lawyers were asked to identify aspects of the system that present barriers to access for low-income women and children who need to use the legal system. One lawyer identified financial eligibility as the first barrier and availability of counsel as the second. This lawyer, who had his office in Chetwynd, said that people there have next to no

choices. He would accept probably only half of the referrals that came to him, and he then tried to help the other people find a lawyer. Some had to be represented by lawyers from as far away as Prince George, and even Dawson Creek and Fort St. John involve significant time and expense for travel.

Another lawyer also mentioned availability of counsel, but specifically with respect to Supreme Court work; the experienced lawyers who should be doing that work just will not take the files. He noted the lack of coverage for divorces and especially property issues as being problematic for women, and then emphasized access as a persistent problem with a serious impact for children, as well as their parents.

The third lawyer identified applications to vary as the major gap in service, along with lack of availability of counsel, due to the difficulties for lawyers of working under the present tariff regime. The most pressing problems identified were inadequate hours for general prep, inadequate rates for disbursements and an unsatisfactory system regarding authorizations. She also noted that the CFCSA tariff is very inadequate.

Finally, the lawyers were given the opportunity to sum up with anything that they wanted to add or emphasize about legal services or access to justice. The one lawyer who has chosen not to participate in the FCMP scheme explained that the heart of the issue is lack of trust in the integrity of the tariff bar. It is perfectly clear that a lawyer is going to have to spend more than 8 hours of time on a complicated family file; why should counsel have to waste their time justifying that, and asking permission to do it? She noted with some regret that this is affecting her willingness to take on difficult files; she knows she will only be paid for 8 hours.

One of the other lawyers, the more junior of the three who had his office in Chetwynd, also spoke of the financial difficulties of a practice with a large component of legal aid clients. It was difficult telling clients that he was unable to do work for them because he would not be paid for it. In the end, he had to shut down his practice in part because he could not carry the costs. He noted that since 1998 there were noticeably longer delays in payment under the tariff.

Another issue raised here was the second-rate status of family law compared to criminal law. Why is a criminal charge of more significance, in terms of the expenditure of public funds, than the lives of women and children and men after a family break-up? The fabric and the infrastructure of our society is changing: the courts now view a relationship of 10-15 years as a long marriage. That is what this is ultimately about: the changing structure of our society and the need to assist people to re-order their lives after marriage break-up. It should be a high priority.

The need for a Native Community Law Office in north-eastern British Columbia was also raised as an issue of access to justice and effective delivery of services. The lawyer who had been based in Chetwynd, who is aboriginal, noted that there is a large native population in the region. His clients were about 50% aboriginal; in CFCSA matters, it would be closer to 75%. He saw a real issue of native women being too timid or afraid to

go into court on their own, and thinks that is true for many native men as well. The native population in the region is not very sophisticated, many live on reserves outside of the population centres, the reserves are not organized and the population does not have a lot of experience with legal kinds of structures. There is widespread poverty, alcohol abuse and violence. There is a real need for an aboriginal resource that could deliver legal services but also focus on public legal education and empowerment.

The remarks of one of the staff lawyers are interesting in this context. He represents many native people in family law cases, and said that he wishes he were more in tune with the culture. Custody has a different meaning for his clients, their attitude towards the financial issues is different, and in general their expectations of the kind of arrangements that should be made after marriage break-up are quite different than his own.

Coverage for the working poor, through some kind of a sliding scale payment scheme, was also proposed as a way to address the shortcomings in the present system.

It was also noted that Dawson Creek, which is the centre for services closest to Chetwynd, lost its poverty lawyer as a result of the legal aid cutbacks. This position was transferred to Fort St. John to try to reduce expenditures and fill gaps in the delivery of family and criminal services, but the result has been a reduction of service in Dawson Creek and Chetwynd.

VIII. Interviews with Provincial Court Judges

Interviews were conducted with 7 judges of the Provincial Court, three from Vancouver and four from the other areas of the province. It should be noted that Vancouver is one of the "Rule 5" courts that are designated as Family Justice Registries. None of the other Provincial Courts in this study (Courtenay, Vernon, Chetwynd) have this designation. What this means in practical terms is that for the past year, applicants to the Provincial Court in Vancouver have been required to meet with a Family Justice Counsellor before they could obtain a Notice of Hearing to proceed with their court application. Also, the position of Child Support Clerk has been retained in the Rule 5 courts, but not in any of the other courts around the province.

A. Impact of Family Dispute Resolution Initiatives

1. Impact on the Conduct of Family Law Matters

Judges were asked which of the recent initiatives related to the resolution of family disputes are having a noticeable impact upon the conduct of family law matters.

One of the Vancouver judges particularly identified the initial diversion to the FJCs. He knows that everyone who comes into the courtroom has seen a mediator and been given basic information; this eliminates the "intake" role for judges. He observed that it is

essential to at least explore with the parties the possibility of a non-adversarial approach. This initiative provides early help towards informal resolution of family matters, and it appears to result in many agreements and consent orders. The other two Vancouver judges also noted that a lot of cases are being settled with the assistance of the FJCs, but then added that the whole program of new ways of promoting early settlement has had an impact: cases are being settled.

By contrast, all of the judges from outside of Vancouver noted that they have experienced a reduction in service level from the FJC program in the last couple of years. One of them cited this as the major negative impact from the changes: there is so little access to resources around the province. He most specifically noted that custody and access reports, which are of enormous assistance in settling or deciding cases, are not available any more.

In Chetwynd, whatever services are available are based in Dawson Creek, which is an hour's drive away. The court has never really had access to them as a resource.

The judge who sits in Courtenay indicated that there are lots of consent orders coming in through the FJC office, but it is less accessible as it is no longer located in the courthouse. They used to be on hand for stand-down meetings with parties on family court days, which was very useful, but this level of service is no longer provided. The Child Support Clerk has also been eliminated, which was a big loss. The overall level of services has actually been reduced.

With respect to Vernon, the judge stated that access to the FJC program has been reduced and that the court does not refer parties to them often.

The judges from the regions identified case conferences as having the most positive impact in their courts. This forum has been in use for CFCSA matters for about 4 years now. A couple of the judges noted that the chance of resolution is very slight in a continuing custody application, but that many applications for non-permanent orders are being settled in this forum. One judge estimated a 70% settlement rate in case conferences. The use of the case conference for FRA matters is more recent. One of the judges who has a lot of experience with it said that these cases are also resolving well in this environment, and that relatively few custody and access matters go into court.

He noted that counsel play a very important role in these case conferences. Although he deals with the parties quite directly, they need their counsel to provide advice on the proposals that are being discussed, and they are less likely to be steamrolled by either the judge or the other party when counsel is present.

The other procedure available for FRA matters is the pre-trial conference. This has been in use for several years now and is also successful at achieving settlement in many cases, but at a later stage.

2. Impact on Members of the Public

The general impression of most of the judges was that the parties are receptive to settlement-oriented environments. One judge noted that people seem to appreciate deeply that someone is listening to them, especially when that someone is a judge. Another stated that people seem to like the case conference: they have direct input, it is informal and quite comfortable. A judge who described the impact on the parties as "reasonably positive" stated that it is helpful to have the parties represented by counsel; if not, some people get agitated and have trouble with the process.

One of the judges stated that it is his perception that a higher percentage of people are achieving a better resolution than they did in the past. He also suggested that judicial dispute resolution may be more effective for disempowered women than the adjudicative model, because the judge can help to balance the playing field and because in general the adjudicative environment has more potential to be oppressive for disempowered people.

A couple of judges mentioned the child support guidelines as having a positive impact for people. It was observed that they apply more readily to people whose lives have a simpler economic structure, which means they work reasonably well at the Provincial Court level. One of the Vancouver judges noted the critical importance of having a Child Support Clerk to help people figure out how to use them, and suggested that maintenance should be included in the issues that can be referred to the FJCs for mediation.

Another judge focused on the CFCSA case conferences. She saw her role there as staying out of the content, but bringing together the right parties and facilitating the discussion. She thinks it is a good forum and sees many of them resolving, although it often requires more than one session of the case conference. She noted the importance of having counsel with an orientation toward dispute resolution, and then discussed L.S.S. funding for counsel in CFCSA cases. She stated that she has been told by tariff counsel that they are not paid for the time they spend reviewing the Ministry's written materials with the client, which is necessary preparation for a successful case conference. She observed that if the system is going to shift towards ADR, L.S.S. needs to recognize this and restructure the tariff to incorporate proper payment for settlement-related activities. At present, there is no incentive for lawyers to put any effort in this direction.

Two judges mentioned the case conferences in both CFCSA and FRA matters as being a positive milieu for the parties, as well as more enjoyable for the judges.

3. Impact Re: Need for Legal Representation

Asked to comment on specific ways in which the changes to the family law system have either increased or decreased the need for legal representation, several of the judges made "yes, but" replies. One acknowledged that the case conference environment is more manageable for an unrepresented person than the courtroom, but then added that it is not the role of the judge to advise on legal positions. Another said legal representation is

probably not as necessary, but on the other hand, a lot of time is wasted if someone has had no legal advice.

A couple of judges focused on the issue of child support. One said that while the guidelines make this much easier, someone is needed to help the payors. Another described the guidelines as a maze, and stated that counsel are needed to help with the more complicated issues such as hardship. He also mentioned that judges just don't have time to explain to everyone why they have to pay child support and how the guidelines work.

Two Vancouver judges noted that counsel are not involved if cases are resolved before they ever get to court, as happens with the diversion to the FJC program.

4. Impact of Delivery of Family Law Services by Staff Lawyers

There are staff lawyers doing family law work in Chetwynd and in Vancouver. The judges from both of these courts noted the heavy reliance they place on staff lawyers in their role as duty counsel. The judge who sits in Chetwynd stated that it would create chaos in the court if they were not providing duty counsel. Vancouver judges noted that most people who come to court get some assistance from duty counsel if they are not represented. They said the staff lawyers are essential: they know the system and the people; without them the judges would have a lot more trouble dealing with everyone.

B. People Representing Themselves in Family Proceedings

1. General Impact of People Being Unrepresented

The judges were asked if they see a higher incidence of people representing themselves in court on family matters, and if so, what is the impact of that. None of the judges unequivocally identified a noticeably higher incidence of self-representation, but they all have dealt with unrepresented people in court.

Many of the judges distinguished between CFCSA and FRA matters in replying to this question. One said that representation is essential in CFCSA matters; it is a very tough job. Another noted that the parents in CFCSA are up against the government; if they do not have a lawyer they perceive themselves to be very overpowered and in an unfair situation. Two of the Vancouver judges noted that for some reason relatively few FRA matters come to Vancouver Provincial Court; the bulk of cases are CFCSA and the parents usually have counsel. They stated that they do not see many unrepresented people in the Vancouver court.

Considering FRA matters, the judge who saw representation as essential in CFCSA took quite a different approach. He stated that often there is no big legal issue in these cases, and they can be approached safely without representation by counsel. He concluded that the challenge is to identify those cases where there are legal issues and counsel should be

involved (e.g., abuse, parental move out of the jurisdiction). He noted that the Provincial Court has been working since 1992 to make its processes more accessible; he would think that need for counsel is a more general issue in Supreme Court.

The Chetwynd judge took the position that the most pressing need in his area is for counsel to represent the unrepresented. He stated that this is the case even given the support of duty counsel. He estimated that in FRA matters, about 30% of people are not represented at all, and of the 70% who are, many are represented by duty counsel. He said that people just cannot afford lawyers; they rely on duty counsel.

The judge who sits in Courtenay stated that in maintenance hearings, most of the women are represented but fewer than 50% of the men have counsel. Even if the men are trying to do their best, they are not able to get the material together without assistance; the documentation required is extremely complex. This results in many adjournments, a waste of court time and delay in getting the orders in place for the support of the mother and children. If the payor husband applies to vary maintenance, there will be no counsel on either side. For the husband, disclosure is critical and timeliness is important. He needs counsel to present his material properly. If the husband is resistant, the wife needs counsel for cross-examination and to deal with such issues as hidden income.

If counsel is not involved in court hearings, often the behaviour of the unrepresented person is inappropriate. For example, he may start examining his wife about who she is sleeping with. One judge worried that if the self-represented party is shut down by the court for bad behaviour, the result may be that important information is never presented and important issues never raised.

The judge who sits in Vernon stated that it makes the judge's job more difficult when the parties are not represented. A lot of time has to be spent on explanations, and the unrepresented person often has an agenda which is unrelated to the action. He made the observation that going into court is very stressful for people, and having a lawyer with them gives them a perception of some balance among the powers.

One Vancouver judge stated that he doesn't know if there is an increase in unrepresented people, but there are many people self-representing. He raised the issue of public confidence: the judiciary may be seen as too involved in the fray when it intervenes for unrepresented parties. He said that he inevitably becomes more inquisitorial, enters into the dispute to try to assist the party to figure out what they have to do, and also to get the information he needs to make a decision. He noted that any case that comes to trial in Vancouver has already been through attempts to settle (with the FJCs and some form of judicial ADR)—they are involved in a fight. It adds a level of stress for the parties to be unrepresented in the forum: there is no buffer, no one to provide perspective, and it is much more emotional for them.

Thinking about the practicalities of unrepresented people trying to present their case, this judge noted the following:

- people need advice about how to prepare their case, what witnesses to call, what points to make; this could be provided by duty counsel, or to some extent by a paralegal;

- people need help with documentation for maintenance cases; this could perhaps be provided by a case management clerk.

If judges have to hear cases involving unrepresented people, these types of resources would increase their comfort level that the parties are presenting all of the relevant evidence.

2. Comparison with Criminal Cases

The Provincial Court judges were asked whether they see a similar incidence of people representing themselves in criminal cases, and whether there are different kinds of impacts in criminal and family cases. All of the judges from the regions agreed that there has been an increase in the number of unrepresented people in criminal matters, and that this poses serious problems for the courts. The Vancouver judges were less able to speak to this question because they do not sit in criminal court. Some of the problems mentioned were:

- the clients do not understand the language or the technicalities of criminal law, and they try to raise a Charter defence;

- they cannot cross-examine;

- they will often plead guilty and then on sentencing reveal that they have a defence;

- a larger proportion of unrepresented people just do not show up for trial dates.

One of the judges, who does more criminal trials than family, noted that the consequences in criminal court of a lack of representation are not likely to be as serious emotionally as in family court, because anyone in criminal court will be represented if there is a likelihood of a jail sentence upon conviction. Another judge observed that the impact in family law is different than for most criminal trials because the parties are dealing with the care and protection of children, and basic economic survival.

3. Specific Concerns About Lack of Representation

The judges were asked to consider whether they would have any specific concerns if there were a person in their courtroom unrepresented on the following issues:

a) custody and access or child support

Four of the 7 judges saw problems with people trying to represent themselves on a child support application. These require extensive documentation and a level of financial

information about the circumstances of the person that a judge cannot hope to obtain without spending an inordinate amount of time in court. Also, some of the exceptional factors, such as extraordinary expenses, are very difficult for a lay person to factor in. Two of the Vancouver judges noted that the Child Support Clerk is of great assistance for unrepresented people.

Reaction to custody and access was more mixed. One of the judges observed that he is quite comfortable dealing with the parties directly about this, but that they should be getting legal advice at the very beginning of the process. He was concerned not only that people may not be properly informed when they come into a case conference or courtroom, but that if they are not properly advised up front they may not know that they have legal rights to assert and should be using the legal process.

A couple of other judges were less comfortable at the thought of unrepresented people in a custody and access application. For one, the issue was that these cases are often hotly contested, and the judge can be in an untenable position if the parties are looking to the court for advice on procedure, or if one of the parties "gets out of line." For the other judge, the concern was that unrepresented parties may just point fingers at each other and the judge may not get the necessary evidence to determine what is in the best interests of the child. Two other judges agreed that the challenge in this situation is to make sure you get the evidence you need; one of the best avenues for this is the custody and access report, if that is an available resource.

b) spousal maintenance

Two of the judges raised issues here that were also raised with respect to child support: obtaining disclosure and providing proper financial information. Four of the judges basically replied that spousal maintenance is a non-issue because it very rarely is heard in Provincial Court. One said that he had not seen an application for a long time; they seem to have disappeared. Two said that the spouse comes after the kids, and in low-income families there is nothing left after child support.

c) child protection

Most of the judges agreed that it is quite rare to see an unrepresented parent on a CFCSA application, unless it is a consent order or the uninvolved parent. It was noted by one judge, however, that there is a major issue about early advice, because once the family gets into the system, the delays of the system work against the parent. It is extremely important that they have legal advice before any decisions are made about their family.

d) enforcement or variation of existing orders

One judge took the view that the presence of counsel is important for enforcement matters because they are quite complicated. This is less so for variations, in his opinion. He went on to describe a sense of imbalance for the defaulting male with respect to maintenance enforcement. With FMEP, they are up against the power of the state now.

Men are very often unrepresented in default proceedings, where there is a real possibility of jail.

Another judge outlined problems that arise for unrepresented people dealing with variations, again focusing on maintenance. Men have trouble getting over the original hurdle of the definition of "a significant change of circumstances;" this is a concept that has a particular meaning in law. Women need legal advice; they are bringing applications to vary which, because of the tax consequences, will result in a net reduction in income for them.

It was pointed out by one of the judges that in any application to do with maintenance, getting the correct information and knowing how to present it is the major issue; that is the role of counsel.

C. Family Violence Issues

The judges were asked whether they see any impact from the cutbacks to legal aid on legal assistance when there are allegations of family violence. One Vancouver judge commented that if he is dealing with an application for a restraining order from an unrepresented woman, he will generally ask duty counsel to become involved. It is his experience that counsel is able to discover nuances that the client has not been able to present to the court.

Three judges said women who are victims of family violence are not appearing in court unrepresented. Another judge discussed this question at some length, noting that where there are allegations of family violence in the context of a CFCSA application, the parents can almost always get separate representation if the woman is willing to be open about the violence. In an FRA matter, the concern is that since the cutbacks it is harder in general to get representation. If a woman is not assertive or not comfortable talking about the situation she is in, she may not get a lawyer.

He then discussed the role of the woman if criminal charges are laid against her spouse. He noted that the number of domestic violence files in criminal court is staggering. There is a widespread pattern of the man being arrested, released on a "no contact" order, then showing up in criminal court a few days later with his spouse, asking to change the bail provisions. The bail order usually refers to "no contact except as ordered by family court"—but there is nobody in that forum to help them, even more so now because the woman may not have a family lawyer. This is, in the opinion of this judge, a major problem in the overall legal response to family violence. This judge also noted that there is no source of information at the family court, unless someone in the registry takes this on, to tell women about the differences between family restraining orders and criminal peace bonds.

D. Consent Orders

Asked whether they see any shift towards more family matters being settled by consent, all of the judges agreed that this is the case. They then discussed the factors that are contributing to this shift.

In Chetwynd, where there is no ready access to an FJC or a Child Support Clerk, the judge said that consent happens more readily when counsel are involved; counsel are needed for effective and timely negotiations.

Five judges mentioned that the guidelines have contributed significantly towards settling child support issues, and 4 judges credited case conferences for settling many CFCSA matters, as well as an increasing number of custody and access cases. One judge noted that the case conference gives the parties information that they never used to get until they were into a trial, and that it also seems to help them realize that the system is trying to assist them in dealing with a difficult situation. They tend to "come around" more easily in this less adversarial setting.

The Vancouver judges also mentioned the FJCs as a significant factor in an increase in consents. One of the judges was asked whether she had any concerns about the quality of these agreements, made at a time when the parties may not have received any legal advice. She indicated that she had heard some of these complaints on applications to vary. In the situations that she dealt with, she had concluded that the agreements had been appropriate at the time they were made.

The suggestion has been made that a high percentage of maintenance orders are made on consent, with one or both parties often unrepresented. The judges were asked whether this is accurate, and if it raises concerns for them. One judge observed that these usually come across as desk orders. She looks at the financial statements and the explanation the parties provide if the amount is not in line with the guidelines. Another judge, from Vancouver, stated that the child support guidelines take a fair load off the court. The Child Support Clerk runs the figures through the computer, and the consent orders are presented to the judges in a good clear format, including the basis for the figure pursuant to the guidelines. A few go into court on issues such as hardship and imputed income, but not many.

Judges were asked what resources they would rely on if they wanted the terms of an order proposed by unrepresented parties to be reviewed. Four of the judges indicated that they would probably hear evidence from the parties; one of them added that he would let them know they are entitled to bring it back for review, or because of a significant change of circumstances. The other options mentioned were the FJC and duty counsel.

E. Impacts on Administration of Justice or Access to Justice

Some of the judges identified problems where the changes to legal aid have had an impact on the administration of justice:

- there are more unrepresented people in the legal system;
- legal aid lawyers are frustrated, as they have been severely affected by the clawbacks and payment levels;
- more lawyers are doing less prep work on their files;
- the reduced level of services by counsel contributes to a proportionate increase in the backlog of cases in Provincial Court;
- people need extra time to try to make arrangements to obtain counsel, and this may cause delays.

The judges were asked whether there is an impact on access to justice from the legal aid cutbacks. One judge was concerned that many people, especially women, never get in the door of the legal system to address their family issues. There are strong pressures from the institutions of society to keep them from taking that step, and very few structural protections for them if they do take it. Another judge simply said that he sees this as an access to justice issue; without the assistance of counsel, the courts cannot deal properly with the number of people before them. One judge highlighted a problem with CFCSA cases: the tariff does not enable lawyers representing these clients to spend the necessary prep time on these files.

A couple of the judges felt that people do have access, but these judges expressed concern about what could be characterized as "quality of justice" issues. Both of them have a major concern that, in the absence of counsel to present and test the quality of evidence, and to present argument on the issues, they may not be hearing all the evidence or considering all of the relevant issues.

The judges were asked whether there are different impacts on access to justice in criminal or family matters. One judge said that the issues are different. There is less access in one sense in family court, because the clients have to initiate, whereas in criminal court they are brought in. The access to justice issue he saw in criminal law is that people plead guilty because they are unrepresented and do not know that they may have a viable defence. Once into the system, accused people have many more statutory and structural protections; family clients have a less formal process, which may afford them more access to the judiciary.

F. Accessing the Legal System—Problems and Suggestions

The judges were asked to identify aspects of the system of delivery of family law services that present the greatest obstacles for low-income women and children who need to use the legal system.

A couple of judges observed that a major obstacle is knowing where to start, what you have to do to get inside the door. One noted that those who get into court tend to have

someone helping them: a Transition House worker or friend or family member. He considered it very important to have community support groups and readily accessible preliminary legal advice. Many of the people who need family law services are people in crisis, and they need help. He also suggested there should be more supportive resources at the courthouse, to make sure that people will follow through once they have begun the process.

The problem of the "voiceless child" was mentioned by two judges, both of whom would like to have the option of being able to appoint a child advocate in cases where the interests of children are not being voiced. One of these judges noted that he used to be able to order someone to meet with kids and report to the court; that service is no longer available.

One judge identified lack of representation on issues of maintenance and support as a major problem for women and children. These issues cannot be properly addressed by lay people in court, and many women are not receiving the income they would be entitled to if their husbands' real incomes were properly brought before the court.

Issues of custody and access were identified by another judge as ones that optimally should be decided with the assistance of counsel. It was also suggested that, if people are not going to have access to counsel, they should be given legal advice and information about the court process and how to prepare their case. The judge who made this suggestion qualified it by saying that many people with a low level of skills may not be able to function effectively in a court environment no matter what information they are given.

Finally, the judges were given the opportunity to sum up by emphasizing or adding any significant concerns regarding legal services or access to justice. Three of the judges emphasized the important role that counsel play in the operation of our legal system; the work of the courts and the worry level of the judges are greatly reduced by their input, and the system produces the best results when both parties are represented in court.

One judge proposed expanded use of duty counsel for CFCSA and FRA matters, so that at least parties would have the opportunity to explain their case to a lawyer, who could advise the court on what is needed.

The last of the judges focused again on what is going on in CFCSA trials. Most of them are now 2-3 weeks, because the Ministry's new risk assessment model requires much more history and background. The judges were told at a recent meeting that, over the past 3 years, the increase in CFCSA court time around the province is the equivalent of 7 judges' time. What is needed in the first instance is negotiation, case conferences and mediation to get these cases settled if at all possible. And, if they are going to trial, the parents have to be represented by lawyers who are properly prepared. The CFCSA tariff should reflect these priorities.

IX. Interviews with Supreme Court Judges

Interviews were conducted with 7 Judges and 2 Masters of the Supreme Court. These included a Master and Judge from Nanaimo, who attend to Supreme Court matters in Courtenay, a Master and Judge from Prince George, who attend to Supreme Court matters in Dawson Creek (which serves Chetwynd), and Judges who attend to Supreme Court matters in Vernon and Vancouver. All of these respondents to the interviews are going to be referred to as judges.

A. Impact of Family Dispute Resolution Initiatives

1. Impact on the Conduct of Family Law Matters

Judges were asked which of the recent initiatives related to the resolution of family disputes are having a noticeable impact upon the conduct of family law matters.

An aspect of the responses that stands out is that 7 of the 9 judges emphasized the same negative impact: the loss of access to custody and access reports through the former Family Court Counsellor program. One judge spoke of the desirability of having the Family Court Counsellor office on site, so that if people were in the midst of an immediate crisis, they could be sent down the hall to try to get it resolved on an urgent basis. But, at minimum, he said that the availability of prompt, short reports is necessary in order to give the court enough information to get things in the family settled on an interim basis. He noted that it is now impossible to get children interviewed outside of Vancouver. What is happening in some cases is that counsel are obtaining funding through L.S.S. to get reports done privately. Two judges noted that these reports tend to be complex psychiatric reports, which are not very useful in an interim situation; what is needed is the type of practical approach that Family Court Counsellors used to provide.

On a more positive note, the judges reported that early intervention hearings seem to be having a positive impact. Some cases settle at this stage, but many other things can be accomplished: the lawyers start communicating; issues get narrowed; progress is usually made in advancing movement on the case.

Having one judge assigned to everything on the case up to the stage of trial, in the case management system, is also seen to have positive results. One judge noted that a lot of the expense and time on family files are in the pre-trial processes, each of which tends to be like a separate lawsuit. If decisions can be made without having to bring applications, for example about disclosure, and if the judiciary is enabled to be a bit more hands-on about encouraging settlement, this model can provide a very effective alternative.

It was pointed out, however, that these alternative approaches are not in place in Vernon, Courtenay or Chetwynd/Dawson Creek. New initiatives in Supreme Court tend to be limited to the larger centres, where there is enough judicial presence to make them

feasible. However, there are some existing mechanisms for a judicial dispute resolution role that are generally available: the pre-trial conference and the settlement conference.

One of the judges, while acknowledging the usefulness of a greater emphasis on an ADR approach in family law cases, observed that the more fundamental issue to be addressed is that family law tends to be discredited within the judiciary and the legal profession. Although family law is some of the most difficult work in civil litigation, it is not respected. Its practitioners are discouraged. Within this context, the trend towards diverting people out of the legal system, sending them to lay mediators, is not helpful; it gives the message that this is not really law. Parties trying to resolve issues that arise at family break-up need to work with people who are properly trained and can address all of the issues—for example, tax, pensions, the pros and cons of joint custody. If mediation is to be a serious alternative, it has to be conducted by well-trained people who can deal with all of the issues and who can spend the time it takes to resolve these often complex cases.

2. Impact on Members of the Public

Judges were asked to describe the response that they have observed among members of the public to new initiatives in the court system. One judge commented that the parties see that the judiciary is interested in having disputes resolved in a way that is satisfying to the parties. The most significant impact is the increased interaction between judges and litigants in a safe environment. In the less formal environment, the judge can play a role more like a mediator, trying to assist the parties to reframe the issues. She has also observed that litigants respond very well to dealing with only one judge on everything.

Another judge noted that the early intervention hearing is a much less formal environment, it is more understandable to people and they seem to be less intimidated than when they are in a courtroom. If an unrepresented person is going into a Supreme Court trial, the pre-trial conference can be useful to teach them a bit and make sure they understand what material they will need to bring. Another judge discussed the settlement conference as an opportunity for positive contact between the parties and the judiciary. It makes a major impact on the parties if the judge knows the file well and is familiar with the names and ages of the children. This assists them to connect with the judge about their personal concerns, assists them to focus on the needs of the children. In this setting, the judge can convey to the parties that their issues are important, and that the court wants to hear from them and their counsel about how they can be addressed. The parties are then better able to accept direct feedback to both of them from the judge.

3. Impact Re: Need for Legal Representation

Asked to comment on specific ways in which the changes to the family law system have either increased or decreased the need for legal representation, responses ranged from the philosophical to the pragmatic.

At a philosophical level, one of the senior members of the court pointed out that there has been debate since before legal aid began about whether people are actually disadvantaged by not having a lawyer to represent them. We don't have any real data to answer that question. However, for some time now only the rich and the poor have been able to get lawyers; the people in the middle have been shut out. He observed that now the poor are converging with the people in the middle; lawyers are now confined to the rich and the very poor. The poor are probably more disadvantaged by this; they have fewer resources to manage doing their own cases.

This judge was of the opinion that if people are not represented, probably more wrong decisions are made. Ultimately, the question is, is it worth the cost to try to prevent that? Philosophically our society has said that it is wrong if even one child is dealt with wrongly, but then we have to be prepared to accept the costs associated with that decision.

A couple of judges observed that, if people are not represented, the less formal processes of the court make it easier for them to manage their cases. However, both went on to say that it is preferable for them to have lawyers, because most of the procedures in Supreme Court are very complex. One noted that the judge can only go so far in assisting, and that a lot happens outside the courtroom if counsel are involved.

One judge mentioned that men, who are more frequently the payors on child support, are increasingly without representation. She pointed out that the pattern seems to be that women are on benefits and men are the working poor, and that there are more services for the very low-income person.

Another judge took the view that counsel is a necessity for custody issues; nothing has been done to decrease that need. It is difficult work that requires skilled advice and advocacy.

4. Impact on Delivery of Family Law Services by Tariff Lawyers

It was generally agreed by the Supreme Court judges that they are not in a position to comment about the delivery of family law services by staff lawyers, because even in communities where there are staff lawyers, they rarely appear in Supreme Court. However, some of the judges did respond when asked whether they see any differences in how tariff lawyers are delivering services. Three judges replied that counsel do a good job for their clients, although one noted that there may be fewer counsel doing the work.

The Master who attends in Courtenay (who also sits as the Registrar) stated that the practice there has been to refer matters of maintenance and division of assets to the Registrar. He said that these matters formed a very busy part of what he did until about 2 years ago, but now it has "died on the vine." He believes that this change has happened because there is no longer legal aid coverage for this work.

Another judge observed that tariff lawyers do not really have conduct of the file. For example, she has asked counsel to obtain information and speak to it at a future court date, and has been told that counsel cannot do this without obtaining an extension of the retainer.

B. People Representing Themselves in Family Proceedings

1. General Impact of People Being Unrepresented

The judges were asked if they see a higher incidence of people representing themselves in court on family matters, and if so, what is the impact of that. Most of the judges agreed that the presence of unrepresented people in Supreme Court is on the increase. Eight of the 9 judges agreed that having people without counsel makes things more difficult for the court for a variety of reasons, including that it takes a lot of extra time to explain things.

One judge voiced the concern that it is easy to make mistakes without the assistance of counsel. For example, a person may tell their story but they don't know what is important from a legal point of view, don't know how to make their point. He said that judges do not always figure out what the point is, and might make mistakes by operating on a wrong premise. Then he provided a first-hand example of a situation in which he was observing an unrepresented husband in his court who was behaving strangely. He thought the man might have personality difficulties, and he referred the family for a short report. On reading the report he realized that he had seriously misjudged the man, who had language difficulties and was in a highly emotional state in the court. He was thankful that his mistake was averted with the assistance of the Family Court Counsellor, but pointed out that it is very easy to misread what is going on when people are under major stress. Lawyers are of great assistance in presenting not only the client's case, but also the client as a person. This judge went on to say that if you make a mistake about money you can fix it later, but you just can't afford to make a mistake when the care of children, or personal safety, is at stake.

Four of the judges mentioned that it appears that most of the unrepresented people are men. One stated that this is particularly noticeable with respect to variations, enforcement, arrears and contempt; another highlighted child support in general. This latter judge commented that this dynamic is unfortunate, and may be creating a perception of unfairness or "ganging up."

A number of other problems associated with self-representation were noted:

- affidavit evidence is not adequate, and oral presentations are a mix of hearsay, argument, etc.; hard to sort it out and feel confident that you've understood it all properly;

- it is very difficult to get the parties to negotiate—they don't trust the process or the opposing lawyer, and they are too emotional in these circumstances;

- parties are less likely to settle: they are not able to assess downside of proceeding to trial, and are not incurring any costs;

- people become even more emotional when they don't understand the rules and the law;

- material is not in order; this creates frustration and increased cost for the other party;

- judges end up focusing on process, not on issues;

- some people can become "chronic" once they figure out that they can just do up a motion and affidavit and get 2 hours of court time. They come to expect special concessions;

- documents are not done properly, orders are not drafted, creating more work for registry and judges.

Five of the judges commented on the difficulty of continuing to appear neutral while having to provide extensive assistance to the unrepresented person. A few judges also expressed concern about whether they are getting all of the information they need to make a decision. Another aspect of this that was mentioned is the concern that all of the issues may not get on the table, or that the wrong issues may be on the table because of miscommunication. One judge stated that he worries that the results are not as just as they could be.

Another observation made was that sometimes people come to court because they do not have any other avenue to find out what is going on with their spouse: they have no way to get information, there is no forum for negotiation.

A phenomenon which was described by a couple of judges who sit in smaller communities is that of men spending all of their money in the early stages of a legal proceeding and then going unrepresented into trial. One of the judges who sits up north estimated that by the time they get to trial, 70% are representing themselves. This arises partly because the public lacks information about what they should expect to pay for lawyers' fees.

2. Comparison with Other Cases

The Supreme Court judges were asked whether they see a similar incidence of people representing themselves in criminal cases or other civil cases, and whether there are different kinds of impacts in family cases and other cases.

Most of the judges stated that, because the criminal matters that come to Supreme Court are serious, it is very rare to see an unrepresented person, except perhaps on an application to have counsel appointed. One judge commented on the difficulty of having to do a jury trial with an unrepresented person.

While the judges see people representing themselves in other kinds of civil cases (for example, foreclosures, bankruptcy, small business disputes), they were in general agreement that the incidence of this is significantly higher in family cases. Most also agreed that the dynamics are different in family cases. One judge stated that in other civil cases the facts are usually more clear, and the relevance of the facts to the issues is obvious. A person coming into court on a foreclosure can figure out what he has to say. In family cases, however, people do not understand what the court views as relevant, and they cannot figure out what they should be talking about. Another judge pointed out that family cases differ from other civil cases in that the issues never get permanently resolved. Some of them are always subject to variation, and there tend to be more interim orders.

3. Specific Concerns About Lack of Representation

The judges were asked to consider whether they would have any specific concerns if there were a person in their courtroom unrepresented on the following issues:

a) custody and access or child support

The judges were in agreement that the child support guidelines make it easier for the court to handle this issue without the advice of counsel, although several mentioned that some of the secondary issues are really quite complex. The main difficulty described was getting the necessary financial information from the payors. It was noted that a Child Support Clerk could be a big help with this.

Responses were more mixed on the custody/access issue. One judge noted that final custody is not so difficult, because by the time the file gets to that stage there will be a custody and access report available and often these issues have pretty much sorted themselves out. However, having adequate information to make a decision on interim custody is always a major concern, and even more so with an unrepresented party. Six of the judges mentioned that the court benefits from assistance in these matters to get the information needed to feel comfortable about making a decision. Two of the judges said that counsel is essential, and another two referred to the need for participation by someone like a Family Justice Counsellor.

Four judges talked about how difficult these issues are to manage when you have an unrepresented party. The emotional dynamics are very strong and the presentation of highly personal information about the other party tends to be completely undisciplined; they do not know the limits.

b) spousal maintenance

While one judge stated that you don't see spousal support so much any more, most of the others spoke about this as an issue that can be problematic, usually because of issues about disclosure and testing the quality of the financial information provided to the court. Unrepresented people are not aware of the tax factors that have to be considered, they are often not able to deal with the complex financial forms, they do not know how to use the tools of the legal system to obtain, or to question, financial information.

One of the judges noted that the law is actually very difficult in this area. There is no consistency in the amount of awards, because of the huge disparities in individual circumstances and because there is so much room for judicial discretion. Also, both the *Divorce Act* and the FRA set out many elements that the court has to consider on these applications. The result is a set of complicated variables, which a lay person does not know. All of this makes it very difficult for anybody to make a reasonable assessment about a claim for spousal maintenance without the advice of a lawyer.

c) division of assets

While a few of the judges noted that, where there are assets there will usually be counsel, several of them pointed out some problems for an unrepresented person in dealing with this issue:

- a person seeking an unequal distribution has to understand the legal requirements in the FRA;
- a lay person may have trouble with the appropriate timing for valuation of assets, and proper evidence to establish value;
- there are significant tax ramifications depending on how things are transferred. Judges are not experts on this; they rely on counsel to provide advice about the specifics of each case.

On the other hand, one judge noted that the issue of pension division is now covered by legislation, which makes that easier, and another observed that if the assets are basically a house, furnishings and pension, which they often are for low-income people, it is not too difficult.

d) enforcement or variation of existing orders

With respect to maintenance, one of the judges made the observation that some recipients bring an application without knowing the current financial circumstances of the payor; there is no avenue other than the court process to obtain financial information about the other party. Obtaining full disclosure and testing the quality of the financial information provided can be difficult for the unrepresented person. If the application is brought by a

payor, the task is more straightforward: to provide evidence that there has been a change in financial circumstances, and particularly income.

One of the judges who sits in Vancouver and in smaller communities stated that he has the impression that there are many unrepresented men on maintenance variations. He said that he does not observe this so often in Vancouver, but he sees it frequently in the resource-based communities where jobs tend to be in flux. He noted that these men usually manage to present their stories to the court.

It was noted that enforcement is a problem at many levels for lay people. If an order is made requiring exchange of information in a variation application, how does the party enforce compliance?

One of the judges focused on variations with respect to custody and access; she observed that cases in which there is ongoing fighting over the kids are particularly destructive. Mediation may be a helpful intervention in many instances, but for some parents the ongoing legal battle takes on a life of its own. This judge noted that sometimes the only thing that stops these cases is prohibitive legal costs, but this does not assist where people are funded through legal aid. Particular care should be taken by L.S.S. to monitor these cases, so that these types of matters only proceed to hearing where there is a credible issue of bad parenting that must be addressed.

C. Family Violence Issues

The judges were asked whether they see any impact from the cutbacks to legal aid on legal assistance available to victims of family violence. All of the judges who responded to this question agreed that it is very rare in Supreme Court to see women unrepresented where there are issues of violence. The only exception noted was that the judges who attend in Dawson Creek (Chetwynd) said that they do see this in Prince George. Also, one of the judges noted that the absence of access to Family Court Counsellor services may be a loss for this client group.

D. Access to Assets

Judges were asked whether the inability to obtain access to assets at the outset of litigation creates a problem for women litigants. The general consensus was that it is not a problem that arises frequently, but there are aspects of this issue that are problematic. There was some level of disagreement among the judges about the powers of the court to order a sale or a distribution to support litigation.

A couple of the judges noted that it is most usual for all of the assets to be frozen so that neither party has access without making an application to the court. However, one judge noted that there could be hidden assets or business assets that may not be “on the table;” another observed that some “settlements” are unfair because there is a lack of an asset base for the women. The comment was made that if there are complications related to

assets, both parties should be represented, and recovery should be obtained from the asset base.

One member of the court observed that it is likely that a woman will be represented on an application to obtain a distribution to pay a lawyer. He is aware of situations in which the woman was unsuccessful on that application and did not proceed with her asset claim. Another judge stated that there is a reluctance to release money for legal fees, and this poses a definite problem for women litigants.

And, finally, one of the judges pointed out that division of assets for most legal aid clients is about what should be liquidated in order to pay off the debts.

E. Consent Orders

Asked whether they see any shift towards more family matters going by consent, there was no consensus among the Supreme Court judges.

One member of the court who thinks there is a trend towards more consents attributed this to a number of factors. Some cases are settling through the early intervention hearing process, and the child support guidelines have reduced litigation by providing more clarity in at least some child support situations. He also noted that the *Family Relations Act* has now been in place for over 20 years, and most of the legal issues to do with interpretation of the legislation have been settled. Some cases are settling for financial reasons: it makes sense to settle.

Another member of the court agreed that economics is a major factor contributing to consents, and that in a community with a depressed economy, people cannot afford to litigate. He also noted that some people just give up; for example, women will fight if they have to with respect to custody and access issues, but many of them will not press their case on financial issues.

One judge looked at the impact of the child support guidelines, and voiced the opinion that they remove too much discretion from the court. Two responsible adults, both represented by counsel, should be able to agree on a different amount that suits their particular circumstances. Another judge simply said that he knows the trial lists are shorter, but it still feels like a never-ending flow.

A judge commented that the family bar is very capable, and there have always been high settlement rates in this area of law. However, focusing on the cases that have traditionally not settled, the ones where the parties become entrenched in their positions, she has noticed a positive impact from more judicial involvement in settlement-focused sessions. She feels that this can be a very helpful environment.

The judges were then asked to consider the suggestion that a very high percentage of maintenance orders are now being made by consent, and that one or both parties are often unrepresented. The five judges who responded to this question agreed that this statement

would be fairly accurate with respect to child support. However, there were qualifying statements. One judge noted that, if the payor is not a salaried employee, the issues are no more likely to be settled than they were in the past. He noted that in the resource-based communities where income tends to be very much in flux, a set of rigid guidelines is not that helpful. The parties often end up with a first order made on the basis of incomplete or temporary information, which then needs to be varied.

Another noted that, although there are more consents, there are also concerns about disclosure, documentation, and a fair application of the provisions of the guidelines. If an unrepresented person is involved and the judge does not have a family law background, issues may be overlooked that should be factored in to arrive at a fair settlement. Two other judges commented that, while the guidelines may be more certain and be resulting in more consents, problems may arise because of aspects of the scheme that may not be fair.

One of the responding judges saw no trend with respect to spousal support, and a couple had some definite concerns. First, one noted that the amount of child support is calculated without regard to the income of the receiving spouse and her need for personal support; the result of this is that there is nothing left for spousal maintenance. This judge stated that spousal support is "withering on the vine;" the sources of financial maintenance for separated women are now an increased level of child support, and division of assets. Another judge suggested there is a bit of a backlash showing up with respect to spousal support. Except for women very near the end of their working lives, lifetime support is not realistic but neither is financial independence within 6 months of separation. Spousal support is an entitlement, it has been earned, but the goal needs to be clear: it is to put supports in place for an adequate period of time to allow a woman to develop appropriate adult career skills, in order to achieve the goal of self-sufficiency.

Judges were asked what resources they would rely on if they wanted the terms of an order proposed by unrepresented parties to be reviewed. The only external resources identified would be to send the parties to legal aid to obtain help to get independent legal advice, or to ask lawyers in the court to speak to the parties. The major avenue would be review by the judge, by way of reading the materials and questioning the parties about duress, ability to understand the implications of the agreement, questions they may have about it. One judge noted that, if he had concerns about a consent agreement dealing with custody and access, he would want to be able to use the resource of a child advocate in appropriate cases.

F. Impacts on Administration of Justice or Access to Justice

Some of the judges identified problems where the changes to legal aid have had an impact on the administration of justice. For the Supreme Court judges, most of the comments related to the increasing number of unrepresented people in the system. It was noted that this is costly, time-consuming and frustrating for the participants in the courtroom, and results in a greater demand on the resources of the registry. There was a concern

expressed about a possible perception that the impartiality of the judiciary is corrupted by dealing differently with unrepresented and represented litigants.

One judge commented that the Supreme Court is not seeing a lot of the cases they used to see. He suspected that many people may be choosing to go to Provincial Court instead, because it is much less expensive if a person is not receiving assistance from legal aid.

The judges were asked whether there is an impact on access to justice from the reductions in legal aid services. Responses to this question were very wide-ranging.

One of the judges began his response by observing that, for people who come into the legal system unrepresented, there is a need for professional input to identify the ones with real legal problems that require legal assistance. He went on to state that the question of whether or not it really makes a difference if people don't have lawyers has been on the table since legal aid started in 1971. He also commented that the extent of coverage for family law has evolved over the past 30 years, and will continue to evolve. It is his view that we have made a decision as a society that one of our goals is to have a just society. One of the things that sets us apart is that everyone is entitled to go to court with a dispute, and get a fair and independent decision (sometimes wrong, but always fair and independent). Lawyers facilitate that process; judges make better decisions when lawyers participate. He then noted that his own observations may be distorted by the fact that it is a lot tougher for him to do a case when there is no counsel. So, bearing that in mind, it is his opinion that things are not very good right now.

One judge focused on the impact of eligibility standards. He said that he has the impression that it is easier for women to get approved for legal aid, mainly because they are more prone to both poverty and family violence. Men may be feeling that they are getting "the short end of the stick," somewhat justifiably. The working poor are not eligible for legal aid; even the working middle class cannot afford lawyers. There is a general issue about the affordability of the system.

One judge, standing out from his peers, took the view that trials are shorter with unrepresented people, because they usually have only two or three things to say. He stated that the courts do their best to deal with the cases that come; he is more concerned in terms of access about the ones that just do not come. Another judge also mentioned the people who the courts do not see.

One of the non-Vancouver judges expressed concern about the impact of the large numbers of unrepresented people. He said that it has not yet amounted to a scandal, or cases being bumped because of the delays, but it is starting to make it difficult to ensure that the scheduled Assizes (periodic sittings of the Supreme Court in smaller communities) can function properly. He noted that it is essential that people feel that they get heard, in order for them to live with the result of a court order. Most of the lawyers doing family legal aid work are relatively young and inexperienced; they are unsure of their judgement. In his view the overall situation is that people are not being adequately represented.

Another judge also noted how important it is that the public perceives that the justice system is available to them to assist in resolving disputes. In the present situation, the working poor who need to come to court are on their own. Most unrepresented people do not understand what is going on in court proceedings, and often do not understand what orders were made or why they were made. The parties need issues resolved quickly and fairly. If there is not proper disclosure, or the court is not given all of the necessary information, the result will be unfair orders, which people will have to live with.

One of the judges pointed out that just providing a lawyer for everyone would not necessarily mean perfect access to justice; there is a need for other kinds of resources, and finding ways to ensure that the services of legal counsel are utilized appropriately.

G. Accessing the Legal System—Problems and Suggestions

The judges were asked to identify aspects of the system of delivery of family law services that present the greatest obstacles for low-income women and children who need to use the legal system. A few points were made:

- good lawyers make a big difference; it is important that they not drop out of the family legal aid system;
- there is a need for more participation by counsel, but an adversarial lawyer for everyone is not necessarily the best approach;
- everyone should have legal advice to be sure that his/her issues are properly addressed; the main role for counsel should be to assist people to negotiate and settle;
- if family cases cannot be settled, they should go to trial for final resolution, rather than going through multiple interim applications that do not resolve the issues;
- a major obstacle is the practical task of gathering the necessary information and evidence and knowing how to present it in the manner the court requires;
- women are generally intimidated by the courts, and are afraid to come in if not represented. The biggest hurdle is to get them in; they generally are quite able to speak for themselves once they are there.

One judge stated that the financial threshold for legal aid is absurd, and another expressed the view that family law has become an extremely complex, costly process and that it is obscene that people lose everything due to the costs of resolving family separation.

Finally, the judges were given the opportunity to sum up by emphasizing or adding any significant concerns regarding legal services or access to justice. Four out of the 7 judges who responded identified a need for more professional assistance for people at the front end of the system. They discussed this in a variety of ways: to discuss and mediate, and

identify the cases where legal intervention is needed; to help people identify issues and organize their information; to use legally trained facilitators who can explore settlement but also assess seriousness; to use duty counsel and paralegals to provide basic advice to everyone and information about community resources.

Many other ideas or concerns were mentioned:

- two judges spoke of the need to be able to appoint counsel for children if there are disputed custody and access issues;
- to try to eliminate the many family court cases where there is really nothing at issue except the fight between the couple;
- more tariff support for settlement-related activities by legal aid lawyers;
- more plain language information for people about how to handle family law matters (about 50% of estates are done by self-counsel) e.g., child support, maintenance, proper use of lawyers;
- many people need an advocate: someone they can trust, who can negotiate on their behalf and advise them in negotiations, someone who can represent them if necessary;
- people use up their resources at the front end, and are unrepresented when the time comes to try to resolve the issues;
- the public perception that women will be given lawyers and men will not is a problem.

One of the judges stated that family problems are not going away just because they are not coming into court. Most lower-income people now have two options: do nothing or do-it-yourself. To the extent that these problems are not being addressed, the effects are being borne by someone, and it is usually women and children.

APPENDIX

Gender Differences in Referrals and Refusals of LSS Services: Changes from Fiscal 1992/93 to Fiscal 1998/99

Revised July 12, 2000

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INTRODUCTION

The Legal Services Society (LSS) of British Columbia has conducted an investigation of recent budget-induced cutbacks in service and, in particular, how these cutbacks may have had a specific impact on women. Over the past few years, LSS has been required to operate within increasingly narrow statutory and financial boundaries. To meet these challenges, it has been necessary for LSS to institute a number of cutbacks to services, and to tighten financial eligibility and coverage criteria. Initial changes to eligibility and coverage guidelines were established in late 1993 and early 1994. By 1997, the budget of LSS was capped, and the organization was required to institute additional measures intended to produce an annualized saving of $14,000,000, including:

- Modifications and holdbacks to the tariff of fees paid to lawyers
- Further reductions in financial eligibility guidelines, with the intention of producing equal reductions in services for both criminal and civil law cases (decreases of 5.5% from fiscal 1995/96)
- Further reduction of family tariff costs (decrease of 12%) by reducing the amount of coverage and by diverting appropriate cases to alternate services
- Reductions in operating and field office budgets by 18% and 12%, respectively

Although these measures have succeeded in reducing overall operating costs, they have also resulted in substantial cutbacks in services provided by LSS. In the fiscal year of 1992/93,[1] there were 129,219 applications for LSS services, of which 73,840 were referred to a lawyer. By the end of fiscal 1998/99,[2] these numbers had dropped to 99,331 applicants and 50,737 referrals. As will be seen in the next section, comparisons across years are not straightforward because of the introduction of a new data collection system in 1996. This paper sets out the steps taken to arrive at figures which are comparable in order to support analysis of the data to make the comparisons of outcomes for men and women seeking legal aid in the areas of civil, criminal or family law.

DATA & ANALYSES

In an effort to study the impact that recent cutbacks to LSS services may have had specifically on women, we analyzed: (1) the total number of applications for LSS services during the fiscal years of 1992/93 and 1998/99, (2) the number of applications that were directed to a lawyer (i.e., a

[1] Based on data captured on July 12, 1999, all MIS records included.
[2] Based on data captured on June 1, 1999, and reported in *Legal Services Society: Annual Report 1998-1999*.

"referral"), (3) the number of applications that were not directed to a lawyer (i.e., a "refusal"), and (4) the gender of clients in these applications. Unfortunately, a simple and direct comparison between years was precluded by some important differences in the manner by which data were collected during the two periods. Specifically, prior to April 1996, LSS employed an off-line "case-centered" Management Information System (MIS). After this date, LSS introduced an on-line "client-centered" Case Management System (CMS). These two systems differed in a number of critical ways, including:

- Differences in information: Some specific kinds of information about clients, case issues, and outcomes that were not recorded in MIS are recorded in CMS
- Differences in precision: The older MIS is less precise than the newer CMS. For instance, CMS does not require or allow duplicate records for the same case. By comparison, duplicate records were necessary for some types of activities in MIS (e.g., when a change of lawyer or a file renewal occurred)
- Differences in case type categories: A new category ("Intake cases") was instituted under CMS, to reflect certain short-term services that were provided to clients who were not referred to a lawyer. These activities were simply recorded under MIS as applications and refusals

In short, fundamental differences between MIS (which holds data from 1992/93) and CMS (which holds data from 1998/99) necessitated several stages of data processing and data transformations before legitimate comparisons between the two bodies of data could be conducted. We believe that our data handling techniques were successful, *as closely as possible*, in equating the two bodies of data, thereby permitting meaningful and valid comparisons to be made between 1992/93 and 1998/99. This document describes:

- The initial (unprocessed) MIS and CMS data sets
- The interim stages of data processing that were undertaken and, in some instances, the reasoning behind the processes
- The final (processed) MIS and CMS data sets
- Graphical and statistical comparisons of outcomes for male and female clients (referrals and refusals of services) in various law categories (criminal, family, immigration, human rights, civil/poverty) for 1992/93 and 1998/99, and comparisons of referrals and total applications for male and female clients in 1992/93 and 1998/99

Step 1: Capturing the raw data

Table 1: Raw Data
Gender Differences in Referrals and Refusals of LSS Services

	Fiscal 1992/93[1] (MIS)		Fiscal 1998/99[2] (CMS[3])	
	Applications	**Referrals**	**Applications**	**Referrals**
Criminal[4]	56,122	43,752	39,523	28,043
Family[5]	43,427	21,651	24,556	13,177
Civil/Poverty[6]	25,196	5,588	10,870	6,225
Immigration[7]	3,922	2,746	3,392	3,094
Human Rights[8]	552	103	263	198
Intake[9]			20,727	
Total	**129,219**	**73,840**	**99,331**	**50,737**

1. Each record from April 1, 1992 to March 31, 1993 in MIS is an "Application" (56,122 records for Criminal Law Worksheet: 73,097 records for Civil Law Worksheet). If "Result for Client" was coded as "Staff," "Private Bar" or "YOA Court" (Criminal Worksheet), or "New Tariff" (Civil Worksheet), then that record was recorded as having a "Referral"
2. Each record from April 1, 1998 to March 31, 1999 in a CMS Cases Table + Client Table join is an "Application" (99,303 records). The algorithm used to determine if a record was given a "Referral" is outlined in the Appendix
3. Includes 28 additional records (20 of which were given a "Referral") for 1998/99 that had been entered into the MIS system
4. For CMS data, "Criminal" includes "Criminal" and "Appeal-Criminal" records
5. For MIS data, "Family" includes "Family" and "Family Appeal" records; For CMS data, "Family" includes "CFCSA," "Appeal-CFCSA," "Family Case Management," and "Appeal-Family Case Management"
6. For CMS data, "Civil/Poverty" includes "Poverty," "Appeal-Poverty," "Appeal-CC Disclosure," "Prisoner's Office," and "Appeal-Prisoner's Office"
7. For CMS data, "Immigration" includes "Immigration" and "Appeal-Immigration
8. For CMS data, "Human Rights" includes "Human Rights" and "Appeal-Human Rights"
9. Intake was recorded under CMS only. An "Intake Case" is defined as a client encounter in which a brief service is provided, but no formal application process is undertaken

MIS: 1992/93

1. *Criminal Cases.* Criminal law case data were taken from information provided by clients in the "Criminal Law Worksheet" (Form 05). For each criminal law worksheet (*record*) that was completed in 1992/93, "client name," "client gender," "result for client," and "client eligibility" was captured. The total number of records was taken as the total number of applications for criminal law services. The number of records for which the "result for client" was coded as "private bar," "staff," or "young offender's act (YOA) court-directed" was taken as the total number of applications for which referrals were given. This convention for determining whether or not a referral had been given for an application in MIS has been used in a number of previous studies conducted by LSS.

2. *Civil Cases.* Civil law (family, civil/poverty, immigration, and human rights) case data were taken from information provided by clients in the "Civil Law Worksheet" (Form 10). For each civil law worksheet (*record*) that was completed in 1992/93, "client name," "client gender," "result for client" and "client eligibility" was captured. In addition, each record could include up to 6 civil law "problem types." However, only 1 civil law problem type was permitted for each

record, and this "primary" problem type was determined according to the following algorithm: For a given record, if any of the 6 problem types was coded as an "immigration" problem type, then that record was categorized as an "immigration law" problem type. Otherwise, if any of the 6 problem types was coded as a "family" or "family appeal" problem type, then that record was categorized as a "family law" problem type. Otherwise, if any of the 6 problem types was coded as a "human rights" problem type, then that record was categorized as a "human rights law" problem type. Finally, all remaining records were categorized as a "civil/poverty law" problem type. This convention for determining "primary" problem type for civil law applications in MIS has been used in a number of previous studies conducted by LSS.

The total number of records that fell into family, civil/poverty, immigration, and human rights law problem types was taken as the total number of applications for each of these respective civil law services. Next, the number of records for which the "result for client" was coded as "new tariff" or "staff" was taken as the total number of applications for which referrals were given for each civil law problem type. MIS raw data (applications and referrals for 1992/93) for criminal law cases and for the 4 categories of civil law cases are presented in columns 2 and 3 of Table 1.

CMS: 1998/99

1. *Cases Table.* For each case (*record*) that was entered into CMS in 1998/99, "case number," "client ID," "case type," "case status," "referral status," and "lawyer number" was captured.[3] For each record, a "result for client" was determined according to an algorithm outlined in the Appendix. This convention for determining whether or not an application has been given a referral has been used previously in Annual Reports prepared by LSS.

2. *Client Table.* For all clients that have been registered under CMS, "client ID" and "client sex" (gender) was captured.

3. *Cases-Client Join Table.* Using client ID as an index, each record in the Cases Table was joined to a record in the Client Table, and the gender of the client associated with each record in the Cases Table was determined. Next, for each record, a law problem type was determined. If case type for a given record was coded as "family case management," "appeal-family case management," "CFCSA," or "appeal-CFCSA," then that record was categorized as a "family law" problem type. If case type was coded as "poverty," "appeal-poverty," "appeal-CC disclosure," "prisoner's office," or "appeal-prisoner's office," then that record was categorized as a "civil/poverty law" problem type. If case type was coded as "criminal" or "appeal-criminal," then that record was categorized as a "criminal law" problem type. If case type was coded as "immigration" or "appeal-immigration," then that record was categorized as an "immigration law" problem type. If case type was coded as "human rights" or "appeal-human rights," then that record was categorized as a "human rights law" problem type. Finally, all records that were coded as "intake" were categorized as an "intake" problem type. This convention for determining problem type for case records in CMS has been used in a number of previous studies conducted by LSS.

[3] It should be noted that although there is very close correspondence between an "application" in MIS and a "case" in CMS, there are slight differences in meaning between the two units. However, we assumed that the concepts were basically equivalent, and hence developed the common concept of "record." Thus, the unit of analysis in the present study is "record," and each application in MIS and each case in CMS, constituted a single record.

4. *MIS Records Added.* A very small number of 1998/98 records that had been stored in MIS were appended to the data set. These records represent applications made in offices that were still not on-line with CMS for part or all of 1998/99, and constituted only 28 records (20 of which were given referrals).

CMS raw data (applications and referrals for 1998/99) for the 5 categories of law problem types and for intake problem type are presented in columns 4 and 5 of Table 1.

Step 2: Deletion of invalid records, refinement of categories

Table 2: Processed Data
Gender Differences in Referrals and Refusals of LSS Services

	Fiscal 1992/93 (MIS)		Fiscal 1998/99 (CMS)	
	Applications	**Referrals**	**Applications**	**Referrals**
Criminal	51,294	42,305	39,514	28,036
Family	29,959	21,347	24,537	13,168
Civil/Poverty	12,481	5,329	10,870	6,221
Immigration	3,223	2,635	3,392	3,094
Human Rights	336	94	263	198
Intake/Other	16,709		20,727	
Total	**114,002**	**71,710**	**99,303**	**50,717**

MIS: 1992/93

1. *Deleted* all records for which "client name" was given as "VOID"
2. *Deleted* all records for which "result for client" was incorrectly coded and thus, could not be determined
3. *Deleted* all records for which "client gender" was "not given" and thus, could not be determined
4. *Transformed* all records for which "result for client" was "reciprocal" into "referred"
5. *Transformed* all records for which "result for client" was "resolved" or "abandoned" (criminal law worksheet), "resolved/abandoned" (civil law worksheet), "self-help," or "sent elsewhere" (both worksheets) into either "intake/other" or "refused," according to the following rule: If a given record had "client eligibility" refused because "eligibility determination not necessary," then "result for client" was categorized as "intake/other." Otherwise, "result for client" was categorized as "refused"
6. *Retained* all records for which "result for client" was "refused" as "refused"
7. *For civil law cases: Deleted* all records for which "case type" was "not given"
8. *For civil law cases: Deleted* all records for which "result for client" was "file renewal," "lawyer change," or "no new file," because such records are duplicates. Specifically, these records had already been entered into MIS in a prior application. It should be noted

that this stage of data processing resulted in the deletion of approximately 7,500 Family law records

MIS processed data (applications and referrals for 1992/93) for criminal law and the 4 categories of civil law, and the total number of records that fell into the "intake/other" category, are presented in columns 2 and 3 of Table 2. By comparing these columns to corresponding columns in Table 1, it can be seen that 88.2% of the original unprocessed records from MIS (i.e., 114,002 of 129,219 records) were included in the final set of processed records.

CMS: 1998/99

1. *Deleted* all MIS records
2. *Transformed* all records for which "case status" was "intake" into "intake/other"

CMS processed data (applications and referrals for 1998/99) for the 5 law categories, and the total number of records in the intake/other category are presented in columns 4 and 5 of Table 2. By comparing the columns to corresponding columns in Table 1, it can be seen that virtually all of the original unprocessed records (i.e., 99,303 of 99,331 records) were included in the final set of processed records.

Table 3: Final MIS Data Set (Fiscal 1992/93)
Gender Differences in Referrals and Refusals of LSS Services

Table 3 presents this final set of MIS records separated with respect to client gender (female and male). Note that applications that fall into the intake/other category have been separated out of the table because, in the present study, these applications could not be designated as a referral or a refusal.

	Referred		**Refused**	
	Female	**Male**	**Female**	**Male**
Criminal	6,598	35,707	1,740	7,249
Family	14,884	6,463	5,011	3,601
Civil/Poverty	2,642	2,687	3,474	3,678
Immigration	665	1,970	157	431
Human Rights	58	36	170	72
Total Records	**24,847**	**46,863**	**10,552**	**15,031**

	Female	**Male**
Intake/Other	8,510	8,199

Table 4 presents the final set of CMS records, additionally separated with respect to client gender (female and male). As with MIS data in Table 3, applications that fall into the intake/other category have be separated out of Table 4.

Table 4: Final CMS Data Set (Fiscal 1998/99)
Gender Differences in Referrals and Refusals of LSS Services

	Referred		Refused	
	Female	**Male**	**Female**	**Male**
Criminal	4,705	23,331	2,275	9,203
Family	9,739	3,429	7,364	4,005
Civil/Poverty	2,783	3,438	2,394	2,255
Immigration	846	2,248	78	220
Human Rights	124	74	43	22
Total Records	**18,197**	**32,520**	**12,154**	**15,705**

	Female	**Male**
Intake	10,069	10,658

Step 3: Comparisons of processed MIS and CMS data sets

Over the two periods under investigation (i.e., fiscal 1992/93 and 1998/99) we compared result for client (referred and refused), separated for each law category (criminal, family, civil/poverty, immigration, human rights, and total), as a function of client gender (female and male). Figures 1 to 6 provide a triad of bar charts for each of these comparisons. Within each triad of charts, the left chart displays data from 1992/93 and the middle chart displays data from 1998/99. Furthermore within each of these 2 charts, the leftmost bar group shows the number of referred applications and the rightmost bar group shows the number of refused applications. Additionally, within each bar group of these 2 charts, the shaded bar represents the number of applications in which the client was female, and the unshaded bar represents the number of applications in which the client was male. Finally, the right chart in each triad displays the percent (%) of total applications that were referred, in 1992/93 (left bar group) and 1998/99 (right bar group), for females (shaded bars) and male (unshaded bars).

Note that *within* each comparison, the scale of measurement (i.e., the *y*-axis, number of applications) is identical in the left and middle charts. This allows for direct comparisons between the 2 periods under investigation. However, *between* each comparison (i.e., between figures), the scale of measurement differs because the number of applications differed markedly over the various law categories. Still, at least some comparisons between law categories may be made in the right chart, on the basis of % of referrals. However, caution must be exercised in such comparisons, because a given % of referrals can imply vast differences in the *absolute*

number of referrals. For example, 80% of referrals can mean 8 of 10 applications were referred. It can also mean 16,000 of 20,000 applications were referred. Hence, in the former scenario, a drop to 50% of referrals would mean a loss of only 3 referrals (i.e., 5 of 10 applications were referred). By comparison, in the latter scenario, a drop to 50% of referrals would mean a loss of 6,000 referrals (i.e., 10,000 of 20,000 applications were referred).

Figure 1

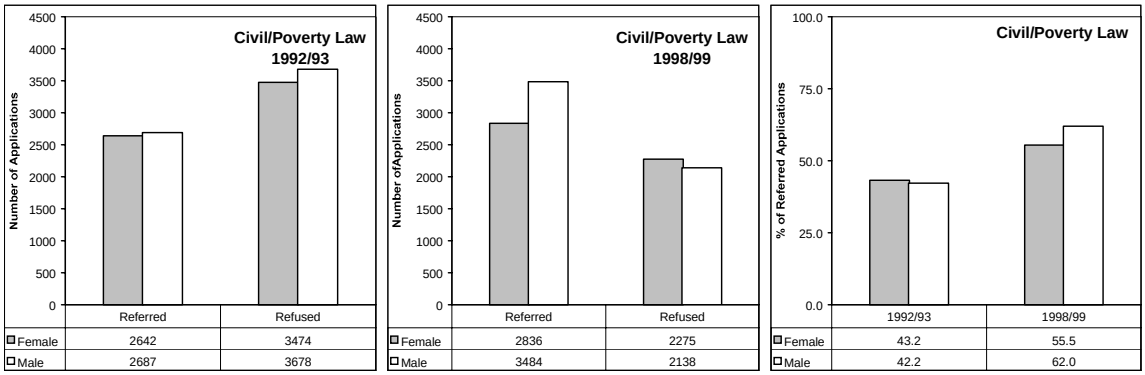


Figure 2

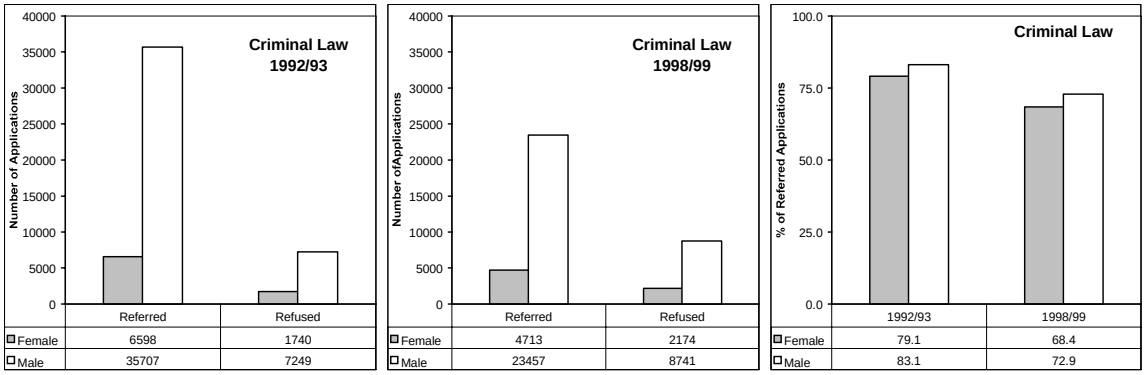


Figure 3

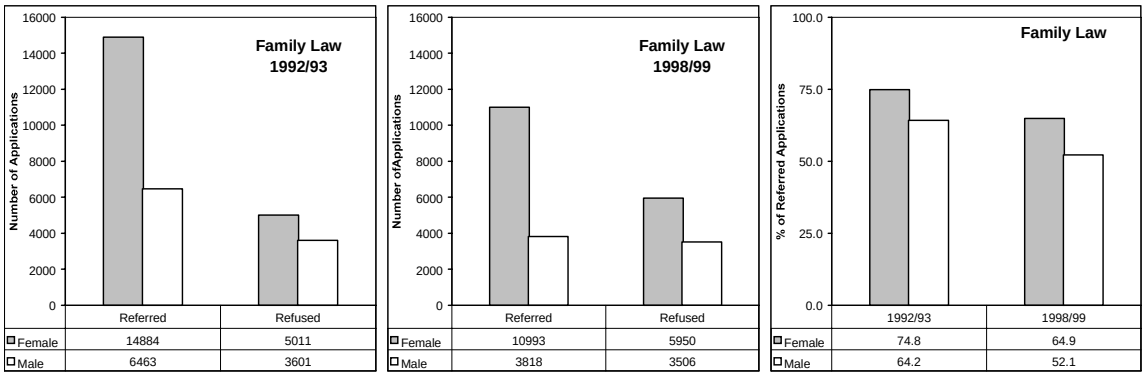


Figure 4

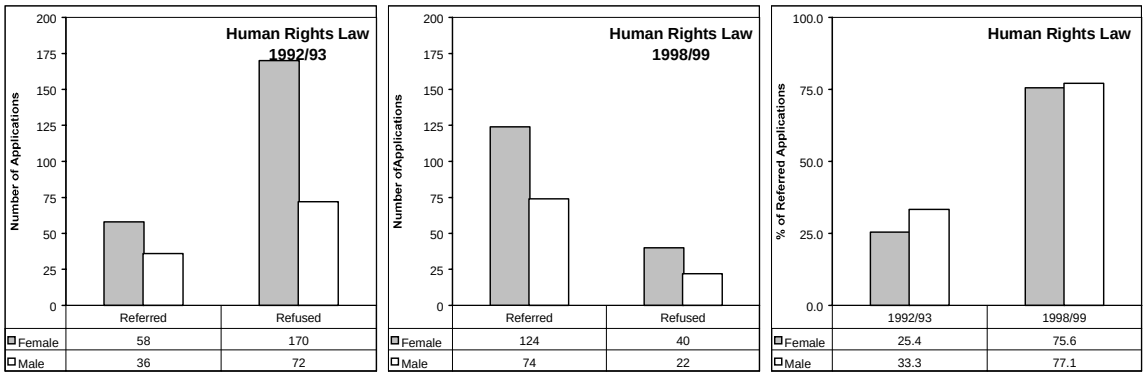


Figure 5

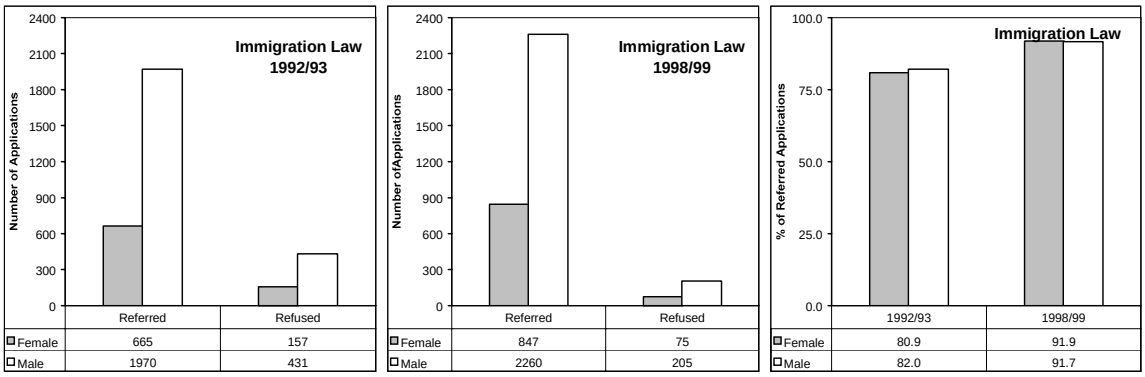
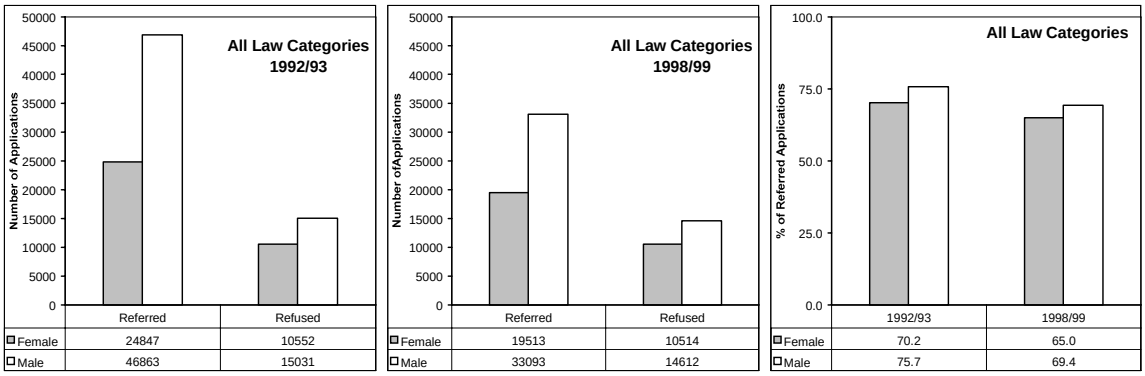


Figure 6



CONCLUSIONS

From these comparisons, several *general* conclusions can be drawn:

- For Criminal and Family law categories, there were marked decreases in number of applications from 1992/93 to 1998/99. For Civil/Poverty and Human Rights law, there were moderate decreases, and for Immigration law there was a slight increase in number of applications
- For Criminal and Family law categories, there were marked decreases in number of referrals from 1992/93 to 1998/99. For Civil/Poverty, Human Rights, and Immigration law, there were increases in number of referrals
- For Criminal and Family law categories, there were slight increases in number of refusals from 1992/93 to 1998/99. For Criminal law, the rate of increase in refusals appeared to be only slightly greater for males than for females, whereas for Family law, the rate of increase in refusals appeared to be only slightly greater for females than for males
- For Human Rights law, there was a marked decrease in number of refusals from 1992/93 to 1998/99. There was also a moderate decrease in number refusals for Civil/Poverty law (with a greater rate of decrease for males than for females), and a slight decrease in number of refusals for Immigration law

To summarize, LSS conducted this study to investigate the impact that recent cutbacks may have had on client referrals and, in particular, if women may have suffered a greater adverse effect than men. Our results show that although there have been substantial reductions in overall numbers of applications[4] and referrals between fiscal 1992/93 and fiscal 1998/99, reductions for women and men have been roughly equal. In fiscal 1992/93, 38.5% of all applicants for LSS services were women (43,909 applications), whereas 61.5% of all applicants were men (70,093 applications). By the end of fiscal 1998/99, these percentages had changed very little: Of all applicants, 40.7% were women (40,420 applications) and 59.3% were men (58,883). Similarly, percentages of female and male applicants that were given referrals have changed very little over the two periods. In 1992/93, 34.7% of all referrals were given to women (24,847 referrals) and 65.3% were given to men (46,863 referrals). By 1998/99, 35.9% of all referrals were given to women (18,197 referrals) and 64.1% were given to men (32,520 referrals). Finally, when each of the law categories is considered separately, percentages of female and male applicants and referrals have also been relatively stable between fiscal 1992/93 and 1998/99. Clearly, the impact of recent cutbacks to LSS services has been equally severe for women and men.

[4] Including applications that fall into the “Intake/Other” category.

Appendix: "Result for Client" Algorithm to Determine "Referred" and "Refused" for CMS Records

1. A record was coded as "referred" if:

- case status was "referred," referral status was "open" or "closed," and lawyer ID was greater than 0 and less than 200000[5]
- case status was "closed," referral status was "closed," and lawyer ID was greater than 0 and less than 200000
- case status was "awaiting referral" or "abandoned" or "pending" or "exception review" or "supervisor review" or "review" or "awaiting payment," and referral status was "open," and lawyer ID was greater than 0 and less than 200000
- case status was "terminated" and lawyer ID was greater than 0 and less than 200000

2. A record was coded as "refused" if:

- case status was "diverted" or "outgoing reciprocal" or "assessment" or "refused service"

[5] A lawyer ID greater than 0 and less than 200000 indicates that a private bar or staff lawyer was assigned to the case