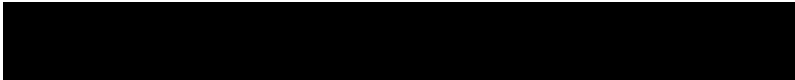




**Custody,
Access and
Child Support
in Canada**

**REPORT ON
FEDERAL-PROVINCIAL-TERRITORIAL
CONSULTATIONS**

Fall 2001



**Custody, Access and
Child Support in Canada**

**REPORT ON
FEDERAL-PROVINCIAL-TERRITORIAL**

*The views expressed in this report are those of the authors
and do not necessarily represent the views of
the Federal-Provincial-Territorial Family Law Committee.*

Aussi disponible en français

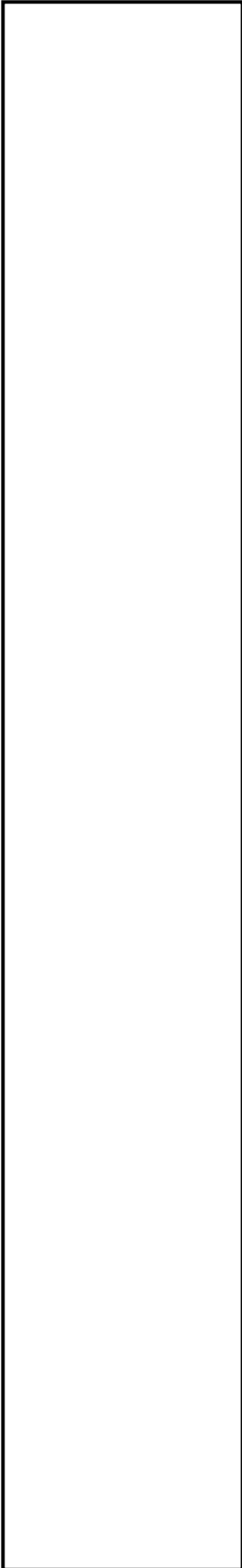
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EXECUTIVE SUMMARY

The federal, provincial and territorial governments held nation-wide consultations on custody, access and child support issues from early April to the end of June 2001. Canadians with an interest in these issues contributed their views through some 2,300 feedback booklets, 71

Respondents stressed the need for improved educational services (for parents as well as for the legal profession), support services (such as supervised access centres or “parenting coordinators”) and legal aid services. To improve the effectiveness of services, respondents suggested that services be offered in a more coordinated, timely and accessible manner.

Participants were asked whether the terms *custody* and *access*, which are currently used in the *Divorce Act*, should be changed. The main argument in favour of changing the terminology is that the terms *custody* and *access* have negative connotations of ownership and promote the concept of a “winner” and a “loser”, which leads to an adversarial process and perpetuates a perceived anti-male bias in the current system. Those opposed to changing the terminology maintained that it is



Some respondents suggested that the overall approach to services addressing the needs of children in situations of family violence should be based on the following

children's opinions, if they are considered, should not be the sole basis for decisions that affect children.

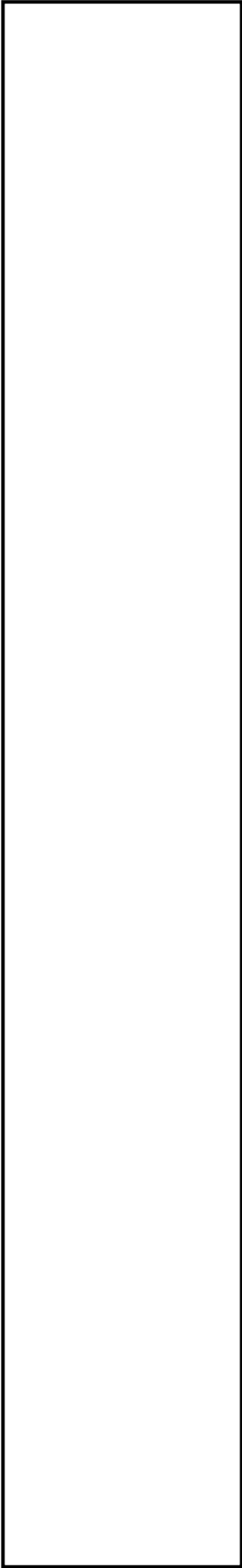
Many young people thought that children should be better informed about their parents' difficult relationship but should remain outside their parents' dispute and should be consulted at the time of separation. Some women's rights organizations and some Aboriginal respondents echoed this position.

Some young people spoke in favour of the possibility of expressing their views to a neutral third party (f

factors that should determine children's level of involvement: age; professional support; ability to provide information; relationship with parents; and emotional well-being. Special needs, the presence detors thalw(i)yfactoionship but e pmneutrld deteriden

INTRODUCTION

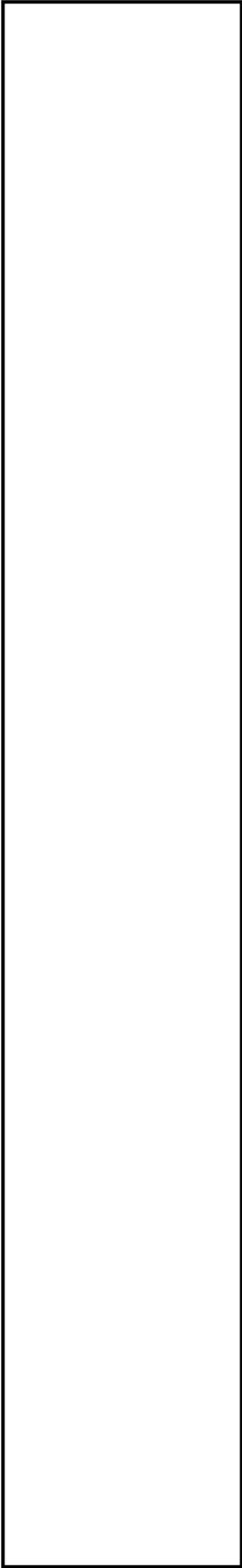
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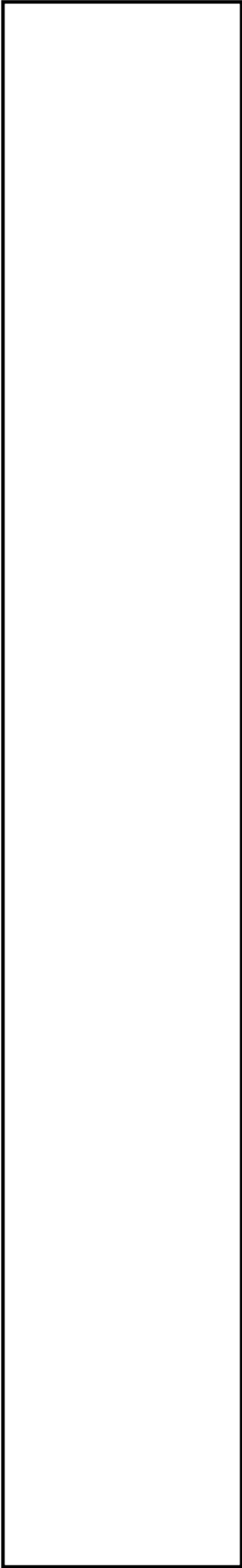


THE CONSULTATION PROGRAM

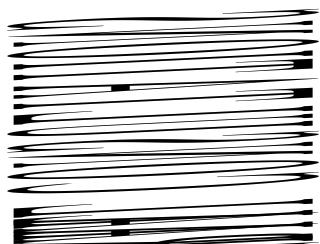
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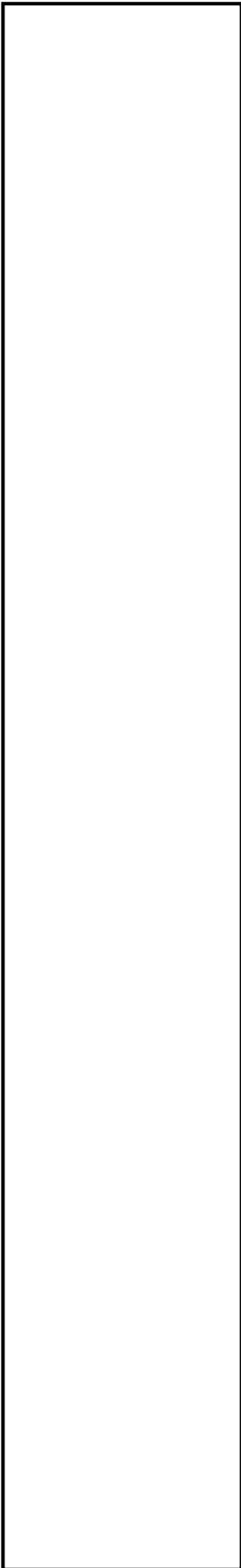


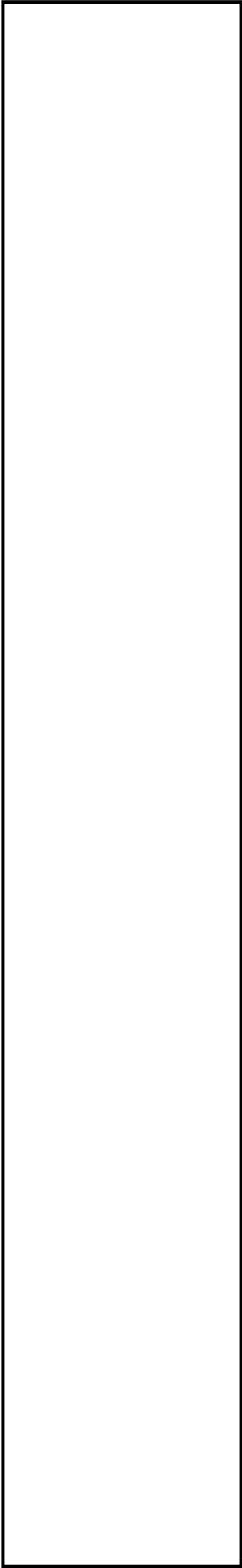


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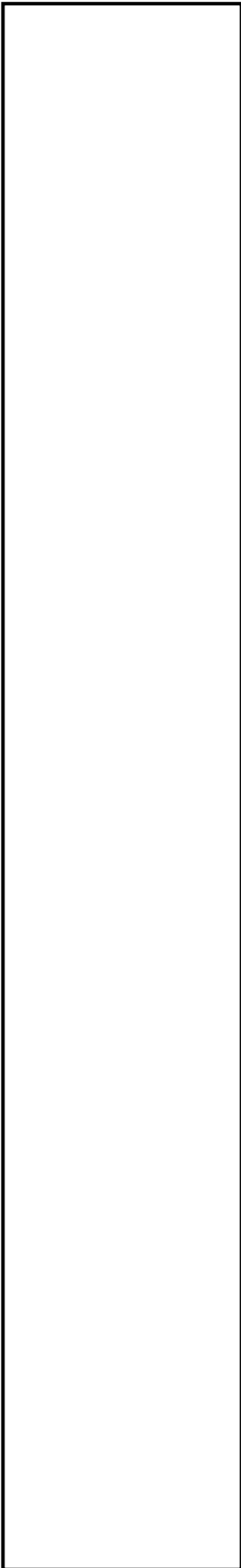
divorce. Many of the youths acknowledged that it is now harder to trust adults. Some participants were clearly burdened by their parents' divorce and had assumed or were given responsibilities beyond their years (e.g. involvement in financial





Services in Rural, Remote and Northern Areas

Respondents in rural and remote areas and the North pointed out that there are many issues particular to the needs of



terms need not have negative implications if parents were to suitably define them and establish a parenting plan and solve problems together.

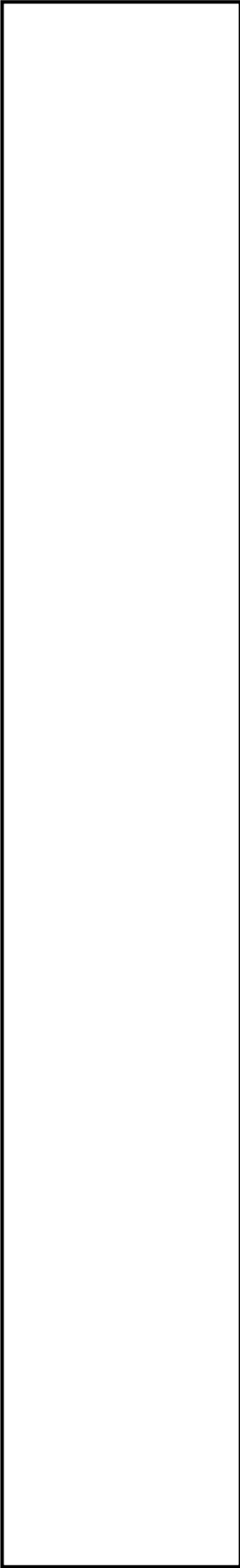
Other points against changing the current terminology were as follows

- € It is effective for the vast majority of reasonable parents. Those parents who are unreasonable will continue to be in conflict regardless of the terminology in the law;
- € A key cause of conflict is child support; therefore, this

nspc

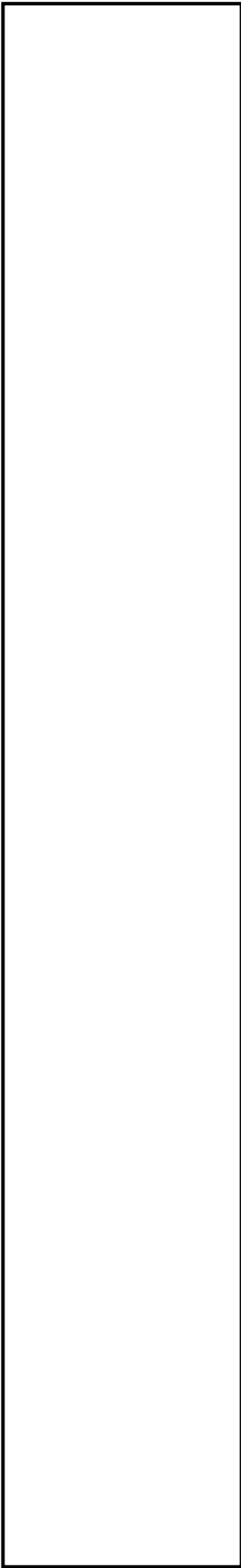
Respondents made the following specific points:

€ The concept of “best interest



€ Changing the terminology would require courts to spend time and resources

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€ It is neutral (it does not imply or assume a 50-50 distribution of parenting responsibilities);

€

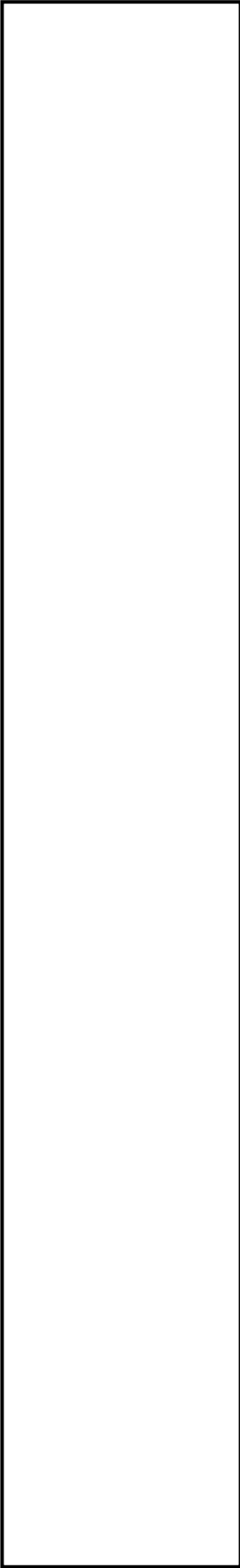
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Other people did not feel that shared parenting presumes equal responsibility for parenting and that this was positive because it allows for flexibility when dealing with exceptional circumstances while still presuming that, in most circumstances, one parent will not have total control over the children.

Others said that it was a drawback that equal responsibility could not be presumed. These people wanted to include the word *equal* (as in *equal shared parenting* or *shared and equal parenting*) to emphasize that parenting responsibilities, ~~decision making the residence and the~~ the following: shared 50

€ A 50-50 split of parenting responsibilities would lower divorce rates and reduce children's vulnerability, which was felt to be higher in single-mother households, in particular when the mother begins

today's society both women and men work and have similar earning power. ~~parents should not have to reside with~~ children between birth and



€ This option is unrealistic as it assumes a preferred parenting situation that is not always realistic or desirable (respond

Alternative Wording

Respondents proposed a number of alternatives, including the following, which they felt were superior to the options offered in the consultation document:

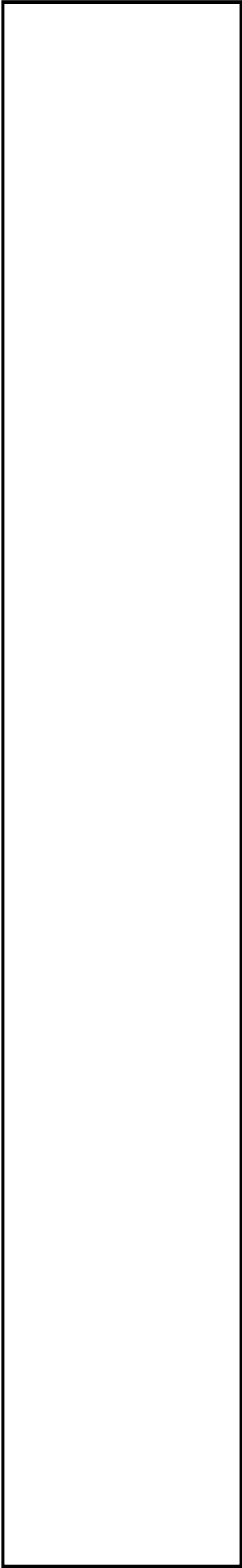
- € Replace *shared parenting* with *co-parenting*, which does not imply a 50-50 split of parenting responsibilities;
- € Replace *access* with *parenting time*, which has fewer negative connotations;
- € Split *custody* into two parts: *custody* and

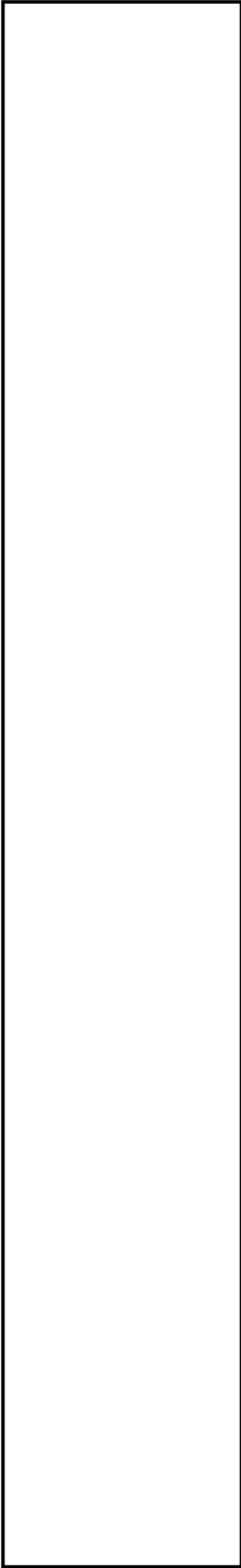
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Issues Facing Children

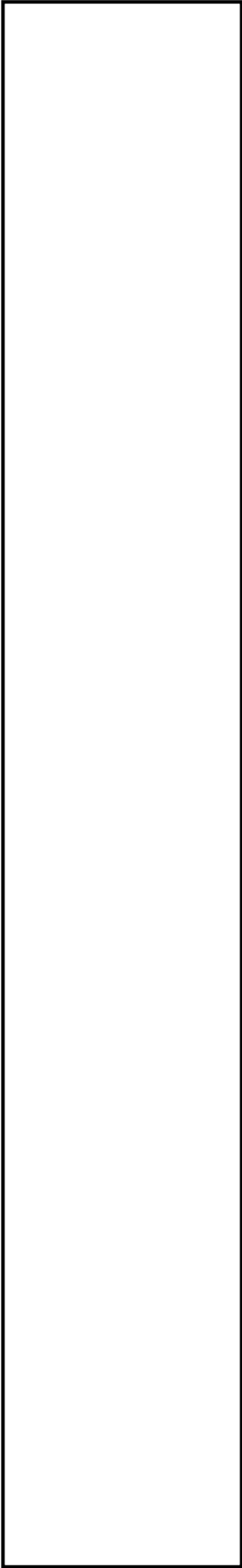
Issues facing children in situations of family violence
nature ns the physical and emotional harm inflicted on children and the
ned to be general agreement among

situations of family violence are commonly
of children losing their physical and emotional safety
children and their basic





impression that such violence is the overrid



Burden of Proof

Two opposing viewpoints are apparent on the issue of how to allocate the burden of proof when family violence or abusive behaviour is alleged. Some people said that when allegations of violence are made, the onus should fall on the

€ Offenders should be required to accept

Those who argued against option 5 suggested that this change would not be acknowledged in the courts. They also felt that this option fails to adequately ensure the safety of children and victims of abuse.

Mechanisms for Ensuring Implementation of Legislation

General Approach

Respondents expressed views on the overall values that should direct service provision. These values, set out below, partly reflect respondents' views on the message legislation should communicate about family violence.

Best Interests of Children. Most respondents said that the best interests of children should be the guiding principle for improving service provision in response to situations of family violence. This would, among other things, mean an increased focus on services that provide direct support for children and their needs.

Preventive. Services need to take a more preventive approach than is currently the case, focusing on educational services and early intervention. Some people proposed a “wrap-around process” to help promote a healthy environment for a family. This approach would bring together family members, neighbours, relatives and service agencies to provide support for both abusers and victims and improve the family's safety, social and financial well-being.

Culturally Appropriate. Services must meet the needs of the diverse cultures and language groups in Canada, in particular in situations of family violence. The system should also feature a more “people-friendly” approach to the legal process, making it less intimidating to Native people.

Gender Sensitive. While most people argued for a gender-sensitive approach to service provision, definitions of the concept varied. Some felt that the current system is gender-biased against men, and that equality for men and women should be sought: they thought it was much more difficult for a father to obtain effective help than it was for a mother. Others argued for a more feminist approach to service provision, bringing greater attention to what was described as the societal bias against women.

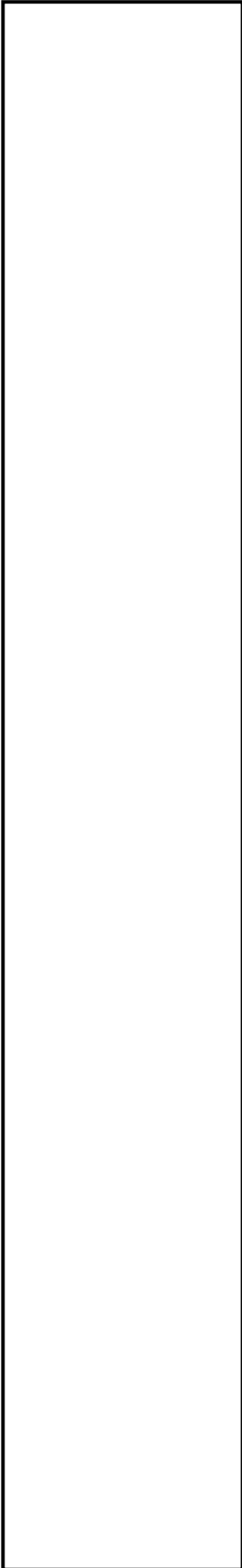
Safe. Many people emphasized the importance of safety while using services, both for children and for spousal victims of abuse.

Structural and Organizational Approach

Many of the suggestions made for improving services concerned the overall structure and organization of service provision, rather than the quality of specific services. The following improvements were suggested.

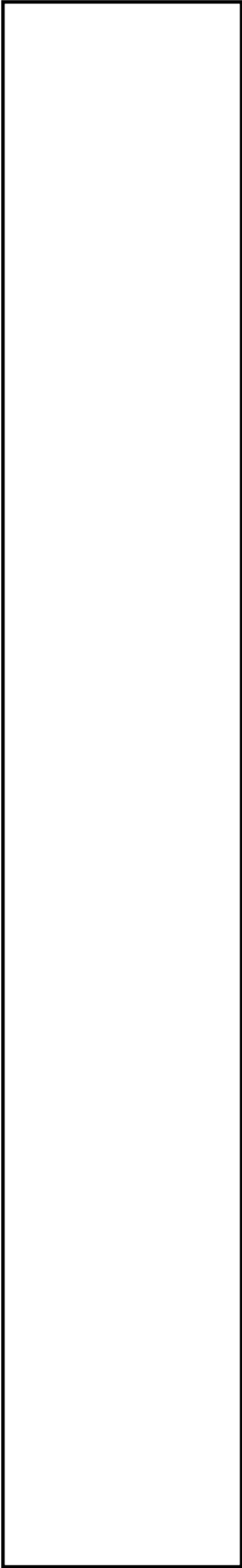
Community-Based Service Provision. Some felt that the local community should play a larger role in providing services than is currently the case. Schools, extended families and community centres were seen as having the potential to protect children from violence and provide them with positive reinforcement.

Adequate Funding. Some respondents strongly emphasized that, without sufficient funding and resources, legislative changes and attempts to improve service provision will fail. It was repeatedly stat



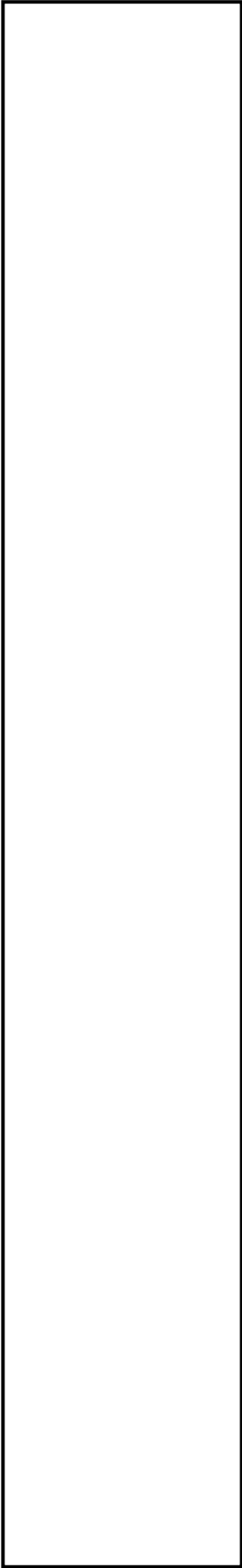
Coordination. Some felt that better coordination among service providers,

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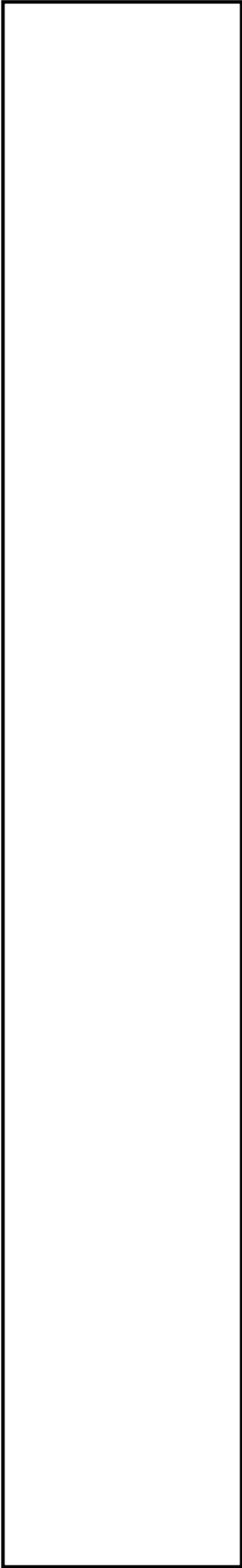


- € An assessment of the high conflict situation must include how the parents function in the rest of their lives. It is important to attend to any mental or behavioural disorders that may affect the parents' parenting ability and to be aware that such things are common in high conflict relationships;
- € Lawyers should notify judges of any criminal court orders so that family court orders may conform to these;
- € There should be communication between the civil and criminal courts, for example, about restraining orders and assault charges;
- € When there are concerns about high conflict, the specific access and custody arrangements should not require any cooperation or joint decisionmaking, nor require contact between the parents;
- € A time schedule should be set for the c

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became *de facto* second lawyers for mothers. The respondents suggested that, if children are to be allowed their own lawyers during the divorce process, these lawyers should have a well-defined role and be properly trained and equipped to receive instructions from their clients and determine their best interests. These respondents also felt that ethical conduct codes were needed for children's lawyers that would address, among other things, the need for neutrality with respect to the children's parents.

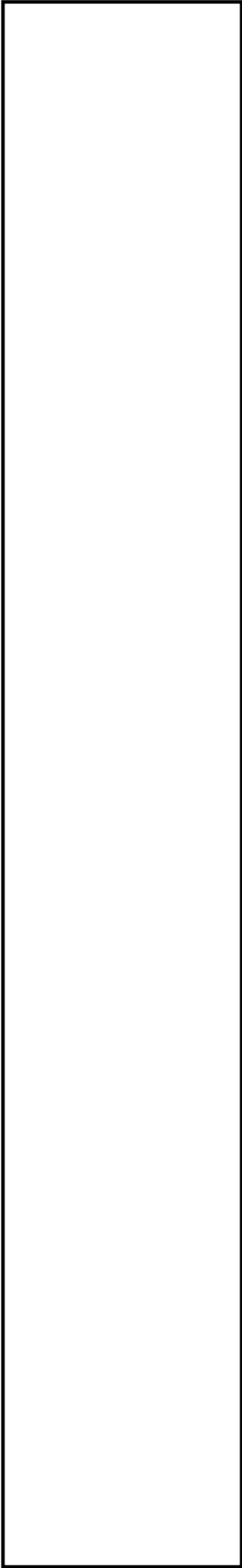
Other respondents said that children should be able to have their own lawyers when they are able to instruct the decision-making process. If custody has been assigned to them, they are unable to

and access:

age: children who are too young or immature would not be able to participate meaningfully in decisionmaking; however, participants did not agree on the age at which children should be more involved (their suggestions ranged from 13 or

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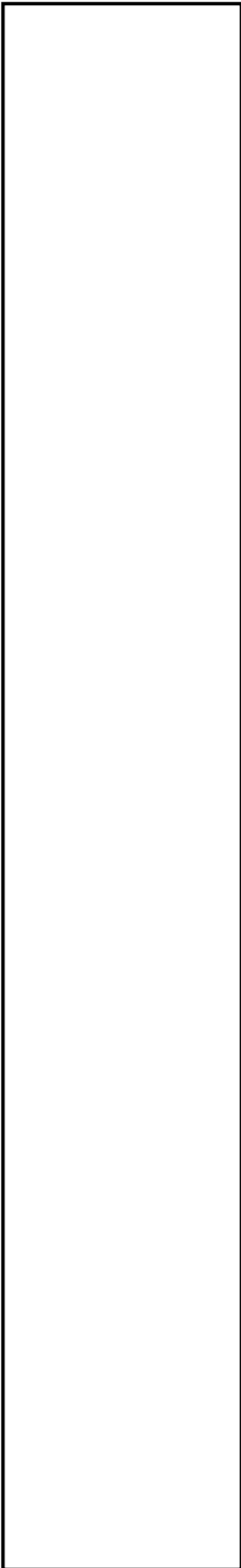
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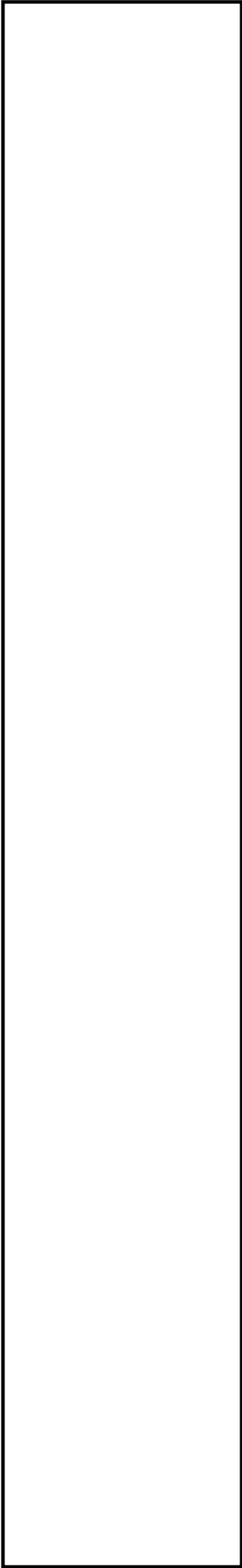
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Child Support Obligations of a Spouse Who Stands in Place of a Parent

Currently, under some provincial and territorial legislation, the biological parent



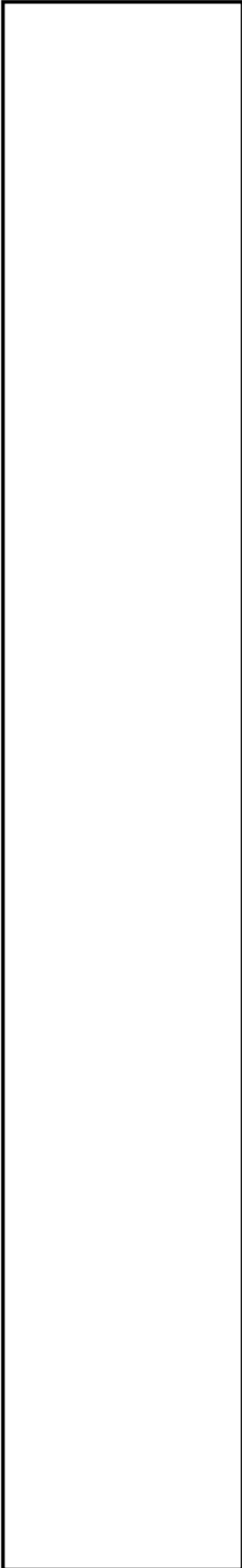


SUMMARY OF THE CONSULTATIONS

Consultations on child custody and access were held in the spring and early

- € children are protected from repercussions;
- € any hearings are private and recorded;
- € children are directly informed of resulting decisions; and
- € professionals involved are informed, trained and have a code of conduct governing their behaviour.

MEETING ACCESS RESPONSIBILITIES



With regard to cost as the determining factor, respondents said that this could

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One participant said that “toys in your office help me to know you like children.” Older

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The fourth theme was safety. Participants described the importance of ensuring that children are protected from emotional and physical abuse. They viewed this as the children's basic right and an obligation on the part of adults.

What (other) professionals did you meet as a result of your parents' separation (e.g. a lawyer, mediator or judge)? Wh

“Don’t try to find out what you did wrong.” Another said, “Your parents don’t hate you. Don’t hate them.” They would urge other young people not to get “caught in the middle” or “take sides.”

Some participants thought children had a responsibility to maintain peace in the household. Others suggested that “if you only see one parent, try to live your life without worrying about the other parent.” They would encourage their friends to stay calm.

In every session, participants repeatedly stated that they did not want parental separation and divorce to be the focus of their life. They said that they would advise friends that “life continues after divorce.” They would encourage their friends to try to be positive and to use activities to distract themselves from difficulties in the home and from parental conflict.

Although in one group there was skepticism about the value of professionals, most participants indicated they would recommend that their friends “talk to someone.”

What advice can you give pa

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access, and that there should be regulations allowing the community to go to court and to have input into custody arrangements. Participants said there should be legislation to compel judges to consider Aboriginal values in custody disputes between Native and non-Native parents.

Financial Support and Custody Arrangements

Some standards are in place to effectively assess who is capable of providing financially for children, but participants expressed concern a

Culture

The Métis, Inuit and First Nations are Canada's Aboriginal people. Each group or First Nation

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high conflict situation. In addition, a service to inform individuals of the roles and responsibilities of each parent early on in the separation or divorce proceedings would reduce potential conflict.

Judges should be educated and better informed about child development, the impact of divorce on children, and various family systems. Judges appear to treat many family units and situations as equally, by habit,

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primary home for the children and that the parents do not share the responsibilities for the children. These participants said that children ultimately need one primary caregiver to create stability. Some participants said that option 3 would not be workable when distance was a factor, because sharing parenting responsibilities would be difficult when the parents live in different parts of the country.

Participants provided additional comments on option 3:

- Familiarizing parents with these words would make them non-threatening; therefore they must be clearly defined.
- Parents and children should have the same understanding of the responsibilities.
- A practical understanding of the consequences of assigning parenting responsibilities must be provided.
- Equal responsibilities should be an option, depending on the circumstances.
- Children should be involved in the decisionmaking.
- More support is needed regardless of the terminology suggested.

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ages of replacing ONc current terminology and introducing ONc term and concept of *shared parenting* mentioled above, participants suggested ONc following:

- There should be screening for family violence.
- The terminology should be more positively worded.
- Shared parenting does not necessarily mean equal parenting or equal residence.
- The term should include ONc concept of equal shared parenting or shared and equal parenting.
- t in ONc best inteests of ONc child.
- Counselling should be accessible, and the children’s needs should be considered.
- Models should be prepared that parents can choose and build upon.

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Table 2: Organizations Represented at the Edmonton Workshop

Table 2: Organizations Represented at the Edmonton Workshop (cont'd)

Maintenance Enforcement

INTRODUCTION

Six workshops were held in British Columbia on custody and access: in Vancouver on

British Columbia

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strongly suggested the need for more education and improved services for parents focusing on children's needs.

Services and Supports Needed

Participants noted that considerable support is needed for both separating and divorcing parents and for children. Concern was voiced about the role and operation of the current adversarial court system, which seems to focus on parents' rights rather than their obligations to their children.

Many participants noted that some services are available but are not well known or advertised. Participants also said that these services are quite fragmented, with no particular way to find out what services exist and how to access them. Several

Option 1

Keep the current legislative terminology.

Many participants said that the current terminology must be changed because the word *custody* denotes ownership and the term *access* denotes visitation. Others said that if definitions of these terms were to be changed, they would have to be narrowed so that people could understand and agree on what they mean; therefore, terminology should not be changed until definitions and concepts are agreed upon.

Option 2

Clarify the current legislative terminology: define *custody* broadly.

Some participants said that this option adequa

Option 5

Replace the current legislative terminology: introduce the new term and concept of *shared parenting*.

Some participants preferred option 5. They said that shared parenting and joint custody should be presumed unless there is reason to believe that one parent is less suitable than the other. The concept of shared parenting allows the presumption of equal

Many participants raised the point that children should not be pawns in the separation or divorce. Furthermore, children should not be put in

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Children must feel at liberty to

solutions. Others suggested qualifying the use of such a list of factors, based on certain conditions.

Reasons why the Divorce Act should not list factors to consider in determining the best interests of children

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€ Others suggested that access agencies engaged with families should be able to liaise with the courts in some way, in order to provide feedback to families, so they don't have to rely on lawyers to report back to them.

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who are victims of violence should not have to negotiate with the other parent when they are

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New Brunswick

during the separation or divorce. One suggestion for accomplishing this was to use a child advocate. Although children need to be informed about the situation and th

Representation of Children

Some participants felt that children should be represented in court by a lawyer to ensure that their

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Appendix A: Recommendations of the Neilsen Report, Spousal Abuse, Children and the Legal System

ount concern in law should

INTRODUCTION

Two consultation sessions on the new *Divorce Act* were held in Newfoundland and Labrador in May and June 2001. These consultations were sponsored by the federal and provincial departments of justice and held in Goose Bay, Corner Brook, Gander

Newfoundland & Labrador

- members of the extended family and how they deal with separation issues;
- the presence or absence of viol

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CHILD SUPPORT

The recent changes brought about by the child support guidelines of 1997 are generally welcomed and supported.

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Acknowledgments

This brief was researched and written by Kirsten M. Schmidt, MA(HeEd) with Joyce Hancock (Provincial Advisory Council on the Status of Women), Helen Murphy (Provincial Association Against Family Violence), and Elaine Wychreschuk, LLB. Assistance was provided by Rebecca Woodrow, Melanie Parsons, and Joyce Aylward.

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Gateway Women's Council, Port Aux Basques
Iris Kirby Transition House, St. John's
Gander Women's Council, Gander
Mokami Women's Council, Goose Bay - Labrador
Labrador West Women's Council, Labrador City - Labrador
Libra Transition House, Goose Bay - Labrador
St. John's Women's Council, St. John's

and the other participants of the Co

Executive Summary

The purposes of this brief is to present women's realities of custody and access in Newfoundland and Labrador and to provide recommendations to the Special Joint Committee on Custody and Access.

Central to this document are our feminist values and beliefs. These inform how we see the world and ho

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We have undertaken this brief and presentation jointly because we feel that the mandate of the joint committee and the recommendations which follow from this consultation process will have serious impact on women's equality and access to fairness and justice.

We recognize the imbalances in power between men and women, and adults and children. These imbalances are played out very strongly in the family justice system where the contributions of women as the primary caregiver is not acknowledged and is often undervalued.

We recognize that women experience even greater discrimination based on Aboriginal status, disability, sexual orientation, race, and immigrant status.

little access to social workers, long waiting lists for counselling and mental health services, and minimal access to

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the decisions made in court weigh the best interests of the child not the needs and rights of parents.

The ideal family does not exist at the time of divorce, especially in divorces that involve custody disputes. When a family unit changes as it does in separation and divorce, there is often a period of grieving and loss.

"I've got a lot of problems with trying to get maintenance.
Actually, my ex owes me about

- 3. Sections 16(10) and 17(9) of the *Divorce Act* which states the 'friendly parent rule' should be removed**

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of violence increased in 35% of cases after separation. "Custody and access

disputes often become tools for batterers to further abuse women and

Legal System

Many of the women in the focus groups expressed concerns about the legal system with regards to custody and access. Presumptions adopted by

Women's experiences with supervised access was negative. They reported that they need supervisors who are trained and aware of power dynamics in relationships. Further, supervisors should be trained staff of the courts, not members of either parent's family. When They

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Recommendations

1. Legislation should articulate a presumption that custody of children should be with the primary caregiver of the children. This should be based on past history of parenting.
2. Primary caregiver should be the person who has the primary decision making authority. This parent has the most involvement, the most experience, and the most knowledge with respect to

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INTRODUCTION

On June 14, 2001, the Northwest Territories Department of Justice sponsored an in-person consultation on custody and access issues. The purpose of the session was to get input into possible leh—

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- € Issues of self-government: laws need to be addressed by Aboriginal communities when they devolve their own jurisdiction.
- € Legislation will be changed, either through legislation reform or

- € Parenting education prior to mediation.
- € Who mediates in small communities?
- € Access for all communities.
- € This is more than just a justice issue; involves many other government departments.
- € Tribunals to adjudicate, rath

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Recommendations

- € Draft a proper order—specific and detailed.
- € Mandatory review of custody order six months later.
- € Legislate required information for custody orders.
- € Can there be a review officer who reviews the order after six months and decides whether it should go back to court or not? Would the dynamics of the relationships effect this? Would a
ma-6.1(e0.2203y/TT9)Tj9 y/TT9 Would a

- € Section 9 of the child support guidelines need to provide more direction:
 - What is the history of financial responsibilities?
 - Who pays for what?
- € Shared custody causes disagreements where there were none before.

Recommendations

- € Section 9 requires more direction to the cour

- € Adults can go for follow-up but youth cannot.
- € Should be consulting with youth, since there is going to be paid work for youth.
- € Abduction: no help unless you have the dollars.
- € Raise awareness and educate people about their rights so they can make choices. Legal education needed for the public and judges and lawyers.
- € Some judges talk down to people. The court personnel as a whole should be educated as well, particularly on the dynamics of small community living.
- € Need genuine consultation with children on matters of custody and access.
- € Grandparents and parents try hard to keep things going, but sometimes judges order contrary conditions.
- € A neutral party is needed to help with investigations when custody disputes come up. (In Newfoundland, a home study is done by the social worker in a custody dispute.)
- € Ask the kids about the process (i.e. what is

€ Eduiating parents and children about their responsibility after separation.

€ .(22)-6on.

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- € How does changing terminology affect the meaning and use of precedence in N.W.T. law?
- € Rights versus responsibilities or rights *and* responsibilities.
- € Keep the current wording and provide more definition about what it means.
- € Key is changing the mind set.
- €

- € Develop custody orders that are clear, easy to understand, and provide appropriate access.
Make sure schools and agencies understand the orders.

- € Consider family violence in court decisions, especially when there is evidence of violence but

Table 1: Participating Organizations

Education

It is in children's best interests for them and their parents to have access to educational resources at all stages of the children's development. Not only should parents and children be educated but also those making decisions that affect them. It was suggested that judges be more informed about the best interests of children in various situations.

Time as a Constraint

Timely decisionmaking is an important factor for children. Children's perception of the length of the process is different from that of the parents. The instability that would exist for children throughout a long separation or divorce process is not in their best interests. There should be sufficient resources available to ensure that the process can be not only informed, but also timely. The resources provided should include sufficient legal aid, parental capacity assessment.

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Introduction of any new terminology must not gloss over violence in a relationship. Participants felt that violence should be a factor in defining new terminology. Concerns about violence in a relationship should not be the main focus of the

Enforcement and Resources fo

Table 1: Organizations Represented at the Nova Scotia Workshops

Bryony House

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Fiord and Resolute, any children older than five must be asked where they prefer to live after a separation or divorce. All participants agreed that the children's feelings should be taken into account

Respecting Aboriginal Customs and Applying Southern Family Law

Participants pointed out that government regulations do not respect Aboriginal adoption customs. They also highlighted the importance of grandparents, and that traditionally the grandparents would adopt a child if necessary after a family break-up. Grandparents have said that social services take children away too soon, before the tr

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Some participants said the family violence issue could be resolved outside the court system through traditional methods, unless the children were at risk. Others felt that more social workers and psychologists were needed to support children in situations of family violence. However, it was pointed out that social workers are overburdened and often mistrusted, and that psychologists are expensive.

support of both parents. They also

Communication

Parents must establish open and honest communicati

divorce or separation. Others felt it would not always be possible for each parent to have equal involvement. They noted that when the parents cannot get along and communicate they probably will not be able to agree on a parenting plan. They also noted that adequately assigning parenting responsibilities within a shared parenting framework might prove difficult, and therefore some responsibilities might not be met.

Some participants said that when the parents are not able to develop their own parenting plan, better support services should be available from the community. A more in-depth discussion of specific suggestions made by participants with regard to services is provided below.

Accountability

Participants felt that parents must realize that they are accountable

advocated developing new terms (avoiding t

- providing clear, comprehensible and accessible information on divorce and separation procedures, the legal system and support services.

Training and Regulation (L-1)

In response to this point, some women's groups said women are still more often primary caregiver, and traditional generalizations about men's and women's roles are

Many participants also felt that we must stop negative stereotyping of single parents, both male and female.

Sensitivity to Special Needs and Culture

Participants felt that services must be available to meet the different needs of parents. They highlighted the need for services that fulfil the following:

- address the needs of substance abusers and mentally ill;
-

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Community-based Services

Some participants felt that more emphasis should be placed on the development of community-based services specializing in divorce and separation and parenting, as well as counselling and mediation for parents and children. Suggestions for such services included:

- resource centres for parents, so they can educate themselves about the legal process;
- a comprehensive community-based clinic outside the legal system that specializes in mediation of parents and children;

Some participants were against introducing the term *shared parenting*. They argued the following:

- In other countries, the implementation of this concept has resulted in increased in conflict or problems in which when violence is an issue. For example, in Australia, violence is not adequately addressed under this model, partly because judges are not properly informed and

- Some felt that parent-parent violence did not indicate that parent-children violence was necessarily a concern. Others felt that parent-parent violence was enough of an indicator that the nt-childrare or could be at risk of violence and, therefore, should be protected.

Participants emphasized that nt-childrmust be protected from violence no matter what. They highlighted the negative impact of violence on nt-child, including that exposure to violence can

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Recognizing the Seriousness of Violence

Participants generally felt that the legislation mu

judges and the legal system cannot m
the situation until the allegations

Some participants highlighted the nee

seriousness of the violence, which would have an impact on the level of access granted. They felt there should be more accurate assessment of each family's situation before granting or withdrawing access privileges.

False Allegations

Men repeatedly raised the issue of false allegations of violence resulting in innocent parents (most often fathers) being denied access to their

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Table 1: Organizations Represented at the Ottawa Workshop

Child Welfare League of Canada
Child/Youth Advocate
Children's Aid Society
ENDES
Entraide Pères-Enfants Séparés
Everyman Magazine
Family Service Canada
Father Craft
GRAND Society
Single Father's Network

Table 2: Organizations Represented at the Toronto Workshop

African-Canadian Legal Clinic
Canadian Children's Rights Council
Canadian Committee for Fairness in Family Law
Catholic Children's Aid Society
Centre for the Study of Civic Renewal
Children's Voice
Community Legal Education, Ontario
Divorce and Defense Strategies
Equal Parenting of Durham
Equal Parents of Canada
Ex-Fathers
Families in Transition, Family Service Organization of Toronto
Family Conflict Resolution Services
Fathers are Capable Too

Table 2: Organizations Represented at the Toronto Workshop (cont'd)

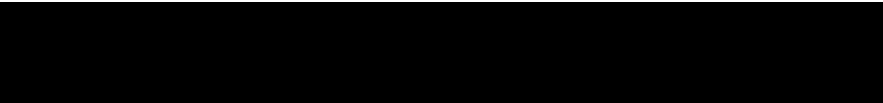
Fathers for Justice

Fathers with Rights

GRAND Society

Human Equality Action and Resource Team

Justice for Children and Youth



Non-Custodial Parents of Durham Region

best interests include their emotional health, and for this reason they should not be involved in the court-based divorce process if at all possible. However, it was also felt that children should be included in discussions about the future (when this is appropriate for their age and level of maturity), although not in a decisionmaking capacity. Children also need to maintain their connection to the wider community.

Children need resources (in both official languages) to help them cope with the divorce and the

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Shared Parental Responsibility

The term *shared parental responsibility* also raised some concerns. Participants said that the term is just as ambiguous as *custody*, and that in a worst-case scenario (for example, involving family violence) the term *shared parental responsibility* might not allow for the legal protection of the child from one of the parents. The word *shared* also implies property or ownership. Some participants said that this option would limit the decisionmaking powers of the primary residential parent, which they saw as a disadvantage.

Shared Parenting

Participants said the term *shared parenting* might imply a 50-50 parenting arrangement to some people and might, therefore, affect child support decisions. Other participants said that this terminology would make it disproportionately difficult for low-income women or others who would find it difficult to go through a lengthy court process to clarify a shared parenting arrangement.

Impact of New Terminology

In general, participants seemed to feel that wh

Ensuring Children's Safety

Education

Participants said that people in the wider community who come into daily contact with families should be better educated about family violence issues (including the *Victims of Family Violence Act*) and appropriate responses. Specifically mentioned were justice system workers and members of the Attorney General's staff. It was also noted that police intervention has successfully mitigated violence, and that community support is very important when resolving issues of family violence.

HIGH CONFLICT RELATIONSHIPS

How well does the family

would lose needed income, and that sometimes parents can incur significant costs to exercise their access, even when that access is not for more than 40 percent of the time. Participants also noted that the situation becomes even more complicated in blended families.

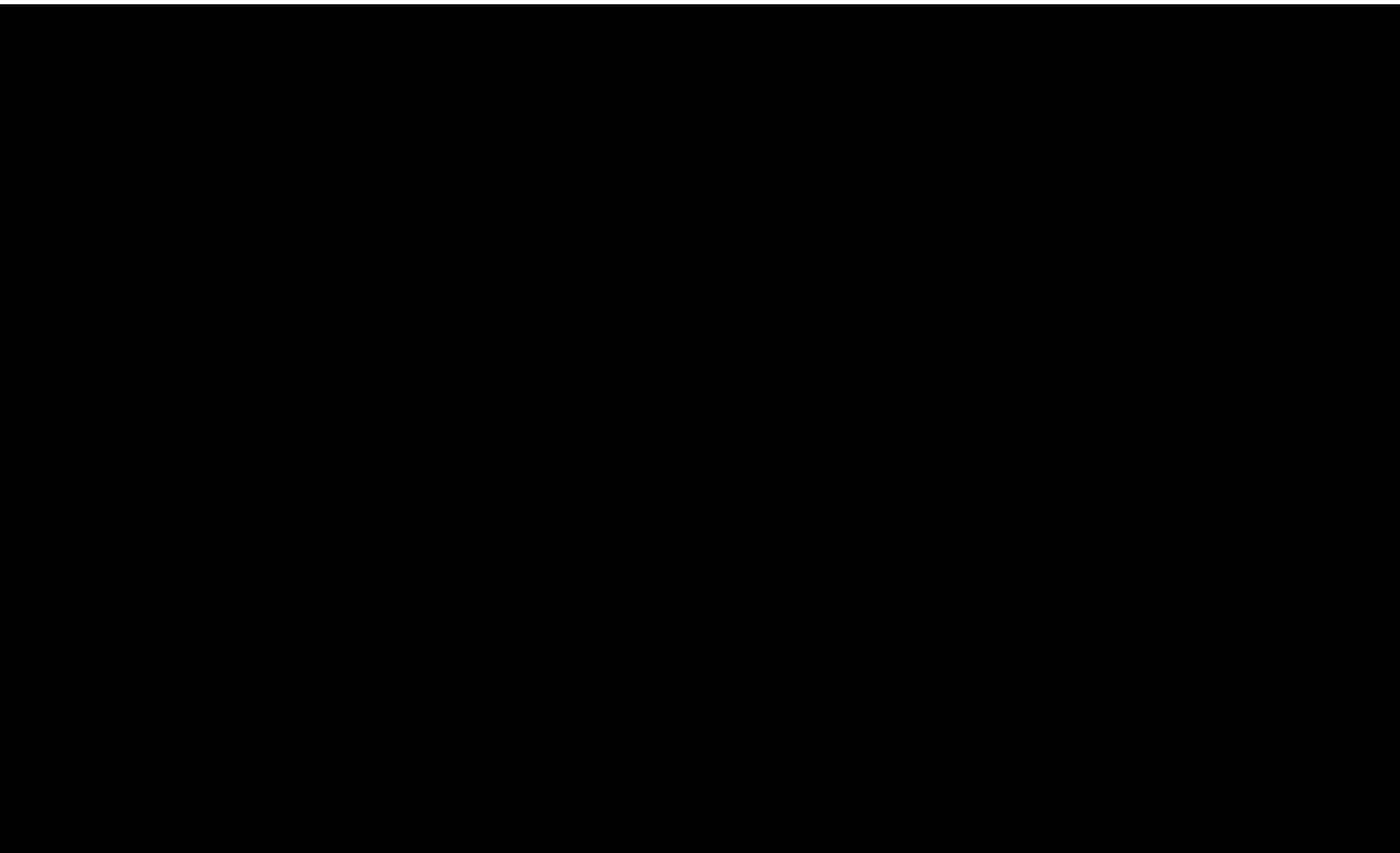
Time as a Deciding Factor

Arguments in favour of using time as the deciding factor were that when a parent has custody more than 40 percent of the time, it implies that

Alternative to the Current Method is to use the minimum standard of living for a child (derived from Statistics Canada information) as a basis for the child support amount. This would ensure a basic standard of living for the children in shared custody situations and would avoid the current problem of the receiving parent's standard of living decreasing to an unacceptable level because he or she received less child support. Another suggested option was to consider expenses as a proportion of overall income, rather than simply net expenses. This would recognize that one parent may have a significantly higher income than the other and, therefore, be able to spend more on the children.

On the subject of deviating from the existing guidelines in a shared custody situation,

Table 1: Organizations Represented



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THEMES 1 AND 2. CURRENT SITUATION AND REVIEW OF SERVICES

This topic was presented differently from how IER had planned it in order to take into account the problems that are specific to Quebec, and because the workshop mainly brought together specialized practitioners as well as representatives of agencies involved in the field. It was

They also agreed there should be compulsory information and education sessions about the redefining of parental roles, the effects of separation on children and, in general, the legal and psychological effects of separation and divorce.

Question 1.3 Should parents who are separating or divorcing be encouraged to stipulate

- The terms represent a poor start for the future.
- They give the impression that there is a winner and a loser, but the children are the real losers.

A consensus was reached on the need to eliminate the expression “le tribunal condamne...”
[“the court condemns...”]

In its written submission, the Chambre des notaires stated that because the terms *custody* and *access* evoke conflict, mediators have for some time opted for the expression *sharing parental responsibilities*, which includes, in particular, th

that option 3, which reflects the situation in Quebec law (except that the expression

that decisions concerning them be made in a climate of cooperation, respect and dialogue, rather than conflict.

“A climate of respect and not disparagement is necessary, because it is clear that what damages the children is conflict. We have to work on a climate of give and take.”

This suggestion reflects certain concerns expressed by the young people in the youth focus

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All the participants denounced the glaring absence of government budgets and financing. This constraint affects current services and casts serious doubt over all future projects that need to be established if there is ever to be hope of responding effectively to this important problem.

One participant stressed the importance of creating protected places for children through “family shelters.” Timing is often important and children can be deprived of one or the other of their parents simply because there is a lack of services. One participant said that in cases of emergency and swift need to be considered, which implies fast-tracking of legal proceedings in particular.

HIGH CONFLICT RELATIONSHIPS

Question 4.6 In high conflict situations, should the law:

- remain unchanged?
 - expressly state that the judge can take into consideration the fact the relationship is very contentious?
 - require the judge to take account of the fact that the relationship is high conflict?
 - oblige the judge to restrict or control the children’s contact with the non-custodial parent and limit his or her parental role when the couple has a high conflict relationship?

From the outset participants had difficulty linking a high conflict relationship and spousal violence in the broad sense. One participant suggested that the concern was with cases of misinterpreted or misinterpreted conflict. In other words, **participants again placed**

THE PARTICIPATION OF CHILDREN

Question 5.1 Do you think the family law system currently takes sufficient account of children's opinions in decisions

Administration of the study of legal pr
because they are too

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Question 6.1 Do you think the family law system sufficiently encourages respect for access

The participants pointed out that asserting access rights in the judicial system has an enormous monetary cost, beyond the emotional cost.

The Barreau du Québec maintained that family law must be humanized and mentioned the work already done in this regard and its 1997 report *Possible et actuelle, une plus grand humanisation du droit de la famille*.

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- They also suggested the “**case-management**” approach, a new ne following the situation as it evolves and providing a link between system.
- **Mediation service should be attached to the supervised access** integrated and useful follow-up is carried out in J-2m6 (volso the

However, in terms of coercive measures, which were far from receiving universal approval, **all participants were very hesitant about the contempt of court proceeding**, which is considered inappropriate and even very harmful when, for example, a parent could use this conviction

- **Mediation should be used with different conciliation models**, so it is available in more

dominate the research that needs to be continued and expanded: child support obligations of parents with children from subsequent unions, additional costs related to sp7 T9 custody and child support for children at or over the age of majority.

Theme 1. Child Support Obligations for Children of Subsequent Unions

Question 7.1

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All participants agreed that the principle of “ability to pay” implies, without any equivocation, that when this ability exists, the child support should not be

Important Additional Specific Comments

The participants were unanimous in saying that there should be perfect harmony between civil and tax laws in the treatment of shared

There is no foundation in the law for this administrative policy, and everyone seems to be against it. When the parents agree that only one of them will ask for tax benefits and family allowances, the subsequent request is in complete agreement with the terms of the Act, and this parent can then have sole right to all the benefits and allowances that can be determined with respect to the criteria of incomr and age.

In such a situation, the tax authorities have no argument for reducing this right in proportion to the custody time. When both parents agree on this distribution, the authorities should be bound by it. And, if both parties request these advantages and cannot agree on the distribution, then, and only then, should the authorities

- Once the parents' income has been established, the children should benefit from presumption of the cost of their needs according to the model, as well as the presumption of the parents' ability to pay, as a function of the distribution of their income.

Many objections were raised by other participants. The Ordre des psychologues is especially clear on this point: just because a child has reached the age of majority does not mean that the child is automatically independent and autonomous in all respects. The "children of a separation" must already cope with their parents' situation (even if they are not always direct witnesses to their conflict). They must not now be obliged to sue their parents.

This would also have the effect of forcing the parent with whom negotiate rent with his or her children.

Despite the fact that the participants affirmed that majority-age children must not be treated like little kids, but rather be led forward to autonomy, as this is one of the criteria used to determ

**FEDERAL-PROVINCIAL-TERRITORIAL CONSULTATION
ON CUSTODY, ACCESS AND CHILD SUPPORT**

Hôtel Québec, June 8, 2001

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Custody, Access and Child Support

Putting Children's Interests First

Discussion Guide for Quebec

April 2001



I. Reorganizing parental roles at the time of separation or divorce

1. THE EXERCISE OF PARENTAL AUTHORITY

When parents separate or divorce, they must decide the way in which they will assume their parental roles and responsibilities from that time on. They face a massive number of very concrete questions, such as:

- With whom will the child live?
- How will the choice of schools be made?
- Who will organize the child's vacations?
- Who will look after health concerns?
- Who will decide about religious or moral instruction?
- etc.

Most couples who are separated or in the process of divorce manage to get along and determine by themselves the new conditions of their life as a parent. Others, however, have difficulty agreeing on some questions. In the case of spousal or family violence, mental illness, problems

for establishing the rules of civil procedure and the administration of legal services in its area. All of this makes the legal context quite complex.

When a court grants custody to one parent, the other parent can generally obtain access. In Quebec, however, that does not mean that the non-custodial parent loses his or her parental authority. The court can, in the interests of the child, modify this authority by according more or fewer powers to each parent. But allocating custody to one parent alone does not deprive the other of authority. On the contrary, Quebec legislation is based on the principle that even after their divorce or separation, the parents continue to exercise their parental authority jointly.

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Sylvie Matteau

II. Exercising and complying with access

Both parents must comply with the conditions of the written agreement or the custody and access order. Problems arise when parents fail to comply, particularly when they refuse access or do not exercise their access. This can occur for various reasons, especially because of a poor

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concerning the children. Mediators permit the parties to distinguish between their spousal relationship, which is ending, and their role as parents, which endures.

During mediation, parties can discuss the methods and criteria that will govern future decisions

Indeed, these services are provided by community or non-profit organizations, which are often not financially secure.

Programs on parenting after a breakup

Seminars on parenting after a breakup (two two-

Before examining this argument more thoroughly, it is important to keep in mind

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common-law spouses, legal separations and annulments. In these same situations, neither parent may be presumed to hold a mandate for the child at or above the age of majority. It is pertinent to note that 50% of support orders now pertain to family matters covered by civil law, i.e. 10% for legal separations and 40% for common-law spouses.

In 1989, out of 37,612 new files pertaining to family matters, 62% involved divorce and 38%, legal separations, marriage annulments and common-law spouses. Ten years later, 1999 figures indicate that out of 37,075 new files in the same area, the percentage of divorce

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Extended Family

Participants noted the need to foster and nourish the children's relationships with their extended family. Grandparents and siblings can provide support and continuity in children's lives. However, the extended family must also be aware of the children's needs for ongoing communication and support, keeping the children out of conflicts and providing a safe environment.

All of this would demonstrate commitment and respect in role modelling. Some participants noted that children should not be negatively affected by economic issues between their parents. Also, financial payments should not be tied to access. Parents have an obligation to ensure that their children maintain contact and relationships with extended family members. Extended family members should also show the same rules of respect. It was mentioned that common-law and multiple relationships may also create problems for children.

Education and Support

Emotional Care

Parents should give their children unconditional love. Participants stressed that meeting the emotional needs of children includes providing love and nurturing the children, delaying personal needs for the sake of the children, letting go of anger, refraining from abuse, forgiving the other parent and fostering in the children a sense of belonging. Some participants felt that parents must recognize that kids are not “divorceable” and still need contact with the other parent and with other children. It was mentioned that parents who are together do not compete for the love of their children; likewise separating parents should refrain from competing. Providing a nurturing, comfortable and stable environment i

- € Justice Department involvement in intakes, interviews with parents and children, referrals and recommendations (e.g. for counselling);
- € custody and access assessments out of court (imp

The importance of sufficient funding was also emphasized. Insufficient funding was seen to cause delays, such as with

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FAMILY VIOLENCE

What are the issues facing children who experience family violence?

Allegations of Violence. Some participants suggested that false allegations and the alienation of one parent are also forms of emotional abuse; others cautioned that people should not be deterred from making allegations of abuse. Many participants felt that all allegations need to be investigated seriously. Some participants indicated that laws to deal with family violence are in place, but are not being enforced. It was suggested that all levels of family abuse issues must be considered in family law matters. Some felt that legislation should include consequences for false allegations. Some participants said that legislation and judges must consider the future and overall development of children (i.e. are we perpetuating the cycle of abuse by allowing family violence to occur?).

A number of participants preferred an approach in which legislation on violence reflected a balance between “setting the bar too high” (perfection leading to system overload) or too low

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ROLES AND RESPONSIBILITIES OF PARENTS

“winning and losing” mentality, and focus primarily on how to get the “best deal” for their clients. In such cases, the participants felt that lawyers frequently aggravate the problem.

The lawyers said that a less adversarial system, but one that still allows individuals going through a mediated separation or divorce to have an advocate acting on their behalf might work better than the current court system. As an example, participants mentioned lawyers in Alberta who will support clients in mediated or other non-confrontational processes, but will not take their case to court.

New Terminology

Using Positive Language

Participants felt that language is problematic. Many terms, such as *sole*, *sole custody* and *access*, have negative connotations and are adversarial. As alternatives, participants preferred such terms as

Participants felt that a better long-term approach might be to



APPENDIX D:

List of Briefs and Background Materials Received

Table 2: Briefs Received From Other Organizations (cont'd)

Organization	Title of Brief
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Table 3: Background Materials Received

Organization	
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APPENDIX D: LIST OF BRIEFS AND BACKGROUND MATERIALS RECEIVED