



The Practice of Family Law in Canada: Results from a Survey of Participants at the 2016 National Family Law Program

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Executive summary

Introduction

The National Family Law Program (NFLP), a high-profile, four-day biennial conference organized by the Federation of Law Societies of Canada, is the premiere national forum for members of the family law community to come together to learn about and discuss developments and issues in family law. It has, in the past, provided a unique opportunity for the Department of Justice Canada and the Canadian Research Institute for Law and the Family to obtain data on the experience and caseloads of family law lawyers and the judiciary.

The NFLP attracts hundreds of lawyers and judges from across the country, and was most recently held in St. John's, Newfoundland and Labrador between 11 and 14 July 2016. Recognizing that both the Department of Justice Canada and the Institute had an interest in surveying participants at the 2016 NFLP, the Federation asked the two groups to work together to maximize responses and minimize the burden on their participants. Accordingly, the Department of Justice Canada contracted the Institute to administer and analyze a survey on current issues in the practice of family law in Canada.

Methodology

Two electronic surveys were developed using FluidSurveys, a Canadian-based online survey service—one for lawyers and one for judges. The purpose of the surveys was to obtain current information on the characteristics of cases handled by family law practitioners in Canada, and to obtain information from both lawyers and judges concerning current family law issues.

Invitations with links to the surveys were distributed to conference registrants on 7 June 2016, followed by a reminder on 20 June 2016. During the conference, representatives from the Department of Justice and the Institute jointly presented preliminary data from the surveys to conference attendees. Another reminder to complete the surveys was distributed by email on 14 July 2016, and the surveys remained open until 3 August 2016.

A total of 458 delegates registered for the conference in St. John's. Surveys were received from 217 participants, resulting in a response rate of 47.4%. This report examines the results of the lawyers' and judges' versions of the NFLP 2016 Survey on the Practice of Family Law in Canada.

Highlights of survey findings

Demographic information

- Almost three-quarters of lawyers responding to the survey were female (72.5%); 27.5% of lawyer respondents were male.
- Respondents were most likely to report that they work in Ontario (20.7%), followed by British Columbia (18.4%) and Alberta (18.0%).
- The majority (70.0%) of respondents were lawyers in private practice, while 18.0% were judges, and 11.6% were lawyers in government, an agency, or a legal aid clinic.
- Lawyers indicated that they had been practicing their profession for an average of 19.9 years; one-half of lawyer respondents (50.4%) had been practicing for 20 years or longer.
- On average, lawyers said that 84.2% of their practice involves family law matters.

Case characteristics

- Lawyers reported that another party self-represented for most or all of the life of the file in 20.4% of their cases in the past year.
- Lawyers indicated that in 32.9% of their family law cases there is an interim order that is, in effect, the final judicial disposition.
- When lawyers were asked which issues in a variation case are most likely to require a trial and judicial decision to resolve, the most common issues were parental relocation (61.2%), spousal support (46.1%), time with the child (39.9%), children's primary residence (36.5%), and arrears of child support (35.4%).

Services

- The services that lawyers were most likely to report that they refer clients to *often* or *almost always* are mediation (70.2%), maintenance enforcement programs (70.1%), parenting education programs (63.2%), individual counselling (56.7%), and marriage or relationship counselling (44.4%).
- Lawyers reported that, on average, approximately one-third of their clients (30.7%) use non-mandatory family services such as parenting education, mental health counselling, and family law information centres.

- Two-thirds of lawyers (66.9%) said that the cases with clients who have utilized one or more family justice services, in particular mediation, are *somewhat more likely* to settle out of court, while 8.4% said that they are *much more likely* to settle. One-quarter (24.1%) said that these cases are *not more likely* to settle out of court.

Children's views

- Judges (35.9%) were considerably more likely than were lawyers (19.7%) to say that they *often* or *almost always* are involved in cases where efforts are made to seek children's views.
- The manner of soliciting children's views that was most frequently used by most lawyers was via an assessment/evaluative report prepared by a mental health professional (62.9%), followed by a legal representative for the child (46.6%), and a non-evaluative report prepared by a lawyer or mental health professional (41.0%).

Custody and access

- A significantly higher proportion of judges (48.7%) said that they *almost always* use terminology other than "custody" and "access" in their orders, compared to only one-quarter (25.5%) of lawyers.
- Over one-half of lawyers (56.3%) said that they *often* or *almost always* use alternate terminology in their agreements, while almost one quarter (23.1%) said that they *never* or *rarely* do so.
- Lawyers indicated that, on average, 42.0% (range = 0% to 100%) of their clients have a shared physical custody arrangement according to their order/agreement.
- Lawyers (10.8%) and judges (19.7%) indicated that, on average, a relatively small proportion of their cases include supervised access on an interim basis. A small proportion of lawyers' (5.3%) and judges' (9.4%) cases include supervised access as a condition of access in the final order. In both of these situations, judges were significantly more likely than lawyers to deal with supervised access cases.
- Both lawyers (6.3%) and judges (14.5%) reported that, on average, the proportion of their cases using supervised exchanges is relatively small. However, judges see this significantly more than lawyers.
- Lawyers' and judges' responses differed significantly in three of the circumstances under which supervised exchange is ordered: where the parents are in high

conflict; where there are allegations of spousal violence; and where the child is unfamiliar with the access parent.

- All respondents were asked if the frequency of interjurisdictional/international custody matters has changed over the past five years. Judges (29.4%) were somewhat more likely to say that these cases are more frequent now than were lawyers (21.9%), but most of the respondents reported no change.
- On average, lawyers said that parental relocation is an issue in 15.2% of their cases while judges reported that relocation is an issue in 14.5% of their cases.
- The most common reason given for a proposed relocation was for an employment opportunity, which was rated as occurring *often* or *almost always* by 77.0% of lawyers and 65.7% of judges. The next most common reasons were to be with a new partner, which was rated as *often* or *almost always* occurring by 72.3% of lawyers and 65.7% of judges, and to be closer to family/friends, rated as occurring *often* or *almost always* by 73.1% of lawyers and 50.0% of judges. The least common reason was to increase distance from the other parent, which was reported as *never* or *rarely* occurring by 79.1% of lawyers and 90.6% of judges.
- The most common type of relocation seen in respondents' cases were when the custodial parent wishes to move to a different province or territory, rated as *often* or *almost always* an issue by 60.2% of lawyers and 31.4% of judges. Cases in which the custodial parent wishes to move within the same province or territory, were rated as *often* or *almost always* an issue by 42.7% of lawyers and 71.5% of judges. The differences between lawyers and judges were significant for both of these situations.
- Lawyers and judges were asked if relocation cases were more difficult to settle, and almost all respondents (98.4%; lawyers – 98.0%; judges – 100.0%) indicated that they were.

Child support

- The issues in child support cases that were rated as most contentious by the greatest numbers of both lawyers and judges tended to be related to income and financial disclosure. These issues include: determination of income; obtaining financial disclosure; imputation of income; and determination and payment of children's special expenses.
- The issue involved in the highest proportion of both lawyers' (35.7%) and judges' (28.8%) child support cases is situations of shared physical custody. On average, a relatively small proportion of lawyers' (13.4%) and judges' (5.2%) cases involve

children the age of majority or older when the initial arrangements are being made.

- Few lawyers' cases (4.8%) involve undue hardship applications; a significantly higher proportion of judges' cases (15.1%) concern such applications.
- Judges (85.3%) were significantly more likely to say that income disclosure in child support cases is *often* or *almost always* an issue than were lawyers (57.6%).
- Almost three-quarters of lawyers (71.3%) said that a party fails to comply with the continuing obligation to provide income information in the years following the making of a child support order occurs *often* or *almost always*.

Spousal support

- There was significant difference between lawyers (48.8%) and judges (26.5%) regarding the cases that involve spousal support issues.
- Judges (26.5%) were significantly more likely to report that income determination or financial disclosure is *almost always* an issue in spousal support cases than were lawyers (9.4%).
- The substantial majority of lawyers (92.7%) said that they use the *Spousal Support Advisory Guidelines* (SSAG) either *often* or *almost always* when spousal support is an issue.
- A significantly higher proportion of lawyers (94.7%) said that they use the SSAG to negotiate spousal support *often* or *almost always*, compared to 62.1% of judges. Lawyers (82.1%) were also significantly more likely to say that they *often* or *almost always* use the SSAG at mediation than were judges (64.3%).
- Almost all lawyers (91.9%) said that they use the SSAG *often* or *almost always* at case conferences, settlement conferences, and judicial dispute resolution conferences. They were also very likely to report using them *often* or *almost always* at trials (91.7%), at interim motions (93.2%), and at other court proceedings (83.1%).
- Three-quarters of lawyers (75.3%) said that the SSAG have been useful in assisting with negotiation, 70.2% said that they have been helpful in encouraging settlement by negotiation, 65.7% said that they offer a starting place, and 51.7% said that they are useful for predicting results.

Family violence

- Over two-thirds of lawyers (69.0%) said that they *often* or *almost always* screen for family violence, compared to almost one-half (46.9%) of judges.
- Over one-half of lawyers (53.1%) said that they *never* use a standardized measure or instrument to screen for family violence, and another 25.5% said that they *rarely* do so.
- On average, lawyers reported that family violence is an issue in 21.7% of their cases and judges said that it is an issue in 25.3% of their cases.
- The most common responses for how the courts addressed family violence *often* or *almost always* were by making a civil order restraining harassment or regulating contact between the parents (lawyers = 54.7%; judges = 71.0%), denying custody to the abusive parent (lawyers = 38.7% judges = 50.0%), and ordering access supervision (lawyers = 36.2%; judges = 54.6%).

Support enforcement and interjurisdictional support orders

- Lawyers and judges reported that support enforcement issues occur in approximately one-quarter of their cases (lawyers = 27.5%; judges = 22.7%).
- Judges (87.1%) were significantly more likely to report that they have dealt with cases involving provincial/territorial interjurisdictional support orders legislation or Reciprocal Enforcement of Maintenance Orders forms than were lawyers (65.2%).

Unified family courts

- One-half of lawyers (50.0%) said that they have had experience with family law proceedings in a unified family court, and just over one-third of lawyers (34.1%) said that there is a unified family court in the jurisdiction. A substantial majority of lawyers (80.2%) who do not have a unified family court in their jurisdiction said that they would like to have one.
- Two-thirds of lawyers (66.7%) *agreed* or *strongly agreed* that unified family courts have judges who are more knowledgeable than other judges about family law and related legal principles. Two-thirds of lawyers (64.7%) *agreed* or *strongly agreed* that unified family courts have judges who are more knowledgeable than other judges about the psychology of separation and the effect of separation on children.

- One-half of lawyers (50.7%) *agreed* or *strongly agreed* that unified family courts have judges who are more effective at settling family cases than other judges.
- Just under one-half of lawyers (44.9%) *agreed* or *strongly agreed* that unified family courts produce outcomes that are more likely to be tailored to individual needs than non-specialized courts.

Limited-scope retainers

- Just over three-quarters of lawyers (77.5%) said that they are aware of other lawyers in their jurisdiction providing services on a limited-scope (unbundled) basis.
- Most lawyers (89.3%) said that they have provided some type of service on a limited-scope basis.
- Most lawyers reported that they provide most of the specified limited scope services *rarely* or *never*.
- The most frequent limited-scope activity for lawyers was providing advice on a separation or similar agreement: 46.1% of respondents said that they do this *often* or *almost always*.
- Over one-third of lawyers (36.0%) said that they *occasionally* provide advice on pretrial processes, such as making interim applications, drafting interrogatories and conducting examinations for discovery, during the litigation process, and 23.0% said that they *occasionally* provide advice on trial processes such as examining witnesses, making objections and introducing evidence, during the litigation process.
- The limited-scope service that lawyers reported encountering most frequently was when a self-represented party has retained a lawyer for the limited purpose of providing legal advice on a separation or similar agreement: 39.9% of lawyers said that this *often* or *almost always* occurs, and 33.6% said that this happens *occasionally*.

Discussion

The Institute also conducted a survey funded by the Department of Justice Canada of the attendees at the 2006 National Family Law Program, and some data gathered from that survey are comparable to those collected in the 2016 survey. Findings from the 2006 and 2016 surveys were examined to provide an indication of any changes in legal professionals' experiences and practices over the intervening ten-year period.

In both the 2016 and 2006 surveys, lawyers were, in general, positive about the family justice services available to their clients. They reported that they *often* or *almost always* refer their clients to services such as mediation (2016 = 70%; 2006 = 62%), maintenance enforcement programs (2016 = 70%; 2006 = 77%), parenting education programs (2016 = 63%; 2006 = 60%), and individual counselling (2016 = 57%; 2006 = 65%). In both 2016 and 2006, lawyers reported that the cases of clients who use family justice services were more likely to settle out of court. However, 17% of lawyers in 2006 said such cases were much more likely to settle out of court compared to 8% of lawyers in 2016. Further, 46% of lawyers in 2006 said these cases are somewhat more likely to settle compared to 67% of lawyers in 2016. In 2016, lawyers said that approximately one-third of their clients use non-mandatory family justice services, such as parenting education, counselling, and family law information centres.

Findings from the 2016 and 2006 surveys indicate that legal professionals are adopting terminology other than “custody” and “access” in their orders and agreements. In 2016, a significantly higher proportion of judges (49%) than lawyers (26%) reported that they *almost always* use alternate terminology in their orders compared to 17% of respondents to the 2006 survey. In addition, in 2016, over half of the lawyers (56%) reported using alternate terminology *often* or *almost always* in their agreements whereas 61% of respondents to the 2006 survey reported doing so.

In 2016 and 2006, respondents reported that a relatively small proportion of their family law cases include supervised access or supervised exchanges. The reasons given for supervised access and exchanges in 2016 were the same as those reported by respondents to the 2006 survey. The most common reasons given by lawyers for supervised access orders were allegations of child abuse (2016 = 84%; 2006 = 85%), allegations of substance abuse (2016 = 79%; 2006 = 74%), and allegations of mental health concerns (2016 = 74%; 2006 = 74%). Supervised exchanges are most likely to occur in cases where the parents are in high conflict (2016 = 61%; 2006 = 69%) and when there are allegations of spousal violence (2016 = 60%; 2006 = 63%).

In 2016, lawyers and judges reported that similar proportions of their cases (about 15%) involve a proposed relocation by the custodial parent; the proportion of cases involving proposed relocations was comparable to that reported by respondents to the 2006 survey (13%). In both years, the most common reasons given for proposed relocations were for an employment opportunity, to be with a new partner, or to be closer to family or friends. In 2016, lawyers and judges were almost unanimous in saying that cases where relocation is an issue are difficult to settle.

Lawyers (49%) reported in 2016 that spousal support is an issue in their cases significantly more frequently than judges did (27%). Findings indicate that the *Spousal Support Advisory Guidelines* (SSAG) have been widely adopted by legal professionals, and are being used much more frequently now than they were in 2006, shortly after they were

first introduced. In 2016, almost all lawyers (93%) reported that they use the SSAG *often* or *almost always*, and they reported that the SSAG have been useful in assisting with negotiation, in encouraging settlement of cases by negotiation, offering a starting point, and predicting results. In 2006, only 55% of respondents said that they use the SSAG *often* or *almost always*.

Both lawyers and judges reported in 2016 that they frequently screen for family violence in their family law cases; however, lawyers (69%) were more likely to screen than were judges (47%). In 2006, 72% of respondents said that they make inquiries in every case to attempt to identify family violence. Even though a high proportion of lawyers reported in both years that they screen for family violence, relatively few said that they use a standardized instrument to do so. In 2016, 53% said that they *never* use a standardized questionnaire and 26% said they *rarely* do so. In 2006, 87% of respondents said that they do not use a standardized questionnaire to identify cases of family violence.

One-half of the lawyers in the 2016 survey said that they have had experience with unified family courts, and one-third reported that they have a unified family court in their jurisdiction. Overall, lawyers tended to agree that unified family courts have judges who are more knowledgeable than other judges about family law and the effects of separation on children, and that judges in these courts are more effective at resolving family cases without a trial. There were, however, significant concerns expressed about the lack of resources and availability of court dates in unified family courts.

In 2016, 80% of lawyers who do not have a unified family court in their jurisdiction said that they would like to have one. Similarly, in 2006, 72% of lawyers and judges said they would like to have a unified family court.

The use of limited-scope retainers, also known as unbundled legal services, is a relatively new development in family law cases and therefore respondents to the 2006 survey were not asked any questions about them. In 2016, the majority of lawyers said that they are aware of other lawyers in their jurisdiction who provide services on a limited-scope basis and/or that they have provided these services themselves. The most frequent limited-scope work performed by lawyers was providing advice on separation and similar agreements.

Acknowledgements

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The authors gratefully acknowledge the kind assistance of Justice James Williams of the Nova Scotia Supreme Court and the Planning Committee of the National Family Law Program 2016 for providing us with the opportunity to survey those attending the Program of the Federation of Law Societies of Canada in St. John's, Newfoundland and Labrador. We also wish to acknowledge the help of Heather Walker for distributing our emails to conference registrants about the survey.

We extend our appreciation to Professor Rachel Birnbaum, Western University, for her comments on the survey used in this project.

Thanks are also due to all the delegates of the conference who completed the very lengthy survey. Without their participation, there would be no project.

The authors wish to acknowledge the generous and continuing financial support of the Canadian Research Institute for Law and the Family by the Alberta Law Foundation.

1.0 Introduction

The National Family Law Program (NFLP), a high-profile, four-day biennial conference organized by the Federation of Law Societies of Canada, is the premiere national forum for members of the family law community to come together to learn about and discuss developments and issues in family law. It has, in the past, provided a unique opportunity for the Department of Justice Canada and the Canadian Research Institute for Law and the Family to obtain data on the experience and caseloads of family law lawyers and the judiciary. The Department of Justice Canada has conducted a survey of NFLP participants every two years since 2004, with the exception of 2014, often working in concert with the Institute; see, for example, Paetsch, Bertrand, & Bala, 2007 and Paetsch, Bertrand, Bala & Hornick, 2005. In 2014, the Institute arranged, with Professors Rachel Birnbaum and Nick Bala, a more limited survey of the views and attitudes of conference attendees on issues relating to access to justice, the resolution of family law disputes and shared custody (Boyd & Bertrand, 2016).

The NFLP attracts hundreds of lawyers and judges from across the country, and was most recently held in St. John's, Newfoundland and Labrador between 11 and 14 July 2016. Recognizing that both the Department of Justice Canada and the Institute had an interest in surveying participants at the 2016 NFLP, the Federation asked the two groups to work together to maximize responses and minimize the burden on their participants. Accordingly, the Department of Justice Canada contracted the Institute to administer and analyze a survey on current issues in the practice of family law in Canada.

This report examines the results of both the lawyers' and judges' surveys of attendees of the NFLP 2016. The purpose of the surveys was to obtain current information on the characteristics of the cases handled by family law practitioners in Canada, and to obtain information from both lawyers and judges concerning current family law issues.

1.1 Methodology

With the permission and assistance of the Program Planning Committee and its Chair, Justice James Williams of the Nova Scotia Supreme Court, we were able to survey the attitudes and experiences of attendees of the NFLP 2016 on a wide variety of family law issues. Two electronic surveys were developed using FluidSurveys, a Canadian-based online survey service—one for lawyers and one for judges. Both surveys contained quantitative and qualitative questions to allow participants to elaborate on their experiences. While the lawyers' and judges' surveys shared a number of questions, the lawyers' survey was considerably longer and covered many topics in more detail than the judges' survey. On the lawyers' survey, the Department of Justice provided questions on the following topics: demographic information; case characteristics; family justice

services; the views of the child; custody and access; child support; spousal support; family violence; and support enforcement and interjurisdictional support orders. The Institute added questions to the survey on unified family courts and limited-scope retainers for family legal services, as well as on additional demographic characteristics. A copy of the lawyers' survey is contained in Appendix A.

For the judges' survey, the Department of Justice provided questions on the following topics: demographic information; case characteristics; the views of the child; custody and access; child support; spousal support; family violence; and support enforcement and interjurisdictional support orders, see Appendix B.

Both surveys and the email invitations to complete the surveys were translated into French, and invitations with links to the surveys were distributed to conference registrants on 7 June 2016, followed by a reminder on 20 June 2016. As an incentive to complete the survey, participants were provided with a code at the end of the survey that they could present to the Department of Justice's booth at the National Family Law Program in St. John's from 12 to 14 July 2016 to obtain a promotional gift.

During the conference, representatives from the Department of Justice and the Institute jointly presented preliminary data from the surveys to conference attendees. Another reminder to complete the surveys was distributed by email on 14 July 2016, and the surveys remained open until 3 August 2016.

A total of 458 delegates registered for the conference in St. John's. Surveys were received from 217 participants, including one French survey, resulting in a response rate of 47.4%.

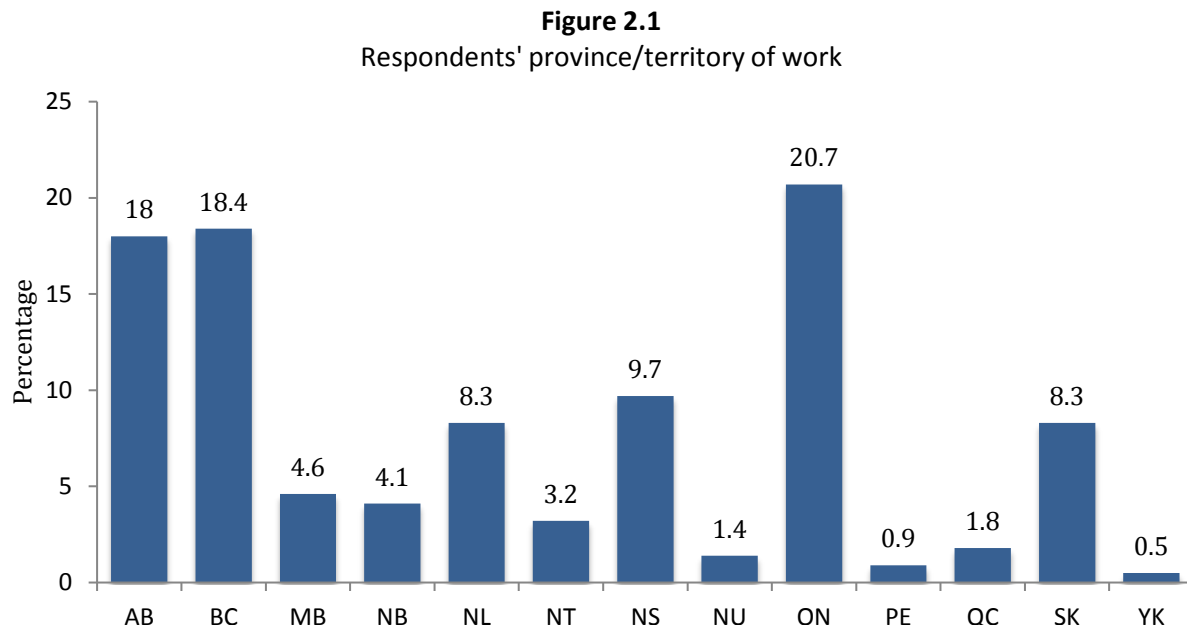
1.2 Limitations

Certain limitations to the data presented in the report may affect the ability to generalize the findings to the legal community as a whole. Specifically, participants in the project do not necessarily represent a random sample of all of the legal professionals in the Canadian family justice community. Therefore, the responses obtained cannot be generalized to all Canadian legal professionals. In addition, the sample is not geographically representative of lawyers and judges across Canada.

2.0 Demographic characteristics

This chapter describes the demographic characteristics of respondents to the Survey on the Practice of Family Law in Canada. Almost three-quarters of lawyers responding to the survey who provided information on their gender were female (n=95; 72.5%); 27.5% (n=36) of lawyer respondents were male.

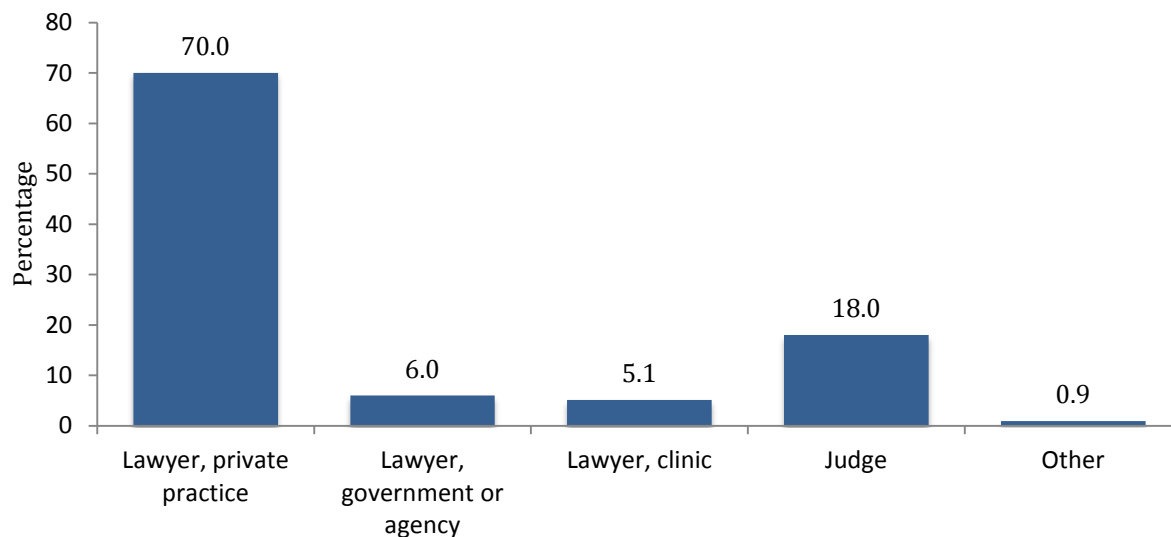
Figure 2.1 presents lawyers' and judges' province or territory of work. While all provinces and territories were represented in the sample, most respondents reported that they work in Ontario (20.7%), followed by British Columbia (18.4%) and Alberta (18.0%). Relatively few respondents were from the Yukon (0.5%), Prince Edward Island (0.9%), Nunavut (1.4%) or Québec (1.8%).



N=217

Figure 2.2 provides respondents' professions. The majority (70.0%) were lawyers in private practice, while 18.0% were judges, and 11.1% were lawyers in government, an agency, or a legal aid clinic. Two respondents indicated that they worked in another profession: one reported being a business valuator, while the other worked in legal aid. Examination of these two individuals' responses suggested that they have a legal background, so they were classified as lawyers for subsequent analyses.

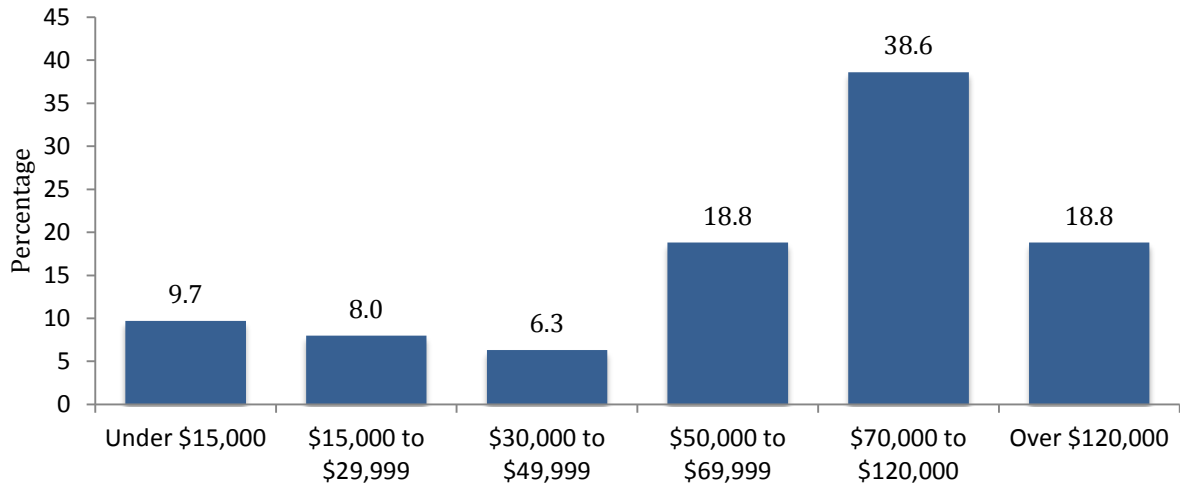
Figure 2.2
Respondents' profession



N=217

Lawyers were asked to identify the individual pre-tax income of most of their clients, and their responses are shown in Figure 2.3. Clients tended to be relatively affluent, with 38.6% of respondents indicating that clients' incomes fell into the \$70,000-\$120,000 range. Equal proportions of lawyers (18.8%) said that their clients' incomes fell into the \$50,000-\$69,999 and over \$120,000 ranges.

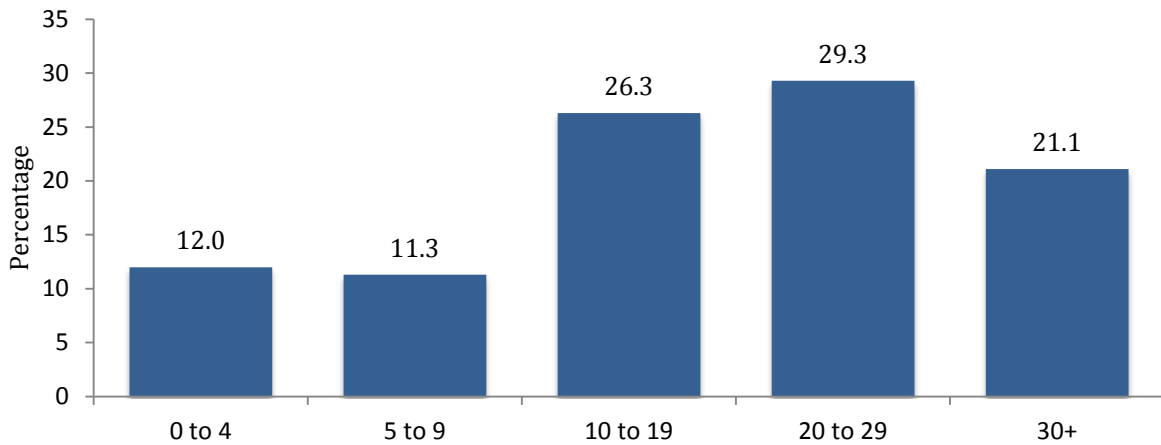
Figure 2.3
Individual pre-tax income of most of the lawyers' clients



n=176

Lawyers indicated that they had been practicing their profession for an average of 19.9 years (range = 1 to 48 years). As indicated in Figure 2.4, one-half of the lawyer respondents (50.4%) had been practicing for 20 years or longer. On average, lawyers said that 84.2% of their practice involves family law matters (range = 20% to 100%).

Figure 2.4
Number of years lawyers have been practicing their profession



n=133

3.0 Case characteristics

Respondents were asked a number of questions regarding the characteristics of their cases, and the findings from these questions are summarized in this chapter. Lawyers were asked in what proportion of their cases in the past year was their clients' representation partly or fully funded by legal aid. On average, they said that their clients were funded by legal aid in 17.4% (range = 0% to 100%) of their cases. When lawyers were asked in what proportion of their cases in the past year the other party self-represented for most or all of the life of the file, on average they indicated this occurred in 20.4% of their cases (range = 0% to 100%).

Judges were asked in what proportion of their cases in the past year was a party's representation partly or fully funded by legal aid, and they responded that, on average, this occurred in 44.0% (range = 0% to 100%) of their cases.

Lawyers and judges were asked what proportion of their family law cases dealing with children involve variations of previous orders or agreements. On average, judges had a significantly higher proportion of variation cases (46.0%; range = 5% to 80%) than lawyers (28.2%; range = 0% to 100%) ($t(213) = 5.5, p < .001$).

Lawyers were asked in what percentage of their family law cases is there an interim order that is, in effect, the final judicial disposition; on average, respondents indicated that this occurs in one-third of their cases (32.9%; range = 0% to 90%).

Lawyers were asked which issues in a variation case are most likely to require a trial and a judicial decision to resolve and their responses are shown in Table 3.1. Almost two-thirds of respondents (61.2%) said that parental relocation cases are likely to require a judicial decision. Other issues that were rated as likely to require a judicial decision by more than one-third of respondents were spousal support (46.1%), time with the child (39.9%), children's primary residence (36.5%), and child support arrears (35.4%).

Table 3.1

Issues most likely to require a trial and judicial decision to be resolved in a variation case,
according to lawyer respondents

Issue	n	%
Parental relocation (mobility)	109	61.2
Spousal support	82	46.1
Time with the child	71	39.9
Children's primary residence	65	36.5
Child support arrears	63	35.4
Spousal support arrears	48	27.0
Child support	42	23.6
Decision-making responsibility regarding the children	30	16.9
Undue hardship under <i>Child Support Guidelines</i>	26	14.6
Other*	6	3.4

N=178; Multiple response data

* Other includes: parental alienation; termination of child or spousal support based on retirement or job loss; personality disordered; dividing family farm property.

4.0 Services

This chapter presents lawyers' responses to a number of questions regarding the services that lawyers know are available to their clients. Table 4.1 provides information on how frequently lawyers inform their clients of or refer them to a number of identified services.

Table 4.1
How often lawyers inform clients about or refer them to various services

	Never		Rarely		Occasionally		Often		Almost Always	
	n	%	n	%	n	%	n	%	n	%
Marriage or relationship counselling (n=171)	8	4.7	39	22.8	48	28.1	33	19.3	43	25.1
Individual counselling (n=171)	4	2.3	15	8.8	55	32.2	56	32.7	41	24.0
Mediation (n=171)	2	1.2	22	12.9	27	15.8	53	31.0	67	39.2
Arbitration (n=168)	58	34.5	46	27.4	26	15.5	20	11.9	18	10.7
Child assessment services (n=169)	16	9.5	34	20.1	75	44.4	30	17.8	14	8.3
Collaborative family law processes (n=172)	55	32.0	43	25.0	30	17.4	22	12.8	22	12.8
Parenting coordination (n=168)	51	30.4	47	28.0	40	23.8	21	12.5	9	5.4
Parenting education programs (n=171)	6	3.5	23	13.5	34	19.9	39	22.8	69	40.4
Domestic violence services (n=169)	19	11.2	65	38.5	58	34.3	23	13.6	4	2.4
Supervised access services (n=169)	27	16.0	70	41.4	57	33.7	14	8.3	1	.6
Supervised exchange services (n=170)	47	27.6	72	42.4	36	21.2	13	7.6	2	1.2
Maintenance enforcement programs (n=171)	6	3.5	13	7.6	32	18.7	56	32.7	64	37.4
Financial assistance services (n=168)	38	22.6	71	42.3	38	22.6	20	11.9	1	.6
Legal Aid services/Duty counsel (n=170)	30	17.6	59	34.7	55	32.4	17	10.0	9	5.3
Recalculation services (n=166)	63	38.0	33	19.9	25	15.1	23	13.9	22	13.3
Interjurisdictional Support Orders Designated Authority Office (n=169)	53	31.4	87	51.5	26	15.4	2	1.2	1	.6
Family Law Information Centres (n=170)	42	24.7	58	34.1	41	24.1	17	10.0	12	7.1

N=178

The services that lawyers were most likely to report that they *often* or *almost always* refer clients to are mediation (70.2%), maintenance enforcement programs (70.1%), parenting

education programs (63.2%), individual counselling (56.7%), and marriage or relationship counselling (44.4%). The services that lawyers were most likely to say that they *never* or *rarely* refer clients to were interjurisdictional support orders designated authority offices (82.9%), supervised exchange services (70.0%), and financial assistance services (64.9%).

Lawyers were also asked where their clients are most likely to receive information about these services; see Table 4.2. The most common response was that the lawyers themselves provided this information to clients (91.0%), followed by friends or family members (55.1%), provincial/territorial government websites (53.9%), court services (49.4%), parenting education programs (44.9%), and federal government websites (43.8%).

Table 4.2
Where clients get their information about various services and processes,
according to lawyer respondents

Source	n	%
From me	162	91.0
Friends/family members	98	55.1
Provincial/territorial government websites	96	53.9
Court services	88	49.4
Parenting education programs	80	44.9
Federal government websites	78	43.8
Public legal education and information associations	53	29.8
Other non-government websites	33	18.5
Another lawyer	30	16.9
Media stories or advertising (e.g., television, radio, newspaper)	22	12.4
Books	9	5.1
International government websites	3	1.7
Other*	12	6.7

N=178

Multiple response data

* Other includes: Internet; social worker; federal publications; Family Law Information Centres; maintenance enforcement program; and legal clinics.

When asked what type of information they provide to their clients about these services, lawyers were most likely to indicate that they provide contact information (79.2%), a description of the services offered (75.8%), and website information (70.8%); see Table 4.3. Lawyers reported that, on average, approximately one-third of their clients (30.7%; range = 0% to 100%) use non-mandatory family services such as parenting education¹, counselling, and family law information centres. When asked if family justice services are

¹ In a number of Canadian jurisdictions, there are also limited free mandatory information programs for separating and divorced parents; the question in the survey focused on mandatory services.

available to their clients in the official language of their choice, the substantial majority of lawyers (81.7%) said that they are.

Table 4.3
The types of information lawyers provide to clients
about various services and processes

Type of Information	n	%
Contact information	141	79.2
Description of services offered	135	75.8
Website information	126	70.8
Location	78	43.8
Information materials	52	29.2
Other*	2	1.1

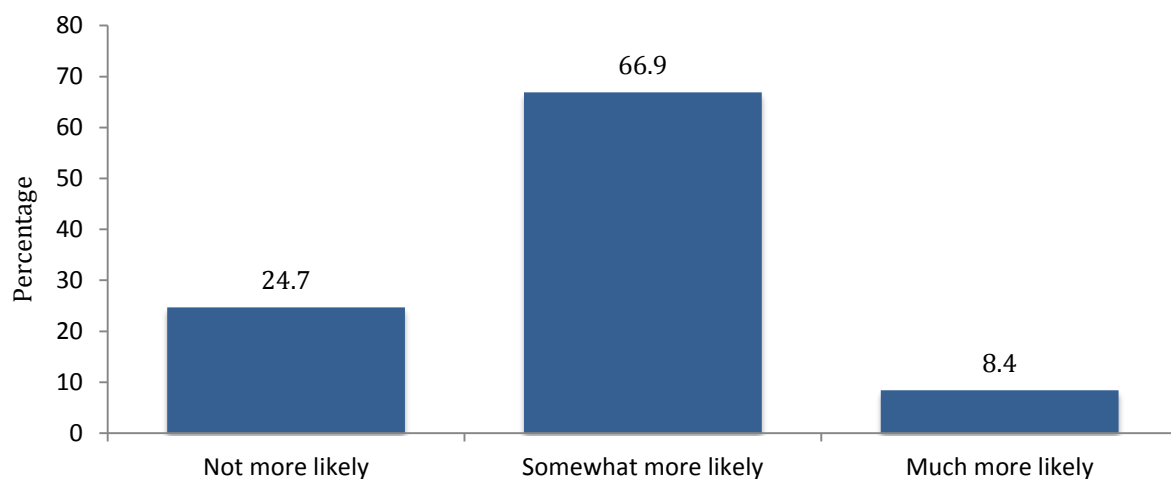
N=178

Multiple response data

* Other includes: web-based parenting services; advice as to the need for/benefits of the services for them.

Lawyers were also asked if the cases of clients who have gone to one or more family justice services are more likely to settle out of court; see Figure 4.1. Two-thirds of respondents (66.9%) said that these cases are *somewhat more likely* to settle out of court, while 8.4% said that they are *much more likely* to settle. One-quarter (24.1%) said that the cases are *not more likely* to settle out of court.

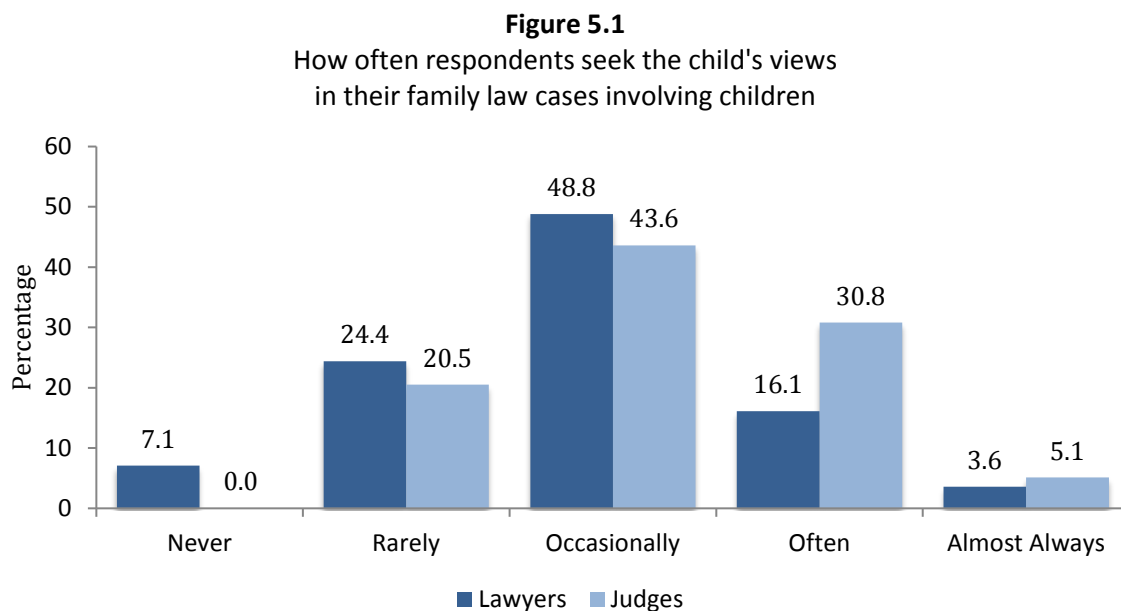
Figure 4.1
When clients have gone to one or more family justice services,
lawyers' views as to whether their case is more likely to settle out of court



n=166

5.0 Children's views

Participants were asked two questions about seeking the views of the child in their family law cases, and their responses are presented in this chapter. Lawyers and judges were asked how often they have cases where there is a process to obtain the child's views; see Figure 5.1. Although not statistically significant, judges (35.9%) were considerably more likely to say that they *often* or *almost always* seek the child's views than were lawyers (19.7%), while lawyers (31.5%) were more likely to say that their cases *never* or *rarely* involve an effort to seek the child's views than were judges (20.5%). This may reflect the fact that there is a greater effort to obtain the views of the child in cases that are litigated than those that are resolved by negotiation.



Lawyers n=168; Judges n=39

Lawyers were asked to indicate the ways in which the children's views are presented, and their responses are shown in Table 5.1. The manner of soliciting the children's views that was endorsed by the most lawyers was through an assessment/evaluative report prepared by a mental health professional (62.9%), followed by a legal representative for the child (46.6%), and a non-evaluative report prepared by a lawyer or mental health professional (41.0%). Few lawyers indicated that the children's views are solicited through their involvement in alternative dispute resolution processes (6.2%), judicial interviews with the child (5.6%), a non-legal representative for the child (5.1%), or by the child's testimony (1.7%).

Table 5.1
Most frequent ways the views of the child are presented,
according to lawyer respondents

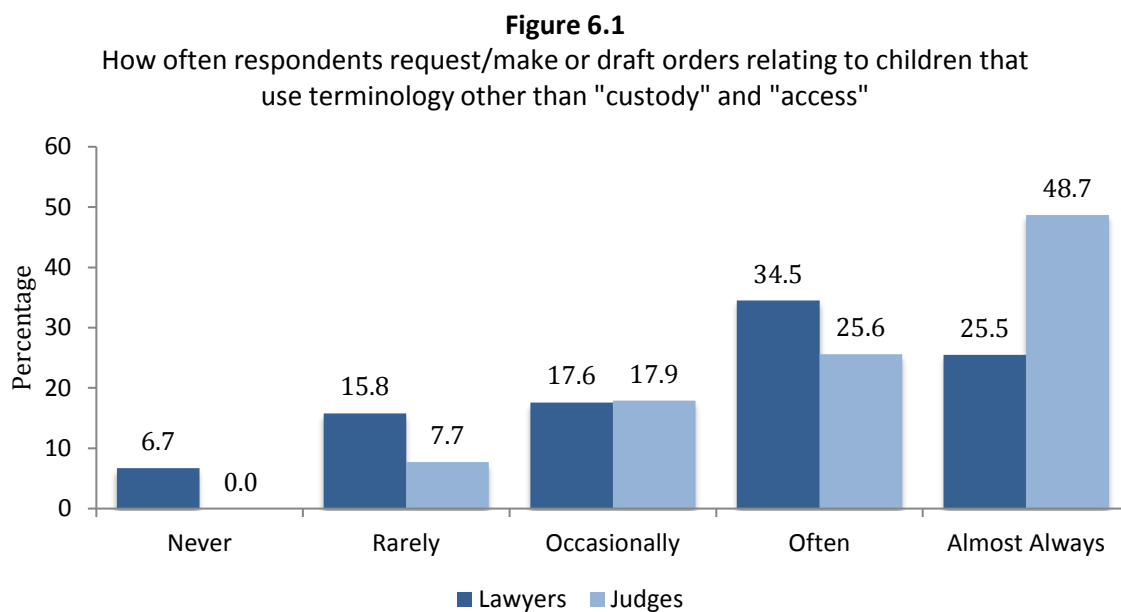
Ways children's views are obtained	n	%
Assessment/evaluative report prepared by mental health professional	112	62.9
Legal representative for child	83	46.6
Non-evaluative report prepared by lawyer or mental health professional (sometimes called "hear the child" or "views of the child" report)	73	41.0
Mental health worker interview with child and reporting to parties and/or court	55	30.9
Lawyer meeting with the child and reporting to parties and/or court	35	19.7
Involvement of children in alternative dispute resolution processes	11	6.2
Judicial interview with child	10	5.6
Non-legal representative for child	9	5.1
Child's testimony	3	1.7

N=178

Multiple response data

6.0 Custody and access

Participants were asked several questions related to custody and access in their family law cases, and the findings are summarized in this chapter. Lawyers and judges were asked how often they request or draft orders that use terminology other than custody and access for parenting arrangements. Their responses differed significantly; see Figure 6.1. Almost one-half of judges (48.7%) said that they *almost always* use alternate terminology, compared to only one-quarter (25.5%) of lawyers. In contrast, lawyers (22.5%) were considerably more likely to say that they *never* or *rarely* use alternate terminology, compared to 7.7% of judges.



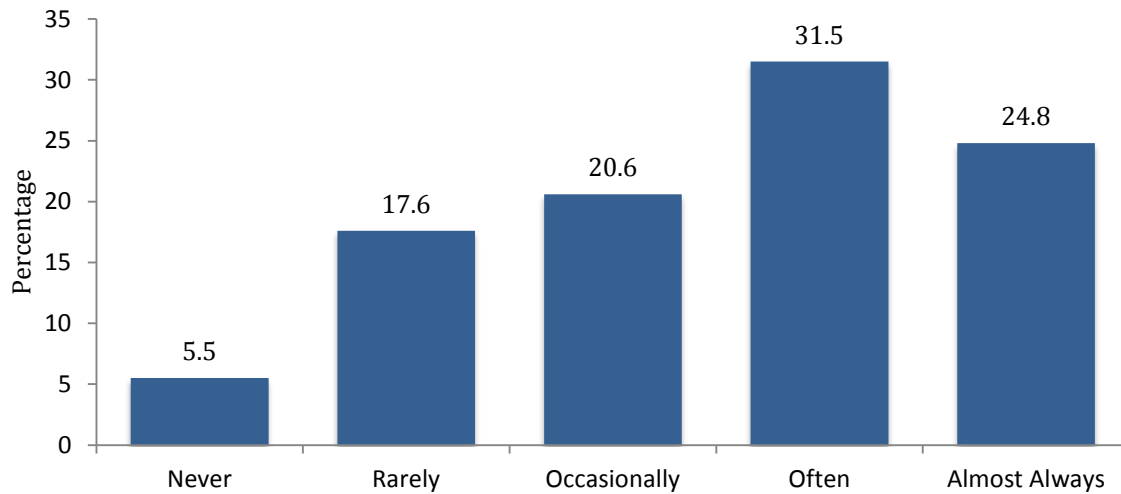
Lawyers n=165; Judges n=39
 $X^2(4) = 10.5, p < .05$

Lawyers were further asked how often they use terminology other than custody and access in their agreements, see Figure 6.2. Over one-half of respondents (56.3%) said that they *often* or *almost always* use alternate terminology, while almost one quarter (23.1%) said that they *never* or *rarely* do so.

Lawyers indicated that, on average, 42.0% of their clients (range = 0% to 100%) have a shared physical custody arrangement according to their order/agreement. Figure 6.3 presents lawyers' responses when they were asked how often, in their cases with shared physical custody arrangements, the arrangements typically last. Almost one-half of lawyers (48.5%) said that they don't know how long the arrangements last, while just over one-quarter (27.9%) said that the arrangements last over five years. No respondents said that the arrangements typically last less than a year.

Figure 6.2

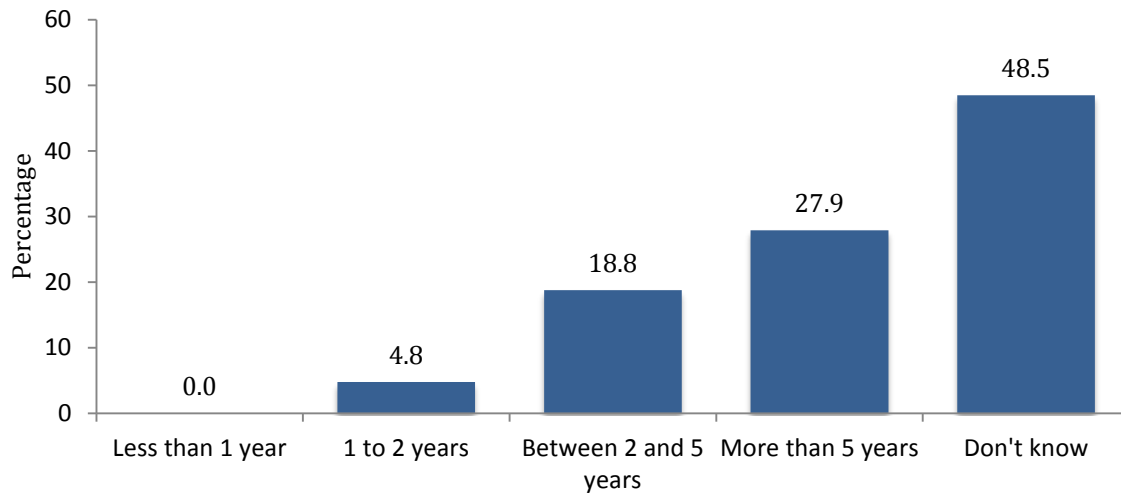
How often lawyers use terminology other than "custody" and "access" in their agreements



n=165

Figure 6.3

Where lawyers have had clients with shared physical custody arrangements, how long the arrangements typically last



n=165

Lawyers and judges were asked the reasons why parents do not comply with their custody/access/parenting orders; see Table 6.1. The differences between lawyers and judges were not statistically significant with the exception of safety concerns. Lawyers (47.1%) were considerably more likely to say that safety concerns are *rarely* given as a

reason for non-compliance than were judges (10.3%). Judges (17.9%) were more likely to say that non-compliance *often* occurs because of safety concerns than were lawyers (7.2%).

Table 6.1
Frequency of reasons given when parents do not comply
with their custody/access/parenting orders

	Never		Rarely		Occasionally		Often		Almost Always	
	n	%	n	%	n	%	n	%	n	%
Access parent does not exercise access										
Lawyers (n=156)	7	4.5	44	28.2	68	43.6	37	23.7	0	0.0
Judges (n=39)	0	0.0	13	33.3	20	51.3	6	15.4	0	0.0
Access parent is late returning child										
Lawyers (n=155)	3	1.9	50	32.3	72	46.5	28	18.1	2	1.3
Judges (n=39)	0	0.0	10	25.6	20	51.3	9	23.1	0	0.0
Custodial parent refuses access without appropriate cause										
Lawyers (n=158)	6	3.8	43	27.2	71	44.9	33	20.9	5	3.2
Judges (n=39)	0	0.0	5	12.8	19	48.7	14	35.9	1	2.6
Custodial parent refuses access with appropriate cause										
Lawyers (n=156)	6	3.8	53	34.0	75	48.1	21	13.5	1	0.6
Judges (n=39)	1	2.6	10	25.6	26	66.7	2	5.1	0	0.0
Child refuses visit with access parent										
Lawyers (n=159)	2	1.3	35	22.0	80	50.3	41	25.8	1	0.6
Judges (n=39)	0	0.0	16	41.0	17	43.6	6	15.4	0	0.0
Custody or access parent tries to change the parenting time schedule										
Lawyers (n=155)	1	0.6	20	12.9	72	46.5	59	38.1	3	1.9
Judges (n=39)	0	0.0	5	12.8	15	38.5	19	48.7	0	0.0
Safety concerns ¹										
Lawyers (n=153)	4	2.6	72	47.1	65	42.5	11	7.2	1	0.7
Judges (n=39)	1	2.6	4	10.3	27	69.2	7	17.9	0	0.0

N=217; Lawyers n=178; Judges n=39

¹ $\chi^2(4) = 19.4, p < .001$

Almost one-quarter of lawyers (23.7%) said that non-compliance *often* occurs because the access parent does not exercise access, compared to 15.4% of judges, while 43.6% of lawyers said that non-compliance *occasionally* occurs for this reason, compared to 51.3%

of judges. A higher proportion of judges (74.4%) than lawyers (64.6%) said that non-compliance *occasionally* or *often* occurs because the access parent is late returning the child.

A considerably higher proportion of judges (38.5%) than lawyers (24.1%) said that non-compliance with parenting orders *often* or *almost always* occurs because the custodial parent refuses access without appropriate cause, for example, because the access parent is a few minutes late. Relatively few lawyers (14.1%) and judges (5.1%) said that non-compliance *often* or *almost always* occurs because the custodial parent refuses access with appropriate cause, for example, because the access parent is intoxicated. Over one-quarter of lawyers (26.4%) said that non-compliance *often* or *almost always* occurs because the child refuses a visit with the access parent, compared to 15.4% of judges. Almost one-half of judges (48.7%) said that non-compliance *often* occurs because the custody or access parent tries to change the parenting time schedule, compared to 38.1% of lawyers.

Lawyers and judges were asked questions regarding supervised access in their cases involving children. Lawyers (10.8%; range = 0% to 85%) and judges (19.7%; range = 5% to 50%) indicated that, on average, a relatively small proportion of their cases include supervised access on an interim basis. However, judges see this significantly more frequently than lawyers ($t(196) = 4.0, p < .001$). A smaller proportion of lawyers' (5.3%; range = 0% to 75%) and judges' (9.4%; range = 0% to 30%) cases include supervised access as a condition of access in the final order, though again occurring significantly more frequently with judges ($t(194) = 2.9, p < .01$).

Lawyers and judges were asked the circumstances under which they recommend/order supervised access in their cases, and their responses are provided in Table 6.2. The most common reasons for supervised access were allegations of child abuse (lawyers – 83.7%; judges – 92.3%), allegations of substance abuse (lawyers – 79.2%; judges – 94.9%), allegations of mental health concerns (lawyers – 74.2%; judges – 89.7%), and where the child is unfamiliar with the access parent (lawyers – 63.5%; judges – 89.7%). Only three lawyers and no judges said that supervised access is not available in their jurisdiction. Lawyers' and judges' responses differed significantly for four of the circumstances under which supervised access is ordered: where there are allegations of spousal violence, substance abuse or mental health concerns; and where the child is unfamiliar with the access parent.

Lawyers and judges were also asked about supervised exchanges in their family law cases. Both lawyers (6.3%; range = 0% to 80%) and judges (14.5%; range = 0% to 80%) reported that, on average, supervised exchanges occur relatively infrequently in their cases. However, judges see this significantly more than lawyers ($t(195) = 4.1, p < .001$).

Table 6.2
Circumstances under which respondents recommend/order
supervised access in their cases

Circumstances	Lawyers		Judges	
	N	%	n	%
Where the parents are in high conflict	21	11.8	6	15.4
Where there are allegations of spousal violence ¹	47	26.4	17	43.6
Where there are allegations of child abuse	149	83.7	36	92.3
Where there are allegations of substance abuse ²	141	79.2	37	94.9
Where there are allegations of mental health concerns ³	132	74.2	35	89.7
Where the child is unfamiliar with the access parent (i.e., reintroduction) ⁴	113	63.5	35	89.7
Where a child has been abducted or there are concerns that a child may be abducted	100	56.2	28	71.8
I don't recommend/order supervised access	2	1.1	0	0.0
Not available in my jurisdiction	3	1.7	0	0.0
Other*	9	5.1	3	7.7

N=217; Lawyers n=178; Judges n=39; Multiple response data

* Other includes: inexperienced parent; child protection files; concerns about third parties in the home; access parent does not have home/adequate sleeping arrangements for child; parent is unable to not put child at risk.

¹ $X^2(1) = 4.5, p < .05$

² $X^2(1) = 5.3, p < .05$

³ $X^2(1) = 4.4, p < .05$

⁴ $X^2(1) = 10.2, p < .001$

Table 6.3 presents the circumstances in which respondents recommend/order supervised exchanges in their cases. The most common circumstances were when the parents are in high conflict (lawyers = 60.7%; judges = 82.1%) and when there are allegations of spousal violence (lawyers = 60.1%; judges = 76.9%). All other circumstances were endorsed by less than one-half of respondents. A small proportion of lawyers (7.3%) and no judges said that supervised exchanges are not available in their jurisdiction. Lawyers' and judges' responses differed significantly for three of the circumstances under which supervised exchange is ordered: where the parents are in high conflict; where there are allegations of spousal violence; and where the child is unfamiliar with the access parent.

Table 6.3
Circumstances under which respondents recommend/order supervised exchange in their cases

Circumstances	Lawyers		Judges	
	n	%	n	%
Where the parents are in high conflict ¹	108	60.7	32	82.1
Where there are allegations of spousal violence ²	107	60.1	30	76.9
Where there are allegations of child abuse	44	24.7	11	28.2
Where there are allegations of substance abuse	70	39.3	17	43.6
Where there are allegations of mental health concerns	71	39.9	19	48.7
Where the child is unfamiliar with the access parent (i.e., reintroduction) ³	49	27.5	18	46.2
Where a child has been abducted or there are concerns that a child may be abducted	45	25.3	7	17.9
I don't recommend/order supervised exchange	15	8.4	0	0.0
Not available in my jurisdiction	13	7.3	0	0.0
Other*	7	3.9	1	2.6

N=217; Lawyers n=178; Judges n=39

Multiple response data

* Other includes: where there are allegations one party is regularly not showing up on time; where the access parent threatens to not return the child to the custodial parent; depends on the child's best interests.

¹ $X^2(1) = 6.4, p < .05$

² $X^2(1) = 3.9, p < .05$

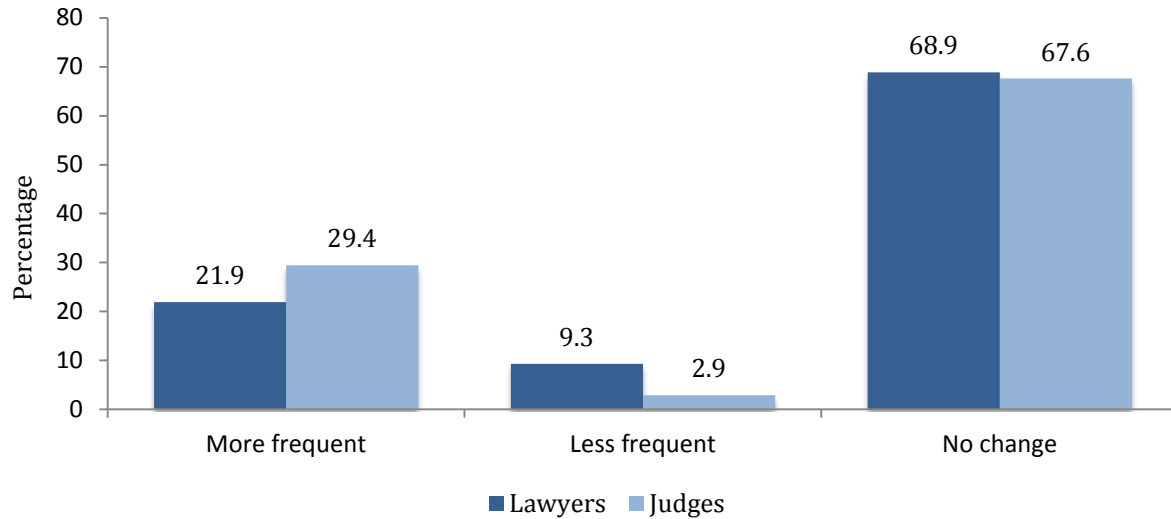
³ $X^2(1) = 5.2, p < .05$

All respondents were asked if the frequency of interjurisdictional custody matters has changed over the past five years; see Figure 6.4. Overall, lawyers' and judges' responses were similar and did not differ significantly, with just over two-thirds of lawyers (68.9%) and judges (67.6%) saying that there has been no change. Judges (29.4%) were somewhat more likely to say that these cases are more frequent now than were lawyers (21.9%).

Respondents were asked a number of questions regarding parental relocation/mobility in their family law cases. On average, lawyers said that parental relocation is an issue in 15.2% (range = 5% to 60%) of their cases and judges reported that relocation is an issue in 14.5% (range = 0% to 40%) of their cases.

Figure 6.4

Respondents' views on whether the frequency of interjurisdictional custody matters, including abduction cases, has changed in the last five years



Lawyers n=151; Judges n=34

All respondents were asked how frequently specific reasons are given for potential relocations; see Table 6.4. The most common reason given was for an employment opportunity, which 77.0% of lawyers and 65.7% of judges reported as occurring *often* or *almost always*. The next most common reasons were to be with a new partner, which was reported as *often* or *almost always* occurring by 72.3% of lawyers and 65.7% of judges, and to be closer to family/friends, reported as occurring *often* or *almost always* by 73.1% of lawyers and 50.0% of judges.

The reason for relocation that was reported by the fewest respondents was to increase distance from the other parent, which was reported as *never* or *rarely* occurring by 79.1% of lawyers and 90.6% of judges. Lawyers and judges only differed significantly for one reason, educational opportunity. Judges (47.1%) were considerably more likely than lawyers (20.4%) to say that this is *rarely* given as a reason. Lawyers (29.6%) were more likely than judges (17.6%) to say that educational opportunity is *often* a reason given for parental relocation (17.6%).

Table 6.4
In cases where parental relocation is an issue, frequency of reasons given

	Never		Rarely		Occasionally		Often		Almost Always	
	n	%	n	%	n	%	n	%	n	%
Employment opportunity										
Lawyers (n=152)	0	0.0	5	3.3	30	19.7	93	61.2	24	15.8
Judges (n=35)	0	0.0	1	2.9	11	31.4	19	54.3	4	11.4
Educational opportunity ¹										
Lawyers (n=142)	10	7.0	29	20.4	57	40.1	42	29.6	4	2.8
Judges (n=34)	0	0.0	16	47.1	12	35.3	6	17.6	0	0.0
To be closer to family/friends										
Lawyers (n=145)	1	0.7	5	3.4	33	22.8	83	57.2	23	15.9
Judges (n=34)	0	0.0	2	5.9	15	44.1	15	44.1	2	5.9
To be with new partner										
Lawyers (n=148)	0	0.0	9	6.1	32	21.6	90	60.8	17	11.5
Judges (n=35)	0	0.0	2	5.7	10	28.6	20	57.1	3	8.6
To increase distance from other parent										
Lawyers (n=134)	44	32.8	62	46.3	23	17.2	5	3.7	0	0.0
Judges (n=32)	12	37.5	17	53.1	2	6.3	1	3.1	0	0.0
No particular reason										
Lawyers (n=116)	61	52.6	39	33.6	14	12.1	2	1.7	0	0.0
Judges (n=25)	16	64.0	6	24.0	3	12.0	0	0.0	0	0.0

N=217; Lawyers n=178; Judges n=39

¹ $X^2(4) = 12.6, p < .05$

Lawyers and judges were asked about the distance of the relocation that is typically involved in cases of parental relocation, and their responses are provided in Table 6.5. The most common types of relocation seen in respondents' cases were when the custodial parent wishes to move to a different province or territory, rated as *often* or *almost always* an issue in relocation cases by 60.2% of lawyers and 31.4% of judges, and cases in which the custodial parent wishes to move within the same province or territory, rated as *often* or *almost always* an issue by 42.7% of lawyers and 71.5% of judges. The differences between lawyers and judges in these two types of relocation were statistically significant. Proposed relocations by the custodial parent within the same city or to a different country are relatively infrequent in respondents' cases. Further, proposed relocations by the access parent are *rarely* an issue in relocation cases.

Lawyers and judges were asked if relocation issues have resulted in cases being difficult to settle, and almost all respondents (lawyers = 98.0%; judges = 100.0%) indicated that they have. When lawyers were asked if a proposed relocation increases the likelihood that a case will be litigated and decided by a judge, 96.1% of respondents said that it does.

Table 6.5

In cases where parental relocation is an issue, frequency of type of parental relocation involved

	Never		Rarely		Occasionally		Often		Almost Always	
	n	%	n	%	n	%	n	%	n	%
Custodial parent wishes to move within the city										
Lawyers (n=137)	62	45.3	33	24.1	25	18.2	15	10.9	2	1.5
Judges (n=34)	15	44.1	11	32.4	7	20.6	1	2.9	0	0.0
Custodial parent wishes to move within the province/territory ¹										
Lawyers (n=145)	0	0.0	14	9.7	69	47.6	57	39.3	5	3.4
Judges (n=35)	0	0.0	1	2.9	9	25.7	22	62.9	3	8.6
Custodial parent wishes to move to a different province/territory ²										
Lawyers (n=146)	2	1.4	12	8.2	44	30.1	78	53.4	10	6.8
Judges (n=35)	1	2.9	6	17.1	17	48.6	11	31.4	0	0.0
Custodial parent wishes to move outside the country										
Lawyers (n=143)	27	18.9	72	50.3	32	22.4	11	7.7	1	0.7
Judges (n=35)	5	14.3	23	65.7	6	17.1	1	2.9	0	0.0
Access parent wishes to move within the city										
Lawyers (n=135)	84	62.2	29	21.5	9	6.7	11	8.1	2	1.5
Judges (n=33)	23	69.7	9	27.3	1	3.0	0	0.0	0	0.0
Access parent wishes to move within the province/territory										
Lawyers (n=136)	43	31.6	53	39.0	31	22.8	7	5.1	2	1.5
Judges (n=34)	16	47.1	10	29.4	7	20.6	1	2.9	0	0.0
Access parent wishes to move to a different province/territory										
Lawyers (n=139)	44	31.7	47	33.8	35	25.2	11	7.9	2	1.4
Judges (n=34)	16	47.1	13	38.2	5	14.7	0	0.0	0	0.0
Access parent wishes to move outside the country										
Lawyers (n=136)	68	50.0	53	39.0	14	10.3	0	0.0	1	0.7
Judges (n=34)	20	58.8	13	38.2	1	2.9	0	0.0	0	0.0

N=217; Lawyers n=178; Judges n=39

¹ $\chi^2(3) = 9.9, p < .05$ ² $\chi^2(4) = 10.7, p < .05$

7.0 Child support

The survey contained a number of questions on child support issues, and the findings are presented in this chapter. Lawyers and judges were asked what the most contentious issues are in cases where child support is an issue; see Table 7.1.

Table 7.1
In cases where child support is an issue,
what the most contentious issues are in respondents' experience

Contentious issues	Lawyers		Judges	
	n	%	n	%
Determination of income	124	69.7	28	71.8
Income/financial disclosure ¹	99	55.6	30	76.9
Shared custody	73	41.0	17	43.6
Split custody	20	11.2	3	7.7
Ongoing income/financial disclosure	78	43.8	19	48.7
Special and extraordinary expenses ²	93	52.2	28	71.8
Undue hardship claims ³	22	12.4	15	38.5
Children the age of majority or over	67	37.6	16	41.0
Party standing in place of a parent	27	15.2	4	10.3
Party with income in excess of \$150,000	36	20.2	3	7.7
Imputation of income where party is a shareholder, director or officer of a company	89	50.0	19	48.7
Imputation of income where party has irregular pattern of income	72	40.4	22	56.4
Imputation of income where party is unemployed/underemployed	103	57.9	29	74.4
Imputation of income where disclosure is inadequate ⁴	75	42.1	27	69.2
Imputation of income for other reason	13	7.3	3	7.7
Other*	7	3.9	0	0.0

N=217; Lawyers n=178; Judges n=39

Multiple response data

* Other includes: grossing up income because of tax rates; claims with Revenue Canada; out of country; income splitting with family; and joint custody litigation ensues because of the *Child Support Guidelines*.

¹ $X^2(1) = 6.0, p < .05$

² $X^2(1) = 5.0, p < .05$

³ $X^2(1) = 15.4, p < .001$

⁴ $X^2(1) = 9.4, p < .01$

The issues that were rated as contentious by the greatest numbers of both lawyers and judges tended to relate to income and financial disclosure. Over two-thirds of both judges (71.8%) and lawyers (69.7%) said that determination of income is often a contentious issue in child support cases, and over three-quarters of judges (76.9%) and over one-half of

lawyers (55.6%) also said that income/financial disclosure is often an issue. Imputation of income was also rated as a contentious issue in child support cases, particularly where the payor is unemployed or underemployed (74.4% of judges and 57.9% of lawyers). Special and extraordinary expenses were also reported as a contentious issue by 71.8% of judges and 52.2% of lawyers.

Lawyers and judges differed significantly on four contentious issues: income/financial disclosure; special and extraordinary expenses; undue hardship claims; and imputation of income where disclosure is inadequate. In each of these, judges were more likely to rate the issue as contentious than were lawyers.

All respondents were asked what proportion of their child support cases involve certain identifiable issues. The child support-related issue that is involved in the highest proportion of both lawyers' (35.7%; range = 0% to 80%) and judges' (28.8%; range = 3% to 60%) cases is shared physical custody situations; this difference between lawyers and judges was not statistically significant. On average, a relatively small proportion of lawyers' (13.4%; range = 0% to 75%) and judges' (5.2%; range = 0% to 15%) cases involve children the age of majority or older when the initial arrangements are being made. However, the difference between lawyers and judges was significant ($t(184) = 3.4, p < .001$).

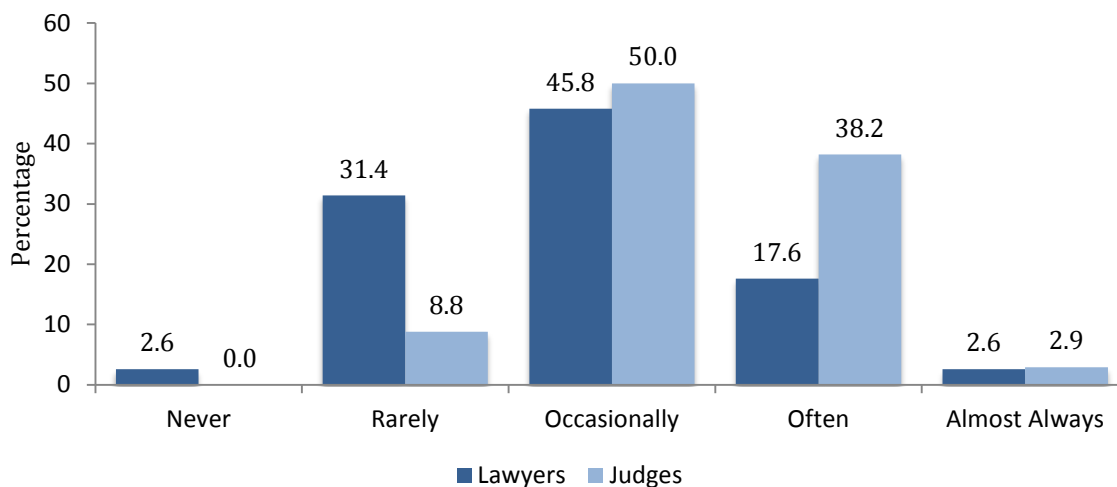
A slightly higher proportion of cases involve variation applications of child support for a child who has reached the age of majority (lawyers = 17.6%, range = 0% to 65%; judges = 18.6%; range = 0% to 75%); this difference between lawyers and judges was not statistically significant. Finally, few lawyers' cases (4.8%; range = 0% to 50%) involve undue hardship applications; a significantly higher proportion of judges' cases (15.1%; range = 0% to 90%) involve this issue ($t(179) = 4.8, p < .001$).

Lawyers and judges were asked how often second families are a factor with respect to child support, see Figure 7.1. Judges (41.1%) were twice as likely to say that this is *often* or *almost always* an issue than were lawyers (20.2%). Conversely, lawyers (34.0%) were much more likely to say that second families are *never* or *rarely* an issue than were judges (8.8%). The difference between lawyers and judges was statistically significant.

Figure 7.2 presents respondents' opinions regarding how often income disclosure is a problem in child support cases. Judges (85.3%) were considerably more likely to say that this is *often* or *almost always* an issue than were lawyers (57.6%). Lawyers (36.6%) were more likely to say that income disclosure is *occasionally* a problem than were judges (14.7%). The difference between lawyers and judges was statistically significant.

Figure 7.1

How often second families are a factor with respect to child support
in respondents' experience

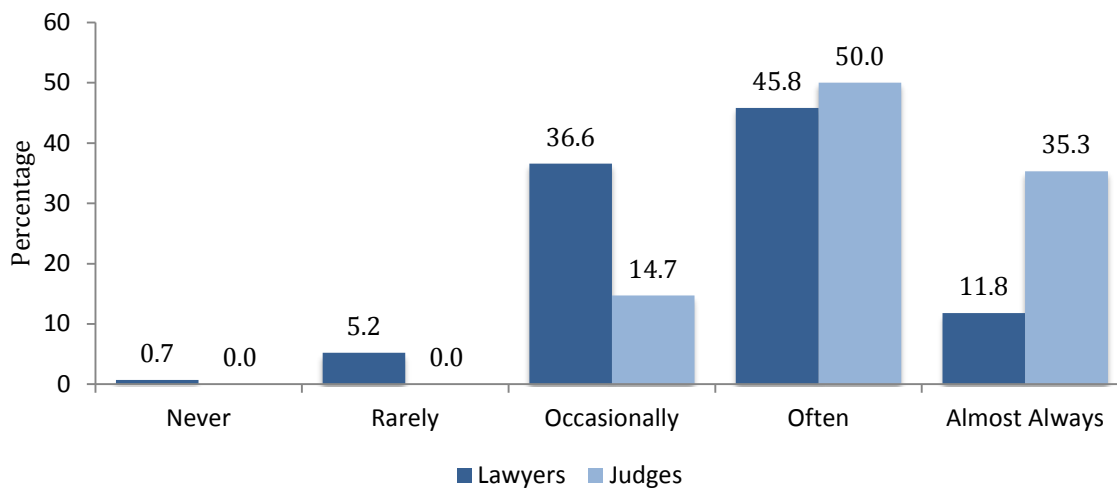


Lawyers n=153; Judges n=34

$\chi^2 (4) = 11.7, p < .05$

Figure 7.2

How often income disclosure is a problem in child support cases
in respondents' experience



Lawyers n=153; Judges n=34

$\chi^2 (4) = 15.8, p < .01$

All respondents were asked what are the most common reasons why income disclosure is a problem in child support cases, and their responses are presented in Table 7.2. The most common reason reported by both lawyers (74.7%) and judges (79.5%) was when the payor is self-employed and there is incomplete or improper income disclosure, followed by cases in which the payor is self-employed and there are issues regarding imputation or determination of income (lawyers = 66.9%; judges = 74.4%). Lawyers and judges differed significantly on two reasons. Judges (76.9%) were more likely than lawyers (57.3%) to say that failure to file income tax is a problem. Lawyers (34.8%) were more likely than judges (17.9%) to say that income disclosure is a problem when income sources are complicated.

Table 7.2

When income disclosure is a problem in child support cases,
what the most common reasons are in respondents' experience

Reasons	Lawyers		Judges	
	n	%	n	%
Failure to file income tax ¹	102	57.3	30	76.9
Refusal to provide pay statement/income tax statement/other financial information	85	47.8	23	59.0
Self-employed (incomplete or improper disclosure)	133	74.7	31	79.5
Self-employed (imputation or determination of income)	119	66.9	29	74.4
Income sources are complicated (e.g., income from tax shelters, income from foreign sources) ²	62	34.8	7	17.9
Other*	5	2.8	3	7.7

N=217; Lawyers n=178; Judges n=39

Multiple response data

* Other includes: cash income; income earned on reserve; self-represented parties; closely held corporation where new partner is a shareholder; and lack of understanding of what is to be provided.

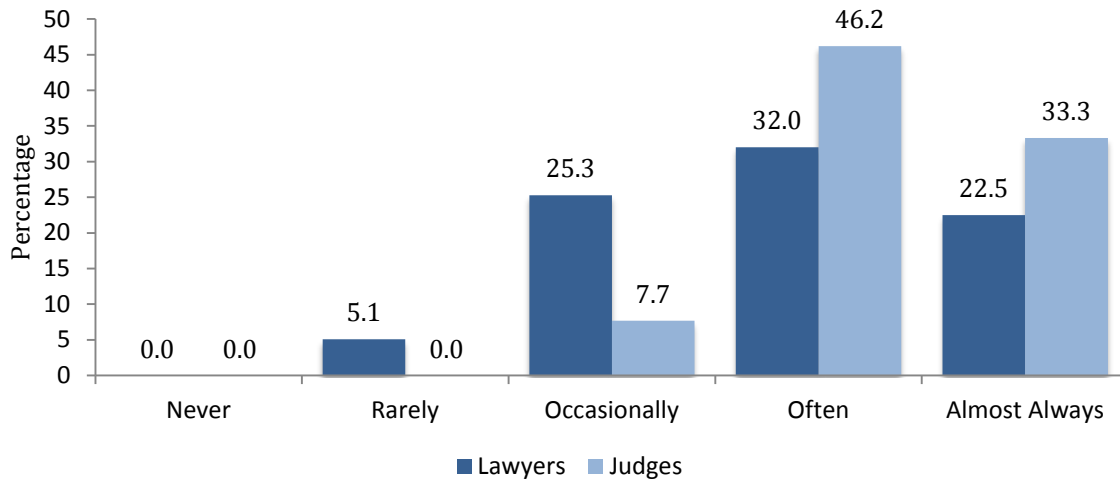
¹ $X^2(1) = 5.2, p < .05$

² $X^2(1) = 4.2, p < .05$

All respondents were asked how often disclosure orders are sought in child support cases where income disclosure is a problem and lawyers and judges differed significantly in their responses; see Figure 7.3. Judges (79.5%) were considerably more likely than lawyers (54.5%) to say that disclosure orders are sought *often* or *almost always*. Conversely, lawyers (25.3%) were more likely to say that disclosure orders are sought *occasionally* than were judges (7.7%). No respondents said that these orders are *never* sought, and 5.1% of lawyers said that they are *rarely* sought.

Figure 7.3

How often disclosure orders are sought in child support cases where income disclosure is a problem



Lawyers n=151; Judges n=34

$\chi^2 (3) = 9.7, p < .05$

Lawyers were asked a series of questions regarding their cases in which income disclosure is an issue, and their responses are presented in Table 7.3. When asked how often the party obliged to pay child support fails to comply with a disclosure order, the majority of lawyers said that this *occasionally* occurs (52.3%); 21.2% of respondents said that this occurs *never* or *rarely*, while 26.5% said that this occurs *often* or *almost always*.

Table 7.3
Lawyers' opinions on how often various situations occur
related to income disclosure in child support cases

	Never		Rarely		Occasionally		Often		Almost Always	
	n	%	n	%	n	%	n	%	n	%
How often does the obliged party fail to comply with an income disclosure order? (n=151)	1	0.7	31	20.5	79	52.3	35	23.2	5	3.3
How often does a party fail to comply with the continuing obligation to provide income information? (n=150)	1	0.7	8	5.3	34	22.7	75	50.0	32	21.3
How often do your clients decide not to pursue a legal entitlement because of lack of disclosure? (n=149)	5	3.4	32	21.5	69	46.3	38	25.5	5	3.4

N=178

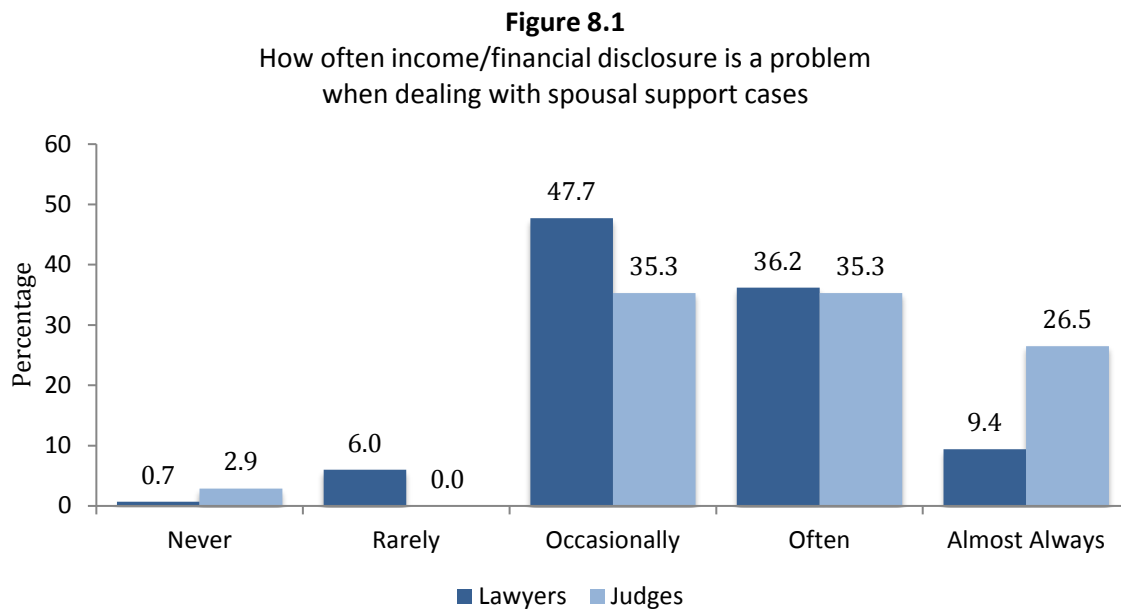
When asked how often a party fails to comply with the continuing obligation to provide income information in the years following the making of a child support order, almost three-quarters of lawyers (71.3%) said that this occurs *often* or *almost always*, while just under one-quarter (22.7%) said that this occurs *occasionally*. Few respondents (6.0%) said that this occurs *never* or *rarely*.

Finally, lawyers were asked how often their clients decide not to pursue an entitlement to child support because of lack of disclosure. The most common response was that this occurs *occasionally* (46.3%). Just over one-quarter of lawyers (28.9%) said that this occurs *often* or *almost always*, while 24.9% said that it occurs *never* or *rarely*.

8.0 Spousal support

The survey contained a number of questions regarding spousal support and the use of the *Spousal Support Advisory Guidelines* (SSAG), and the findings are presented in this chapter. Lawyers and judges were asked in what proportion of their cases is spousal support an issue. Lawyers said that, on average, 48.8% (range = 1% to 100%) of their cases involve spousal support, while judges said that, on average, 26.5% (range = 2% to 75%) of their family law cases involve spousal support. This difference between lawyers and judges was statistically significant (t^2 (182) = 5.1, $p < .001$).

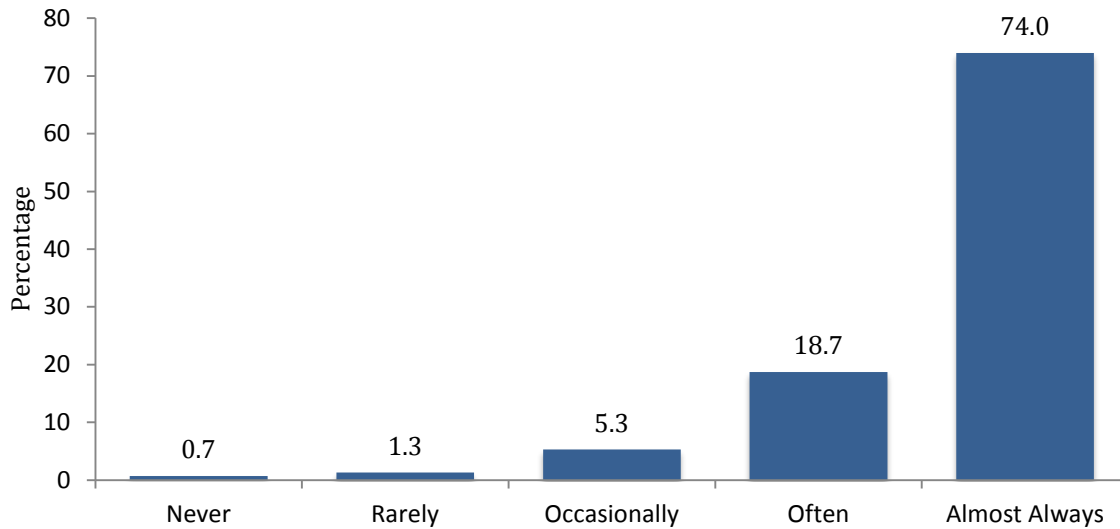
Lawyers and judges were asked how often, in their cases dealing with spousal support, income or financial disclosure is a problem and lawyers and judges differed significantly in their responses; see Figure 8.1. Judges (26.5%) were considerably more likely to report that disclosure is *almost always* an issue than were lawyers (9.4%), while lawyers (47.7%) were more likely to report that disclosure is *occasionally* a problem than were judges (35.3%). Few lawyers (6.7%) or judges (2.9%) said that disclosure is *never* or *rarely* a problem.



Lawyers n=149; Judges n=34
 X^2 (4) = 10.7, $p < .05$

Figure 8.2 presents the frequency with which lawyers reported using the *Spousal Support Advisory Guidelines*. The substantial majority of lawyers (92.7%) said that they use the Guidelines either *often* or *almost always*; very few said that they use them *occasionally* (5.3%), *rarely* (1.3%), or *never* (0.7%).

Figure 8.2
How often lawyers use the *Spousal Support Advisory Guidelines*



n=150

All respondents were asked questions regarding the frequency with which they use the SSAG and in what situations, and their responses are shown in Table 8.1. When asked how frequently they use the SSAG to negotiate, almost all lawyers (94.7%) said that they use them *often* or *almost always*, compared to 62.1% of judges. Judges (20.6%) were more likely to say that they *never* or *rarely* use the SSAG to facilitate negotiations, compared to 1.3% of lawyers. Lawyers (82.1%) were also more likely to say that they *often* or *almost always* use the SSAG at mediation or arbitration than were judges (64.3%). These differences between lawyers and judges are statistically significant.

Almost all lawyer respondents (91.9%) said that they use the SSAG *often* or *almost always* at case conferences, settlement conferences, and judicial dispute resolution conferences. They were also very likely to report using them *often* or *almost always* at trials (91.7%), at interim motions (93.2%), and at other court proceedings (83.1%).

Lawyers were asked what impact the SSAG have had on the determination of spousal support in their practice; see Table 8.2. Three-quarters of lawyers (75.3%) said that the SSAG have been useful in assisting with negotiation, 70.2% said that they have been helpful in encouraging settlement by negotiation, 65.7% said that they offer a starting place, and 51.7% said that they are useful for predicting results. Only 3.9% of lawyers said that the SSAG have had a negative impact, and no lawyers said that they have had no impact.

Table 8.1
Frequency of use of the *Spousal Support Advisory Guidelines*

	Never		Rarely		Occasionally		Often		Almost Always	
	n	%	n	%	n	%	n	%	n	%
To negotiate ¹										
Lawyers (n=149)	2	1.3	0	0.0	6	4.0	29	19.5	112	75.2
Judges (n=29)	3	10.3	3	10.3	5	17.2	8	27.6	10	34.5
At mediation or arbitration ²										
Lawyers (n=140)	10	7.1	4	2.9	11	7.9	24	17.1	91	65.0
Judges (n=28)	2	7.1	3	10.7	5	17.9	12	42.9	6	21.4
At case conferences, settlement conferences, judicial dispute resolution conferences										
Lawyers (n=149)	3	2.0	3	2.0	6	4.0	27	18.1	110	73.8
At trials										
Lawyers (n=144)	4	2.8	3	2.1	5	3.5	20	13.9	112	77.8
At interim motions										
Lawyers (n=148)	1	0.7	2	1.4	7	4.7	24	16.2	114	77.0
At other court proceedings										
Lawyers (n=136)	10	7.4	8	5.9	5	3.7	19	14.0	94	69.1

Lawyers N=178; Judges N=39

¹ $X^2(4) = 35.9, p < .001$

² $X^2(4) = 20.8, p < .001$

Table 8.2
Lawyers' opinions on the impact the *Spousal Support Advisory Guidelines* have had
on the determination of spousal support issues in their practice

Impact	n	%
Assist in negotiation	134	75.3
Encourage settlement by negotiation	125	70.2
Offer a starting place	117	65.7
Predict results	92	51.7
Negative impact	7	3.9
No impact	0	0.0
Other*	5	2.8

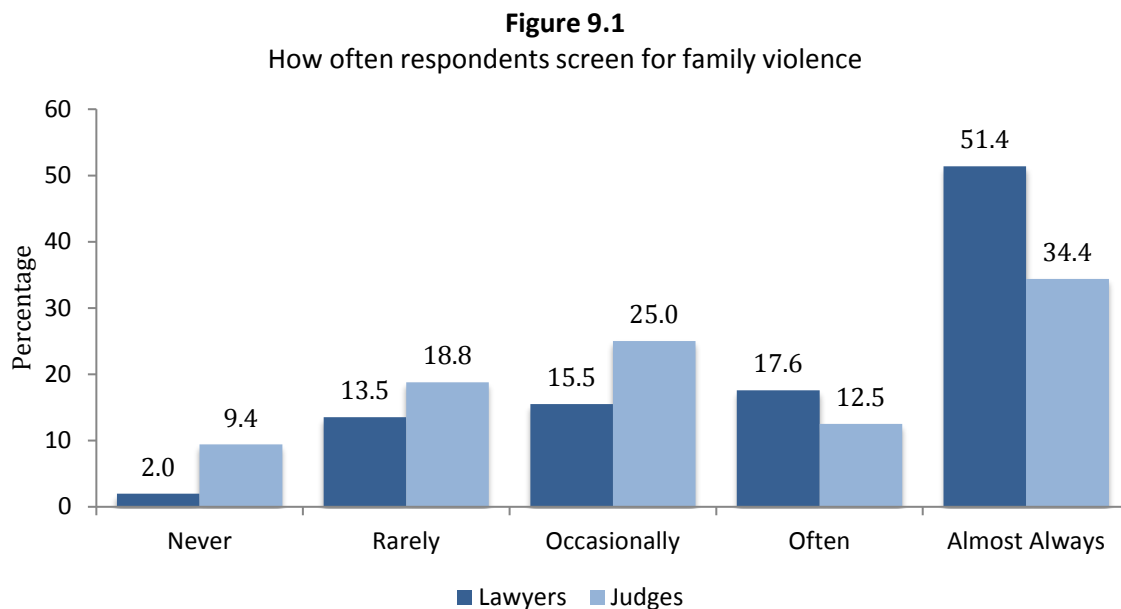
N=178

Multiple response data

* Other includes: assist for short-term marriages; don't assist for long-term marriages where children are/soon to be adult children; don't assist when entitlement is an issue as this gets ignored; sometimes they set unreasonable expectations when the other lawyer does not appreciate that they are "guidelines."

9.0 Family violence

This chapter presents findings from the survey questions related to family violence. All respondents were asked how frequently they screen for family violence, and their responses are provided in Figure 9.1. Over two-thirds of lawyers (69.0%) said that they *often* or *almost always* screen for family violence, compared to almost one-half (46.9%) of judges. Judges (28.2%) were more likely to say that they *rarely* or *never* screen for family violence than were lawyers (15.5%). However, these differences between lawyers and judges were not statistically significant.



Lawyers n=148; Judges n=32

Lawyers who do screen for family violence were asked how often they use a standard questionnaire or other tool for that purpose; see Figure 9.2. Over one-half of respondents (53.1%) said that they *never* use a standardized instrument or measure, and another 25.5% said that they *rarely* do so. Only 13.1% of lawyers said that they *often* or *almost always* use a standardized measure.

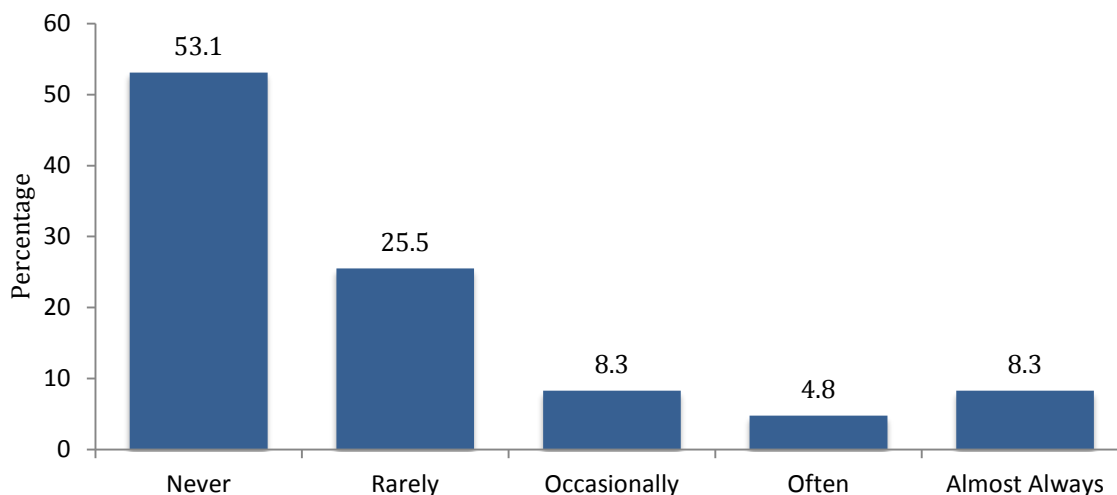
Lawyers who reported that they use a standardized tool to screen for family violence were asked the source of this tool. The most common response, provided by over one-half of lawyers (58.7%), was that they were given the tool by their firm, followed by a tool that was provided by a professional practice group (26.1%); see Figure 9.3.

Lawyers and judges were asked in what proportion of their family law cases is family violence an issue. On average, lawyers reported that family violence is an issue in 21.7%

of their cases (range = 0% to 95%) and judges said that it is an issue in 25.3% of their cases (range = 5% to 60%).

Figure 9.2

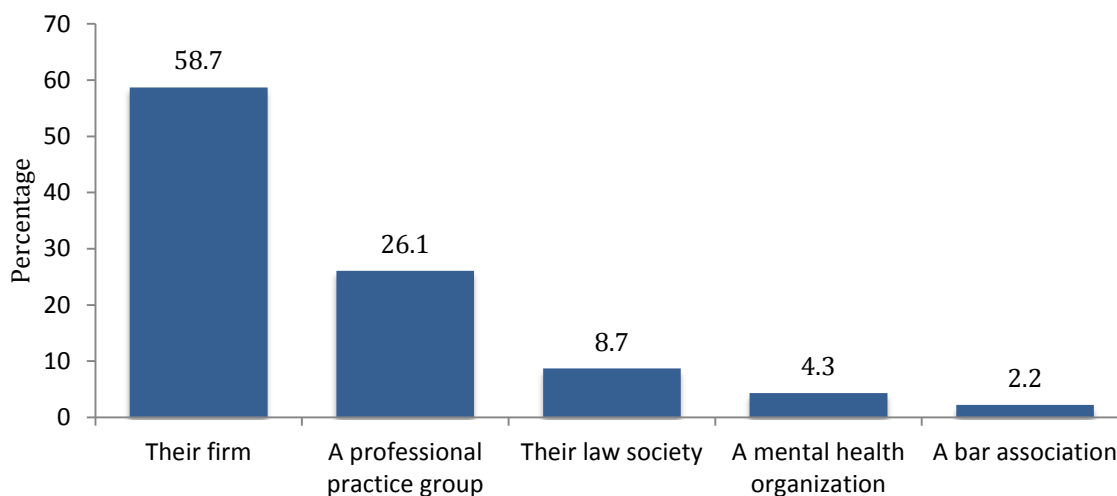
How often lawyers use a standard questionnaire or other tool to screen for family violence



n=145

Figure 9.3

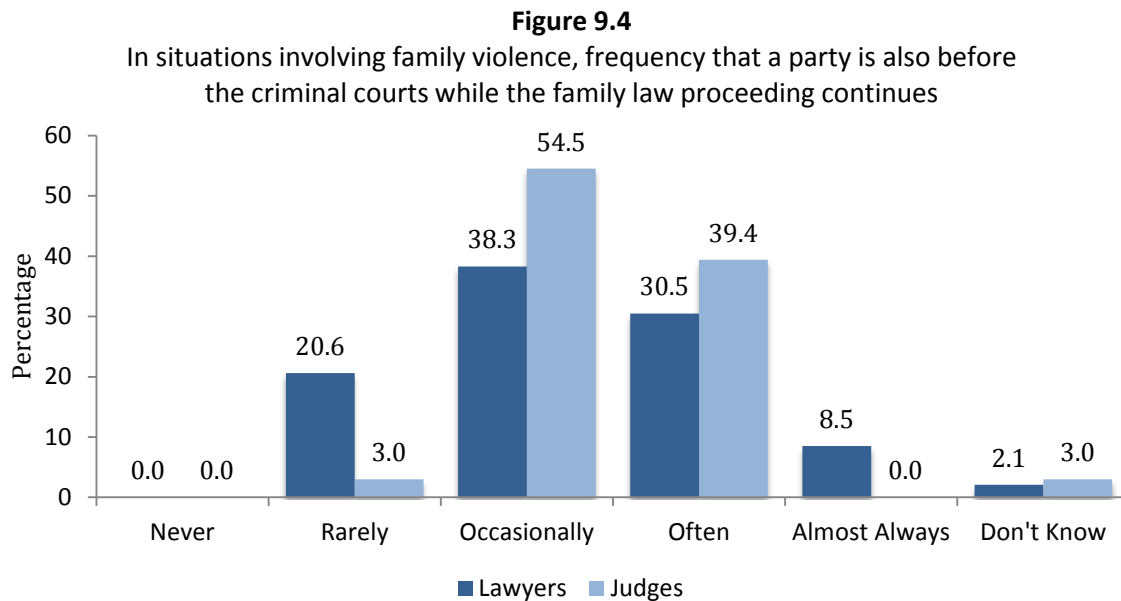
Source of standard questionnaire or other tool used by lawyers to screen for family violence



n=46; missing=22

Lawyers and judges were asked how often a party is also before the criminal courts in situations involving family violence, and lawyers and judges differed significantly in their responses; see Figure 9.4. Lawyers (20.6%) were considerably more likely to say that this is *rarely* the case than were judges (3.0%). Judges were more likely to report that a

party is also before the criminal courts *occasionally* (54.5%) or *often* (39.4%) than were lawyers (38.3% and 30.5%, respectively).

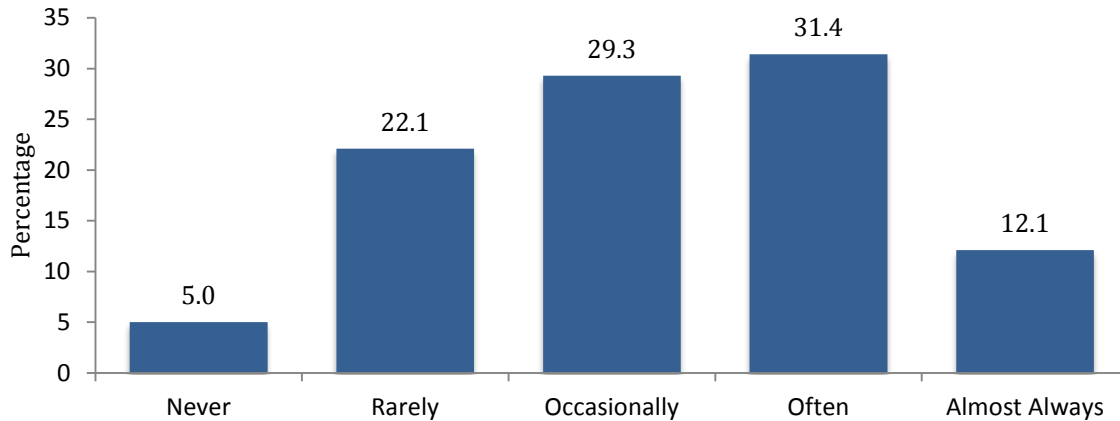


Lawyers n=141; Judges n=33
 $\chi^2 (4) = 10.0, p < .05$

Lawyers were asked how often they liaise with professionals or agencies in the criminal justice system when a party in one of their family law cases is simultaneously involved in criminal proceedings; see Figure 9.5. Just under one-half (43.5%) of lawyers said that they *often* or *almost always* liaise with an aspect of the criminal justice system in these cases, while 29.3% said that they *occasionally* do so. Just over one-quarter (27.1%) of respondents said that they *never* (5.0%) or *rarely* (22.1%) liaise with the criminal justice system.

Figure 9.5

How often lawyers liaise with elements of the criminal justice system to help serve their client when the party is simultaneously involved in criminal proceedings



n=140

Lawyers were asked if they are aware of the services that are available for their clients in cases where there is family violence, and the substantial majority (85.6%) said that they are. Two lawyers said that there are no services available in their area, and 12.9% said that they are not familiar with the available services.

Lawyers and judges were asked, in their experience with cases involving family violence, how the court dealing with the family law issues addressed the violence, and their responses are provided in Table 9.1. The most common ways that the court addressed family violence *often* or *almost always* were: by making a civil order restraining harassment or regulating contact between the parents (lawyers = 54.7%; judges = 71.0%); denying custody to the abusive parent (lawyers = 38.7% judges = 50.0%); ordering access supervision (lawyers = 36.2%; judges = 54.6%); ordering exchange supervision (lawyers = 30.4%; judges = 48.5%); and making use of counselling services (lawyers = 37.3%; judges = 23.3%). When asked how frequently the court did not address the family violence issue, most lawyers (61.6%) and judges (90.0%) said that this *never* or *rarely* occurred. Lawyers and judges differed significantly in their responses to four ways the court addressed the family violence issue: access supervision was ordered; counselling services were used; access was denied to the abusive parent; and the court did not address the issue.

Table 9.1
In cases involving family violence, frequency of how the court
addressed the family violence issue

	Never		Rarely		Occasionally		Often		Almost Always	
	n	%	n	%	n	%	n	%	n	%
Assessment services were used										
Lawyers (n=119)	20	16.8	34	28.6	42	35.3	18	15.1	5	4.2
Judges (n=30)	4	13.3	15	50.0	9	30.0	2	6.7	0	0.0
Child was given legal representation										
Lawyers (n=121)	46	38.0	25	20.7	29	24.0	19	15.7	2	1.7
Judges (n=31)	9	29.0	11	35.5	6	19.4	4	12.9	1	3.2
Access supervision was ordered										
Lawyers (n=127)	4	3.1	18	14.2	59	46.5	39	30.7	7	5.5
Judges (n=33)	0	0.0	0	0.0	15	45.5	15	45.5	3	9.1
Exchange supervision was ordered ¹										
Lawyers (n=122)	25	20.5	20	16.4	40	32.8	34	27.9	3	2.5
Judges (n=33)	1	3.0	1	3.0	15	45.5	14	42.4	2	6.1
Counselling services were used ²										
Lawyers (n=126)	8	6.3	26	20.6	45	35.7	37	29.4	10	7.9
Judges (n=30)	1	3.3	2	6.7	20	66.7	7	23.3	0	0.0
Parents were educated on the effects of family violence on children										
Lawyers (n=124)	20	16.1	33	26.6	35	28.2	25	20.2	11	8.9
Judges (n=30)	2	6.7	8	26.7	7	23.3	7	23.3	6	20.0
Access was denied to abusive parent ³										
Lawyers (n=125)	27	21.6	51	40.8	35	28.0	12	9.6	0	0.0
Judges (n=31)	0	0.0	14	45.2	12	38.7	4	12.9	1	3.2
Custody was denied to abusive parent										
Lawyers (n=124)	13	10.5	23	18.5	40	32.3	35	28.2	13	10.5
Judges (n=32)	0	0.0	6	18.8	10	31.3	8	25.0	8	25.0
Civil order restraining harassment/regulating or restraining contact between parents										
Lawyers (n=128)	2	1.6	14	10.9	42	32.8	53	41.4	17	13.3
Judges (n=31)	1	3.2	2	6.5	6	19.4	15	48.4	7	22.6

	Never		Rarely		Occasionally		Often		Almost Always	
	n	%	n	%	n	%	n	%	n	%
Civil order restraining harassment/regulating or restraining contact between party and child										
Lawyers (n=128)	9	7.0	42	32.8	37	28.9	34	26.6	6	4.7
Judges (n=30)	1	3.3	6	20.0	14	46.7	6	20.0	3	10.0
Court did not address issue ⁴										
Lawyers (n=107)	33	30.8	33	30.8	28	26.2	13	12.1	0	0.0
Judges (n=20)	13	65.0	5	25.0	1	5.0	1	5.0	0	0.0

Lawyers N=178; Judges N=39

¹ $X^2(4) = 12.1, p < .05$

² $X^2(4) = 11.3, p < .05$

³ $X^2(4) = 12.1, p < .05$

⁴ $X^2(3) = 9.7, p < .05$

10.0 Support enforcement and interjurisdictional support orders

The survey contained a number of questions regarding the enforcement of support obligations and the use of interjurisdictional support orders, and the findings are summarized in this chapter. Lawyers and judges were asked what proportion of their family law cases involve support enforcement issues, and they reported that these occur, on average, in approximately one-quarter of their cases (lawyers = 27.5%, range = 0% to 100%; judges = 22.7%, range = 5% to 70%).

All respondents were asked how frequently they deal with support enforcement services, and their responses are presented in Table 10.1. Under one-half of lawyers (42.7%) and just over one-half of judges (53.1%) said that they *often* or *almost always* deal with their provincial/territorial maintenance enforcement program. Few respondents said that they deal with provincial/territorial Interjurisdictional Support Orders Designated Authority Offices: 78.9% of lawyers and 58.1% of judges said that they *never* or *rarely* deal with this office. However, the difference between lawyers and judges was statistically significant. Lawyers were asked how often they deal with the Department of Justice Canada's Family Law Assistance Services, and the substantial majority (94.8%) said that they *never* or *rarely* do so.

Table 10.1
How frequently respondents have dealt with various support enforcement services

	Never		Rarely		Occasionally		Often		Almost Always	
	n	%	n	%	n	%	n	%	n	%
Provincial/territorial Maintenance Enforcement Programs										
Lawyers (n=138)	11	8.0	30	21.7	38	27.5	38	27.5	21	15.2
Judges (n=32)	0	0.0	5	15.6	10	31.3	12	37.5	5	15.6
Provincial/territorial Inter-Jurisdictional Support Orders Designated Authority Office ¹										
Lawyers (n=137)	39	28.5	69	50.4	22	16.1	5	3.6	2	1.5
Judges (n=31)	3	9.7	15	48.4	9	29.0	4	12.9	0	0.0
Department of Justice Canada Family Law Assistance Services										
Lawyers (n=134)	102	76.1	25	18.7	7	5.2	0	0.0	0	0.0

Lawyers N=178; Judges N=39

¹ $\chi^2(4) = 10.4, p < .05$

Lawyers were asked how often their clients make use of various federal government remedies for non-payment of support orders or agreements; see Table 10.2. Almost one-half of lawyers (46.0%) said that they have *occasionally* had cases where federal payments were garnisheed for non-payment of support, 30.9% said that this *never* or *rarely* happens in their cases, and 23.0% said that this has occurred *often* or *almost always*. Having a passport denied or suspended by the federal government was a less frequent occurrence, with two-thirds (65.5%) of lawyers stating this has *never* or *rarely* happened in their cases, 28.8% saying that this has *occasionally* occurred, and only 5.7% saying that this has happened *often* or *almost always*. Finally, 59.7% of lawyers said their cases *never* or *rarely* involved federal salaries and remunerations garnisheed or had federal pensions diverted in order to satisfy support orders or agreements, 28.8% said that this has occurred *occasionally*, and 11.6% said that this occurred *often* or *almost always*.

Table 10.2
How frequently lawyers have had clients (or their former spouses)
who encountered various federal government sanctions

	Never		Rarely		Occasionally		Often		Almost Always	
	n	%	n	%	n	%	n	%	n	%
Federal payments garnisheed by the Department of Justice Canada	12	8.6	31	22.3	64	46.0	25	18.0	7	5.0
Passport denied or suspended by the federal government for being in persistent arrears of their support obligations	52	37.4	39	28.1	40	28.8	7	5.0	1	0.7
Federal salaries and remunerations garnisheed or had federal pension benefits diverted for the purposes of satisfying support orders or agreements	35	25.2	48	34.5	40	28.8	13	9.4	3	2.2

n=139

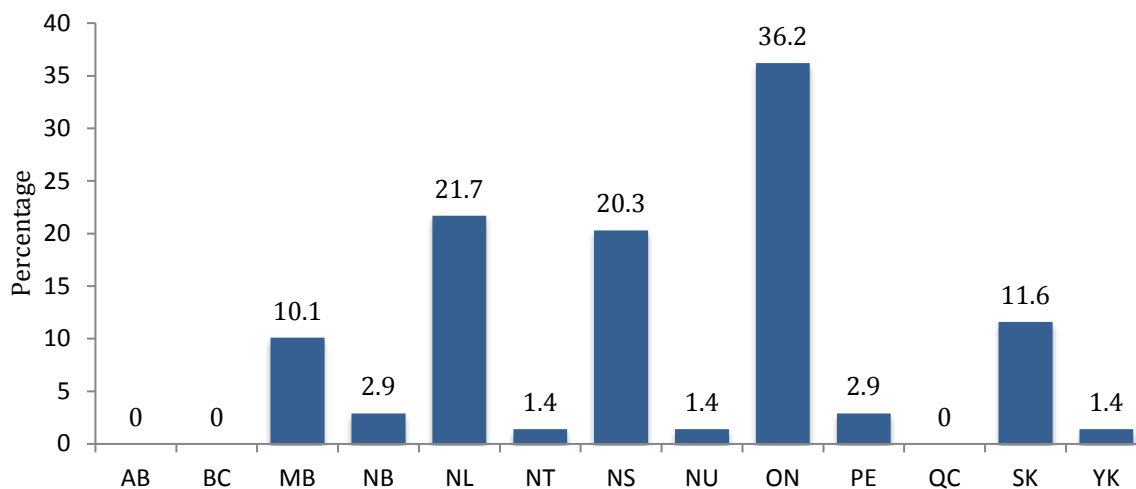
Lawyers reported that, on average, 26.0% (range = 0% to 100%) of their support enforcement cases include dealing with maintenance enforcement programs on behalf of a creditor, and 27.7% (range = 0% to 100%) of their cases have involved dealing with maintenance enforcement programs on behalf of a debtor. Lawyers also reported that, on average, 16.1% (range = 0% to 100%) of their cases involved dealing directly with a debtor on behalf of a creditor, and 14.2% (range = 0% to 90%) of their cases have involved dealing directly with a creditor on behalf of a debtor.

Lawyers and judges were asked if they have had any cases involving provincial/territorial Interjurisdictional Support Orders legislation or Reciprocal Enforcement of Maintenance Orders forms; judges (87.1%) were significantly more likely to report that they have dealt with such cases than were lawyers (65.2%) ($X^2(1) = 5.7, p < .05$). Lawyers said that, on average, only 6.6% (range = 0% to 50%) of their cases involve clients seeking advice on such cases.

11.0 Unified family courts

The Canadian Research Institute for Law and the Family added a number of questions to the survey for lawyers regarding their experiences with and impressions of unified family courts, and the findings are summarized in this chapter. Lawyers were initially asked if they had experience with family law proceedings in a unified family court, and 50.0% said that they have. Figure 11.1 presents the provinces and territories in which respondents obtained that experience. Lawyers were most likely to have had experience with unified family courts in Ontario (36.2%), Newfoundland and Labrador (21.7%), Nova Scotia (20.3%), Saskatchewan (11.6%), and Manitoba (10.1%).

Figure 11.1
Province/territory in which lawyers have had experience
with family law proceedings in a unified family court



n=69
Multiple response data

Lawyers who said they had experience with family law proceedings in a unified family court were asked the extent to which they agreed or disagreed with several statements comparing unified family courts to other courts, and their responses are provided in Table 11.1. The statement with which most respondents *agreed* or *strongly agreed* was that unified family courts have judges who are more knowledgeable than other judges about family law and related legal principles. Two-thirds of lawyers (66.7%) *agreed* or *strongly agreed* with this statement, while only 13.0% *disagreed* or *strongly disagreed*.

Lawyers were also asked if unified family courts have judges who are more knowledgeable than other judges about the psychology of separation and the effect of separation on children, and almost two-thirds (64.7%) *agreed* or *strongly agreed* that this is the case, while a small proportion (11.8%) *disagreed* or *strongly disagreed*.

Table 11.1
Extent to which lawyers agree or disagree with various statements about
unified family courts compared to other courts*

	Strongly Agree		Agree		Neither		Disagree		Strongly Disagree		Don't Know	
	n	%	n	%	n	%	n	%	N	%	n	%
Have simpler processes (n=69)	10	14.5	12	17.4	15	21.7	18	26.1	9	13.0	5	7.2
Have simpler rules of court (n=69)	5	7.2	12	17.4	13	18.8	23	33.3	10	14.5	6	8.7
Have simpler rules of evidence (n=69)	4	5.8	12	17.4	19	27.5	21	30.4	7	10.1	6	8.7
Provide easier access to family justice services (n=69)	11	15.9	22	31.9	8	11.6	16	23.2	8	11.6	4	5.8
Provide more timely resolution of family law disputes (n=68)	9	13.2	13	19.1	14	20.6	14	20.6	14	20.6	4	5.9
Produce outcomes that are more likely to be tailored to individual needs (n=69)	13	18.8	18	26.1	15	21.7	11	15.9	6	8.7	6	8.7
Have judges who are more knowledgeable about family law and related legal principles (=69)	24	34.8	22	31.9	8	11.6	5	7.2	4	5.8	6	8.7
Have judges who are more knowledgeable about the psychology of separation and the effect of separation on children (n=68)	23	33.8	21	30.9	9	13.2	5	7.4	3	4.4	7	10.3
Are less expensive for litigants (n=69)	6	8.7	7	10.1	14	20.3	21	30.4	14	20.3	7	10.1
Have judges who are more effective at settling cases (n=69)	17	24.6	18	26.1	18	26.1	5	7.2	3	4.3	8	11.6

* Based on lawyers who had experience with family law proceedings in a unified family court, n=69.

Respondents were asked if unified family courts have judges who are more effective than other judges at settling family cases, and one-half (50.7%) *agreed* or *strongly agreed* that this is the case and only 11.5% *disagreed* or *strongly disagreed*. When asked if unified family courts produce outcomes that are more likely to be tailored to the specific needs of

individual litigants, 44.9% of the respondents *agreed* or *strongly agreed* with this statement, while one-quarter (24.6%) *disagreed* or *strongly disagreed*.

Lawyers were asked if unified family courts have simpler processes than other courts, and one-third of respondents (31.9%) either *agreed* or *strongly agreed* with this statement, while 39.1% *disagreed* or *strongly disagreed*. When asked if unified family courts have simpler rules of court than other courts, one-quarter (24.6%) *agreed* or *strongly agreed* with this statement, while almost one-half (47.8%) *disagreed* or *strongly disagreed*. When asked if unified family courts have simpler rules of evidence, 22.9% of respondents *agreed* or *strongly agreed*, and 40.5% *disagreed* or *strongly disagreed*.

When asked if unified family courts provide easier access to family justice services than other courts, almost one-half of lawyers (47.8%) *agreed* or *strongly agreed* that they do, and over one-third (34.8%) *disagreed* or *strongly disagreed* with this statement. With regard to whether unified family courts provide more timely resolution of family law disputes than other courts, one-third of lawyers (32.3%) *agreed* or *strongly agreed* that this is the case, while 41.2% either *disagreed* or *strongly disagreed*. When asked if unified family courts are less expensive for litigants, only 18.8% of lawyers *agreed* or *strongly agreed* that this is the case, and one-half (50.7%) *disagreed* or *strongly disagreed*.

The next set of questions in the survey asked lawyers if there is a unified family court in their jurisdiction, and just over one-third of participants (34.1%) said that there is. Participants who do not have a unified family court in their jurisdiction were asked if they would like to have one, and the substantial majority (80.2%) said that they would.

Respondents who indicated that they have a unified family court in their jurisdiction were asked the extent to which they agree or disagree with a number of statements about unified family courts, and their responses are presented in Table 11.2. When asked if the unified family court in their jurisdiction has a bench specializing in family law disputes, over three-quarters of lawyers (79.6%) *agreed* or *strongly agreed* that this is the case; only 9.1% *disagreed* with this and no one *strongly disagreed*, while 11.4% said that they *neither agreed nor disagreed*. Participants were also asked if the unified family court in their jurisdiction offers mediation or collaborative settlement processes, and almost three-quarters (72.8%) *agreed* or *strongly agreed* that it does, while 15.9% *disagreed* or *strongly disagreed* and 11.4% *neither agreed nor disagreed*.

Lawyers were asked if their unified family court uses rules of court that are tailored to family law disputes, and over one-half (59.1%) *agreed* or *strongly agreed* that this is the case, while one-fifth (20.4%) *disagreed* or *strongly disagreed*, and the same proportion (20.5%) *neither agreed nor disagreed*. When asked if the unified family court in their jurisdiction resolves family law disputes efficiently, 43.2% *agreed* or *strongly agreed* that this is the case, while one-third (34.1%) *disagreed* or *strongly disagreed*, and 22.7% *neither agreed nor disagreed*. When asked if their unified family court resolves family law disputes

speedily, responses were somewhat less positive, with 31.8% of lawyers *agreeing* or *strongly agreeing* with this statement, while one-half (50.0%) *disagreed* or *strongly disagreed*, and 18.2% said that they *neither agreed nor disagreed*. These questions did not, however, ask lawyers to compare the efficiency of family court dispute resolution to dispute resolution in other courts.

Table 11.2
Extent to which lawyers agree or disagree with various statements about
the unified family court in their jurisdiction

	Strongly Agree		Agree		Neither		Disagree		Strongly Disagree		Don't Know	
	n	%	n	%	n	%	n	%	n	%	n	%
Has a bench specializing in family law disputes	23	52.3	12	27.3	5	11.4	4	9.1	0	0.0	0	0.0
Resolves family law disputes speedily	3	6.8	11	25.0	8	18.2	18	40.9	4	9.1	0	0.0
Resolves family law disputes efficiently	5	11.4	14	31.8	10	22.7	12	27.3	3	6.8	0	0.0
Uses rules of court that are tailored to family law disputes	10	22.7	16	36.4	9	20.5	6	13.6	3	6.8	0	0.0
Offers mediation or collaborative settlement processes	9	20.5	23	52.3	5	11.4	4	9.1	3	6.8	0	0.0
Accommodates off-site mediation or collaborative settlement processes	3	6.8	10	22.7	11	25.0	9	20.5	4	9.1	7	15.9

n=44

Lawyers were asked if their unified family court uses rules of court that are tailored to family law disputes, and over one-half (59.1%) *agreed* or *strongly agreed* that this is the case, while one-fifth (20.4%) *disagreed* or *strongly disagreed*, and the same proportion (20.5%) *neither agreed nor disagreed*. When asked if the unified family court in their jurisdiction resolves family law disputes efficiently, 43.2% *agreed* or *strongly agreed* that this is the case, while one-third (34.1%) *disagreed* or *strongly disagreed*, and 22.7% *neither agreed nor disagreed*. When asked if their unified family court resolves family law disputes speedily, responses were somewhat less positive, with 31.8% of lawyers *agreeing* or *strongly agreeing* with this statement, while one-half (50.0%) *disagreed* or *strongly disagreed*, and 18.2% said that they *neither agreed nor disagreed*. These questions did not, however, ask lawyers to compare the efficiency of family court dispute resolution to dispute resolution in other courts.

Finally, when asked if the unified family court in their jurisdiction accommodates off-site mediation or collaborative settlement processes, over one-quarter of lawyers (29.5%) *agreed* or *strongly agreed* that this is the case, while the same proportion (29.6%) *disagreed* or *strongly disagreed*, one-quarter (25.0%) *neither agreed nor disagreed*, and 15.9% said that they *don't know*.

Lawyers who have a unified family court in their jurisdiction were asked the extent to which they are satisfied with several outcomes and services provided by the court, and their responses are provided in Table 11.3. Respondents reported being most satisfied with the overall quality of decision-making in their unified family court: almost three-quarters of lawyers (72.7%) said that they are *satisfied* or *very satisfied*, only 6.8% reported that they are *dissatisfied*, and 20.5% said that they are *neither satisfied nor dissatisfied*.

Table 11.3
Lawyers' satisfaction levels with various aspects
of the unified family court in their jurisdiction

	Very Satisfied		Satisfied		Neither		Dis-satisfied		Very Dis-satisfied		N/A	
	n	%	n	%	n	%	n	%	n	%	n	%
The availability of dates for hearings	1	2.3	16	36.4	8	18.2	9	20.5	10	22.7	0	0.0
The availability of dates for trials	0	0.0	13	29.5	6	13.6	13	29.5	11	25.0	1	2.3
The accessibility of court processes	0	0.0	20	45.5	12	27.3	8	18.2	4	9.1	0	0.0
The availability of family justice services	4	9.1	21	47.7	9	20.5	7	15.9	2	4.5	1	2.3
The overall quality of the non-adversarial dispute resolution services offered	3	6.8	14	31.8	13	29.5	10	22.7	2	4.5	2	4.5
The overall quality of decision-making	10	22.7	22	50.0	9	20.5	3	6.8	0	0.0	0	0.0

n=44

Lawyers who have a unified family court in their jurisdiction were also asked how satisfied they are with the availability of family justice services in their unified family court, and over one-half (56.8%) said that they are either *satisfied* or *very satisfied*, while 20.4% said that they are either *dissatisfied* or *very dissatisfied*, and 20.5% said that they are *neither satisfied nor dissatisfied*.

Lawyers were also asked how satisfied they are with the accessibility of court processes in their unified family court, and while no respondents said that they are *very satisfied*, 45.5% said that they are *satisfied*. Over one-quarter of lawyers (27.3%) said that they are either *dissatisfied* or *very dissatisfied* with the accessibility of court services, and 27.3% said that they are *neither satisfied nor dissatisfied*.

When asked how satisfied they are with the availability of dates for hearings, over one-third (38.7%) said that they are either *satisfied* or *very satisfied*, while 43.2% said that they are either *dissatisfied* or *very dissatisfied*, and 18.2% said that they are *neither satisfied nor dissatisfied*. This question did not, however, ask lawyers to compare the availability of court dates in the unified family court to availability of dates in other courts.

When asked their level of satisfaction with the availability of dates for trials in their unified family court, no respondents said that they are *very satisfied* and 29.5% said that they are *satisfied*. Over one-half of lawyers (54.5%) said that they are either *dissatisfied* or *very dissatisfied*, and 13.6% said that they are *neither satisfied nor dissatisfied*.

When asked how satisfied they are with the overall quality of the non-adversarial dispute resolution services offered in their unified family court, over one-third of lawyers (38.6%) said that they are either *satisfied* or *very satisfied*; 27.2% said that they are either *dissatisfied* or *very dissatisfied*, and 29.5% are *neither satisfied nor dissatisfied*.

Finally, respondents were asked if they had any additional comments about unified family courts, and 38 respondents provided 54 comments. These comments were coded and are presented in Table 11.4. The most common comment, provided by 31.6% of respondents who provided comments was that judges hearing family law cases should have expertise in family law. Other common comments that were offered by respondents were: unified family courts lack the resources to provide timely access to justice/cases are backlogged/need more judges (23.7%); unified family courts are a good first step/good in theory/unified family courts are needed (18.4%); and unified family courts are more complicated than regular family court process/more complex (13.2%).

Noting the need for unified family courts, three lawyers commented:

They should be in all areas. Family issues are complex and may include a wide range of other issues including cultural, psychological issues and addiction issues. Judges need to have knowledge of these other issues as well as complex parenting and financial issues, and therefore family courts should in all cases be specialized.

Having a UFC is a huge advantage, which becomes clear when you don't have access to it. The specially trained and experienced bench is the biggest advantage. The wait times are higher because there are so many more participants in the family

court process than in the general division, not because of any inherent inefficiencies in the UFC.

The federal and provincial governments need to quit wrangling about financial responsibility, and resolve the issue as soon as possible. Families simply cannot continue to suffer the current adversarial, complex and counterintuitive court system while governments dither about funding.

Table 11.4
Lawyers' comments about unified family courts

Comments	N	% of respondents
Judges hearing family law cases should have expertise in family law	12	31.6
Unified family courts lack the resources to provide timely access to justice/cases are backlogged/need more judges	9	23.7
Unified family courts are a good first step/good in theory/unified family courts are needed	7	18.4
Unified family courts are more complicated than regular family court process / more complex	5	13.2
Dual system is difficult to navigate/disparity in processes and services	3	7.9
Political issues between superior court and provincial court/political issues between federal and provincial governments	3	7.9
Toronto does not have a unified family court but it does have specialized judges in family law	3	7.9
There should be one court for all matters – not just family law	2	5.3
Some are good, some are bad	2	5.3
Wait times are higher because of volume of cases, not inherent inefficiencies in the unified family court	2	5.3
Inequitable access to justice when some parts of the province have unified family courts and others do not	1	2.6
Fear the loss of rules regarding procedure and evidence	1	2.6
Tried but discontinued	1	2.6
Manitoba's unified family court is great	1	2.6
Need more focus on mediation and collaborative processes	1	2.6
Do not agree with specialized courts...matters such as human rights tend to be given insufficient resources	1	2.6

n=38

Multiple response data

Other respondents expressed concerns about unified family courts, and mentioned the higher costs associated with them:

They are great - in theory. Problem is, they are too expensive. In jurisdictions that have them, they do not replace existing courts, or even close to it. Mostly, they just service large urban centres - which only adds to the confusion of litigants generally and further Balkanizes the services available province-wide. The result is (a) more services in fewer centres, and therefore less services generally; (b) specialization of judges in small regions, so less knowledge in the Bench overall; and (c) three courts that don't talk to one another instead of just two - where the level of coordination might be encouraged. I would rather save the money on Cadillacs and let everyone ride newer Chevys: more services; more judicial education; more communication and cooperation between existing courts.

A Unified Family Court is like a wolf in sheep's clothing. Fluffy and snuggly on the outside but in reality more expensive and time consuming on the inside. I do not think that a Superior Court can really act like a Provincial Court when it comes to family matters where a degree of informality and flexibility is necessary, at times, to resolving issues.

Good in theory but our jurisdiction is lacking in adequate resources to provide timely access to justice.

I don't know of any jurisdictions in Canada where there is truly a unified family court. I'm speaking of a family court system where support services are available on site, such as parenting counselors, addiction counselors, children's lawyers, legal aid etc. Ontario may be the closest thing, since they have dedicated family courts and judges. Most jurisdictions, the judges do family and other cases, criminal, commercial etc. along with family matters. None of our judges had any family law experience prior to their appointment. The Supreme Courts will tell you they are a unified family court, but in fact they are not. The support services are not fully integrated with the family court, and deal independently of the court system. They participate in court, but that's not the same thing as being truly unified. Governments lack the financial resources to truly unify family court services.

12.0 Limited-scope retainers

The Canadian Research Institute for Law and the Family added a number of questions to the survey for lawyers regarding their use of limited-scope retainers (unbundled legal services), and the findings are summarized in this chapter. Lawyers were asked if they provide services on a limited-scope basis and 68.7% reported that they do. Further, when asked about the frequency with which they have ever been retained for specified purposes, 89.3% of the sample have provided services on a limited-scope basis; see Table 12.1. The frequency of occurrence was *rarely* or *never* for most of the specified purposes, as described below. For example, lawyers were asked how often they are retained to conduct legal research for purposes of the litigation process, and the majority (79.9%) said that this *never* or *rarely* happens; 17.5% said that they do this *occasionally*, and only 2.7% said that this occurs *often* or *almost always*.

When asked how often they represent a litigant in court for all or part of a hearing or trial, lawyers indicated that this is not a frequent occurrence, with almost three-quarters (72.8%) saying that this *never* or *rarely* happens, while 22.8% said that it occurs *occasionally*, and only 4.4% said that it happens *often* or *almost always*.

Similarly, almost three-quarters of respondents (72.6%) said that they *never* or *rarely* represent a litigant in court for all or part of a case conference or settlement conference; one-quarter (24.8%) said that they do this *occasionally*, and only 2.7% said that this occurs *often* or *almost always*. Lawyers said that they more frequently provide advice on strategy in connection with the litigation process, with 37.4% saying that they do this *occasionally* and 6.1% saying that this occurs *often* or *almost always*; over one-half of respondents (56.5%) said that this *never* or *rarely* occurs.

When asked how frequently they provide advice on pretrial processes, such as making interim applications, drafting interrogatories and conducting examinations for discovery, during the litigation process, over one-half (57.9%) said that they *never* or *rarely* do this, 36% do this *occasionally*, and 6.2% said that this occurs *often* or *almost always*. With regard to providing advice on trial processes such as examining witnesses, making objections and introducing evidence, during the litigation process, almost three-quarters of lawyers (72.6%) said that they are *never* or *rarely* retained for this limited purpose, while 23% said that this *occasionally* occurs and only 4.4% said that this happens *often* or *almost always*.

Just over one-half (52.2%) of participants said that they are *never* or *rarely* retained for the limited purpose of drafting documents during the litigation process, while over one-third (36.5%) said that this happens *occasionally*, and 11.3% said that they do this *often* or *almost always*. With regard to preparing written arguments for use during the litigation process, over three-quarters (77.6%) of lawyers said that this *never* or *rarely* occurs, 17.9% said that this happens *occasionally*, and only 4.5% said that they do this *often* or *almost always*.

Table 12.1

Frequency with which lawyers have been retained
for specified limited purposes*

	Never		Rarely		Occasionally		Often		Almost Always	
	n	%	n	%	n	%	n	%	n	%
Representing a litigant in court for all or part of a hearing or trial (n=114)	38	33.3	45	39.5	26	22.8	3	2.6	2	1.8
Representing a litigant in court for all or part of case conference or settlement conference (n=113)	46	40.7	36	31.9	28	24.8	2	1.8	1	0.9
Providing advice on strategy in connection with the litigation process (n=115)	19	16.5	46	40.0	43	37.4	6	5.2	1	0.9
Providing advice on pretrial processes...during the litigation process (n=114)	29	25.4	37	32.5	41	36.0	6	5.3	1	0.9
Providing advice on trial processes...during the litigation process (n=113)	41	36.3	41	36.3	26	23.0	4	3.5	1	0.9
Drafting documents for use in the litigation process (n=115)	19	16.5	41	35.7	42	36.5	12	10.4	1	0.9
Preparing written arguments for use during the litigation process (n=112)	50	44.6	37	33.0	20	17.9	4	3.6	1	0.9
Conducting legal research for the purposes of the litigation process (n=114)	50	43.9	41	36.0	20	17.5	2	1.8	1	0.9
Representing a client in negotiations in connection with the litigation process (n=114)	33	28.9	41	36.0	34	29.8	4	3.5	2	1.8
Providing advice on a separation or similar agreement (n=115)	2	1.7	22	19.1	38	33.0	40	34.8	13	11.3

* Based on lawyers who provide services on a limited-scope retainer basis, N=117.

Representing a client in negotiations in connection with the litigation process was also a relatively infrequent occurrence, with 64.9% of lawyers reporting that this *never* or *rarely* occurs, 29.8% saying that this happens *occasionally*, and 5.3% saying that it occurs *often* or *almost always*.

By far the most frequent limited-scope activity for lawyers was providing advice on a separation or similar agreement. Almost one-half (46.1%) of lawyers said that they do this *often* or *almost always*, and one-third (33%) said that this happens *occasionally*. Only 20.8% said that this *never* or *rarely* occurs.

Respondents were asked if they are aware of other lawyers in their jurisdiction providing services on a limited-scope basis, and just over three-quarters (77.5%) said that they are. Lawyers were asked how frequently they deal with self-represented litigants who have retained a lawyer for limited purposes, and their responses are presented in Table 12.2. The majority of lawyers (60.0%) said that they *never* or *rarely* deal with self-represented litigants who have retained a lawyer for the limited purpose of representing them in court for all or part of a hearing; just over one-third (35.4%) said that they encounter this *occasionally*, and only 4.6% said that this occurs *often* or *almost always*.

When asked how frequently they encounter self-represented litigants who have hired a lawyer for the limited purpose of representing them for all or part of a case conference or settlement conference, almost two-thirds of respondents (62.8%) said that this happens *never* or *rarely*, while 33.3% said that this occurs *occasionally* and only 3.9% said that they encounter this *often* or *almost always*. Less than one-half of lawyers (42.3%) said *never* or *rarely* encounter self-represented litigants who have hired a lawyer for the limited purpose of providing advice on strategy in connection with the litigation process, while one-half (49.2%) said this happens *occasionally*, and only 8.5% said that this occurs *often* or *almost always*.

Respondents were asked how often they have encountered self-represented litigants who have retained a lawyer for the limited purpose of providing advice on pretrial processes, such as making interim applications, drafting interrogatories or conducting examinations for discovery. Over one-half of participants said that this occurs *never* or *rarely* (53.9%), while 40.8% have encountered this *occasionally*, and only 5.4% said that this happens *often* or *almost always*.

Respondents were asked how often they encounter self-represented litigants who have hired a lawyer for the limited purpose of providing advice on trial processes such as examining witnesses, making objections and introducing evidence, during the litigation process. The majority (60.0%) said that this occurs *never* or *rarely*, one-third (35.4%) said that this happens *occasionally*, and only 4.6% said that this occurs *often* or *almost always*.

Table 12.2

Frequency with which lawyers have dealt with self-represented litigants, on the other side of a file, who have retained a lawyer for specified limited purposes

	Never		Rarely		Occasionally		Often		Almost Always	
	n	%	n	%	n	%	n	%	n	%
Representing them in court for all or part of a hearing or trial (n=130)	28	21.5	50	38.5	46	35.4	5	3.8	1	0.8
Representing them in court for all or part of case conference or settlement conference (n=129)	36	27.9	45	34.9	43	33.3	4	3.1	1	0.8
Providing advice on strategy in connection with the litigation process (n=130)	20	15.4	35	26.9	64	49.2	10	7.7	1	0.8
Providing advice on pretrial processes (n=130)	30	23.1	40	30.8	53	40.8	6	4.6	1	0.8
Providing advice on trial processes (n=130)	41	31.5	37	28.5	46	35.4	5	3.8	1	0.8
Drafting documents for use in the litigation process (n=130)	21	16.2	41	31.5	56	43.1	11	8.5	1	0.8
Preparing written arguments for use during the litigation process (n=128)	42	32.8	49	38.3	33	25.8	3	2.3	1	0.8
Conducting legal research for the purposes of the litigation process (n=128)	46	35.9	48	37.5	31	24.2	2	1.6	1	0.8
Representing them in negotiations in connection with the litigation process (n=129)	35	27.1	45	34.9	42	32.6	6	4.7	1	0.8
Providing legal advice on a separation or similar agreement (n=128)	16	12.5	18	14.1	43	33.6	38	29.7	13	10.2

N=178

When asked how often they have encountered self-represented litigants who have retained a lawyer for the limited purpose of drafting documents for use in the litigation process, almost one-half (47.7%) said that this *never* or *rarely* happens, while 43.1% said

that they have encountered this *occasionally*, and 9.3% said that this occurs *often* or *almost always*.

Respondents were asked how frequently they encounter self-represented litigants who have retained a lawyer for the limited purpose of preparing written arguments for use during the litigation process. Over two-thirds (71.1%) of lawyers said that this *never* or *rarely* occurs, one-quarter (25.8%) said that they encounter this *occasionally*, and only 3.1% said that this happens *often* or *almost always*. When asked how frequently they encounter self-represented litigants who have hired a lawyer to conduct legal research for them for the purposes of the litigation process, the majority of respondents (73.4%) said that this *never* or *rarely* happens, 24.2% said that the encounter this *occasionally*, and very few (2.4%) reported that this occurs *often* or *almost always*.

Participants were also asked how often they encounter situations in which a self-represented party has retained a lawyer for the limited purpose of representing them in negotiations in connection with the litigation process, and 62.0% said that this *never* or *rarely* occurs, one-third (32.6%) said that this *occasionally* occurs, and 5.5% said that this happens *often* or *almost always*.

The limited-scope service that lawyers reported encountering most frequently was when a self-represented party has retained a lawyer for the limited purpose of providing legal advice on a separation or similar agreement. When asked how often they encounter these situations, over one-third (39.9%) of lawyers said that this occurs *often* or *almost always*, 33.6% said that this happens *occasionally*, and 26.6% said that they encounter this *never* or *rarely*.

13.0 Summary and discussion

This report examines the results of surveys of both the lawyers and judges who attended the NFLP in St. John's, Newfoundland and Labrador, held 11 to 14 July 2016. The purpose of these surveys was to obtain current information on the characteristics of cases handled by family law practitioners in Canada, and to obtain information from both lawyers and judges concerning family law issues.

Questions on the following topics were provided by the Department of Justice on the lawyers' survey: demographic information; case characteristics; family justice services; the child's view; custody and access; child support; spousal support; family violence; and support enforcement and interjurisdictional support orders. The Institute added questions to the survey on unified family courts and limited scope legal services, as well as some additional demographic characteristics.

The Department of Justice provided questions on the following topics for the judges' survey: demographic information; case characteristics; the child's view; custody and access; child support; spousal support; family violence; and support enforcement and interjurisdictional support orders.

13.1 Summary of survey findings

13.1.1 Demographic information

Survey respondents were asked a number of demographic questions and questions regarding their profession and the nature of their work.

- Almost three-quarters of lawyers responding to the survey were female (72.5%); 27.5% of lawyer respondents were male.
- Respondents were most likely to report that they work in Ontario (20.7%), followed by British Columbia (18.4%) and Alberta (18.0%).
- The majority (70.0%) of respondents were lawyers in private practice, while 18.0% were judges, and 11.6% were lawyers in government, an agency, or a legal aid clinic.
- Lawyers' clients tended to be relatively affluent, with 38.6% of respondents indicating that the income for most of their clients fell into the \$70,000-\$120,000 range. Equal proportions of lawyers (18.8%) said that their clients' incomes fell into the \$50,000-\$69,999 and over \$120,000 ranges.

- Lawyers indicated that they had been practicing their profession for an average of 19.9 years; one-half of lawyer respondents (50.4%) had been practicing for 20 years or longer.
- On average, lawyers said that 84.2% of their practice involves family law matters.

13.1.2 Case characteristics

Respondents were asked several questions regarding the characteristics of their family law cases.

- When asked in what proportion of the cases they handled in the past year was their client's representation partly or fully funded by legal aid, on average, lawyers reported that 17.4% of their clients had legal aid funding.
- Judges reported that 44.0% of the cases they handled in the past year had at least one party's representation partly or fully funded by legal aid.
- Lawyers reported that another party self-represented for most or all of the life of the file in 20.4% of their cases in the past year.
- Lawyers and judges were asked what proportion of their family law cases dealing with children involve variations of previous orders or agreements. On average, judges dealt with a significantly higher proportion of these cases (46.0%) than lawyers (28.2%).
- Lawyers indicated that in 32.9% of their family law cases there is an interim order that is, in effect, the final judicial disposition.
- When lawyers were asked which issues in a variation case are most likely to require a trial and judicial decision to resolve, the most common issues were parental relocation (61.2%), spousal support (46.1%), time with the child (39.9%), children's primary residence (36.5%), and arrears of child support (35.4%).

13.1.3 Services

Lawyers were asked a series of questions regarding which family justice services are available to their clients and how frequently they refer clients to them.

- The services that lawyers were most likely to report that they refer clients to *often* or *almost always* are mediation (70.2%), maintenance enforcement programs

(70.1%), parenting education programs (63.2%), individual counselling (56.7%), and marriage or relationship counselling (44.4%).

- When asked where their clients are most likely to receive information about family justice services, the most common responses were that the lawyers themselves provide this information to their clients (91.0%), followed by friends or family members (55.1%), provincial/territorial government websites (53.9%), court services (49.4%), parenting education programs (44.9%), and federal government websites (43.8%).
- When asked what type of information they provide to their clients about these services, lawyers were most likely to say that they provide contact information (79.2%), a description of the services offered (75.8%), and website information (70.8%).
- Lawyers reported that, on average, approximately one-third of their clients (30.7%) use non-mandatory family services such as parenting education, mental health counselling, and family law information centres.
- Two-thirds of lawyers (66.9%) said that the cases of clients who have utilized one or more family justice services, in particular mediation, are *somewhat more likely* to settle out of court, while 8.4% said that they are *much more likely* to settle. One-quarter (24.1%) said that these cases are *not more likely* to settle out of court.

13.1.4 Children's views

Respondents were asked two questions regarding the frequency with which children's views are sought in their family law cases, and the means used to solicit those views.

- Judges (35.9%) were considerably more likely than were lawyers (19.7%) to say that they *often* or *almost always* are involved in cases where efforts are made to seek children's views.
- The manner of soliciting children's views that was most frequently used by most lawyers was via an assessment/evaluative report prepared by a mental health professional (62.9%), followed by a legal representative for the child (46.6%), and a non-evaluative report prepared by a lawyer or mental health professional (41.0%).

13.1.5 Custody and access

Respondents were asked several questions regarding parenting arrangements in their family law cases, and the frequency with which they use alternatives to the traditional “custody” and “access” terminology to describe these arrangements.

- A significantly higher proportion of judges (48.7%) said that they *almost always* use terminology other than “custody” and “access” in their orders, compared to only one-quarter (25.5%) of lawyers.
- Over one-half of lawyers (56.3%) said that they *often* or *almost always* use alternate terminology in their agreements, while almost one quarter (23.1%) said that they *never* or *rarely* do so.
- Lawyers indicated that, on average, 42.0% (range = 0% to 100%) of their clients have a shared physical custody arrangement according to their order/agreement.
- Lawyers and judges were asked the reasons why parents do not comply with their custody/access/parenting orders. Almost one-quarter of lawyers (23.7%) said that non-compliance *often* occurs because the access parent does not exercise access, compared to 15.4% of judges.
- A higher proportion of judges (74.4%) than lawyers (64.6%) said that non-compliance *occasionally* or *often* occurs because the access parent is late returning the child.
- A considerably higher proportion of judges (38.5%) than lawyers (24.1%) said that non-compliance with parenting orders *often* or *almost always* occurs because the custodial parent refuses access without appropriate cause. Relatively few lawyers (14.1%) and judges (5.1%) said that non-compliance *often* or *almost always* occurs because the custodial parent refuses access with appropriate cause, such as intoxication of the access parent.
- Over one-quarter of lawyers (26.4%) said that non-compliance *often* or *almost always* occurs because the child refuses a visit with the access parent, compared to 15.4% of judges.
- Almost one-half of judges (48.7%) said that non-compliance *often* occurs because a parent tries to change the parenting time schedule, compared to 38.1% of lawyers.
- Judges (17.9%) were significantly more likely than were lawyers (7.2%) to say that non-compliance *often* occurs because of safety concerns, while lawyers (47.1%) were more likely than judges (10.3%) to say that this *rarely* occurs.

- Lawyers (10.8%) and judges (19.7%) indicated that, on average, a relatively small proportion of their cases include supervised access on an interim basis. A small proportion of lawyers' (5.3%) and judges' (9.4%) cases include supervised access as a condition of access in the final order. In both of these situations, judges were significantly more likely than lawyers to deal with supervised access cases.
- The most common reasons given for supervised access orders were allegations of child abuse (lawyers = 83.7%; judges = 92.3%), allegations of substance abuse (lawyers = 79.2%; judges = 94.9%), allegations of mental health concerns (lawyers = 74.2%; judges = 89.7%), and the child's unfamiliarity with the access parent (lawyers = 63.5%; judges = 89.7%).
- Lawyers and judges differed significantly for four of the circumstances under which supervised access is ordered: where there are allegations of spousal violence, substance abuse or mental health concerns; and where the child is unfamiliar with the access parent.
- Both lawyers (6.3%) and judges (14.5%) reported that, on average, the proportion of their cases using supervised exchanges is relatively low. However, judges see this significantly more than lawyers.
- The most common reasons given for recommending/ordering supervised exchanges were parents who are in high conflict (lawyers = 60.7%; judges = 82.1%) and when allegations of spousal violence are made (lawyers = 60.1%; judges = 76.9%).
- Lawyers' and judges' responses differed significantly in three of the circumstances under which supervised exchange is ordered: where the parents are in high conflict; where there are allegations of spousal violence; and where the child is unfamiliar with the access parent.
- All respondents were asked if the frequency of interjurisdictional/international custody matters has changed over the past five years. Judges (29.4%) were somewhat more likely to say that these cases are more frequent now than were lawyers (21.9%), but most of the respondents reported no change.

Respondents were asked a number of questions on parental relocation.

- On average, lawyers said that parental relocation is an issue in 15.2% of their cases while judges reported that relocation is an issue in 14.5% of their cases.
- The most common reason given for a proposed relocation was for an employment opportunity, which was rated as occurring *often* or *almost always* by 77.0% of

lawyers and 65.7% of judges. The next most common reasons were to be with a new partner, which was rated as *often* or *almost always* occurring by 72.3% of lawyers and 65.7% of judges, and to be closer to family/friends, rated as occurring *often* or *almost always* by 73.1% of lawyers and 50.0% of judges. The least common reason was to increase distance from the other parent, which was reported as *never* or *rarely* occurring by 79.1% of lawyers and 90.6% of judges.

- Lawyers and judges only differed significantly for one reason, relocating for an educational opportunity. Judges (47.1%) were considerably more likely than lawyers (20.4%) to say that this is *rarely* given as a reason. Lawyers (29.6%) were more likely than judges (17.6%) to say that educational opportunity is *often* a reason given for parental relocation (17.6%).
- The most common type of relocation seen in respondents' cases were when the custodial parent wishes to move to a different province or territory, rated as *often* or *almost always* an issue by 60.2% of lawyers and 31.4% of judges. Cases in which the custodial parent wishes to move within the same province or territory, were rated as *often* or *almost always* an issue by 42.7% of lawyers and 71.5% of judges. The differences between lawyers and judges were significant for both of these situations.
- Lawyers and judges were asked if, in cases where relocation is an issue, this results in cases being difficult to settle, and almost all respondents (98.4%; lawyers = 98.0%; judges = 100.0%) indicated that it does.

13.1.6 Child support

Respondents were asked a number of questions regarding characteristics of their family law cases involving child support.

- The issues in child support cases that were rated as most contentious by the greatest numbers of both lawyers and judges tended to be related to income and financial disclosure. These issues include: determination of income; obtaining financial disclosure; imputation of income; and determination and payment of children's special expenses.
- Lawyers and judges differed significantly on four contentious issues: income/financial disclosure; special and extraordinary expenses; undue hardship claims; and imputation of income where disclosure is inadequate. In each of these, judges were more likely to rate the issue as contentious than were lawyers.

- The issue that is involved in the highest proportion of both lawyers' (35.7%) and judges' (28.8%) child support cases is situations of shared physical custody. On average, a relatively small proportion of lawyers' (13.4%) and judges' (5.2%) cases involve children the age of majority or older when the initial arrangements are being made, although the difference between lawyers and judges was significant.
- Few lawyers' cases (4.8%) involve undue hardship applications; a significantly higher proportion of judges' cases (15.1%) concern such applications.
- Judges (41.1%) were twice as likely to say that second families are a factor with respect to child support *often* or *almost always* than were lawyers (20.2%). Conversely, lawyers (34.0%) were much more likely than judges (8.8%) to say that second families are *rarely* or *never* an issue. The differences between lawyers and judges were significant.
- Judges (85.3%) were significantly more likely to say that income disclosure in child support cases is *often* or *almost always* an issue than were lawyers (57.6%).
- Both lawyers (74.7%) and judges (79.5%) reported that the most common reason why income disclosure is a problem in child support cases is when the payor is self-employed and there is incomplete income disclosure, followed by cases in which the payor is self-employed and there are issues regarding the imputation or determination of income (lawyers = 66.9%; judges = 74.4%).
- Lawyers and judges differed significantly on two reasons why income disclosure is a problem. Judges (76.9%) were more likely than lawyers (57.3%) to say that failure to file income tax is a problem. Lawyers (34.8%) were more likely than judges (17.9%) to say that income disclosure is a problem when income sources are complicated.
- Judges (79.5%) were significantly more likely than lawyers (54.5%) to say that disclosure orders are sought *often* or *almost always* in child support cases where income disclosure is a problem.
- When asked how often the obliged party fails to comply with a disclosure order, the majority of lawyers said that this *occasionally* occurs (52.3%).
- Almost three-quarters of lawyers (71.3%) said that a party fails to comply with the continuing obligation to provide income information in the years following the making of a child support order occurs *often* or *almost always*.
- Almost one-half of lawyers said that their clients *occasionally* decide not to pursue a legal entitlement because of lack of disclosure.

13.1.7 Spousal support

Survey respondents were asked a number of questions regarding their cases involving spousal support and their use and opinion of the *Spousal Support Advisory Guidelines* (SSAG).

- Lawyers said that, on average, 48.8% of their cases involve spousal support issues, while judges said that 26.5% of their family law cases involve spousal support. This difference between lawyers and judges was significant.
- Judges (26.5%) were significantly more likely to report that income determination or financial disclosure is *almost always* an issue in spousal support cases than were lawyers (9.4%).
- The substantial majority of lawyers (92.7%) said that they use the SSAG either *often* or *almost always* when spousal support is an issue.
- A significantly higher proportion of lawyers (94.7%) said that they use the SSAG to negotiate spousal support *often* or *almost always*, compared to 62.1% of judges. Lawyers (82.1%) were also significantly more likely to say that they *often* or *almost always* use the SSAG at mediation than were judges (64.3%).
- Almost all lawyers (91.9%) said that they use the SSAG *often* or *almost always* at case conferences, settlement conferences, and judicial dispute resolution conferences. They were also very likely to report using them *often* or *almost always* at trials (91.7%), at interim motions (93.2%), and at other court proceedings (83.1%).
- Three-quarters of lawyers (75.3%) said that the SSAG have been useful in assisting with negotiation, 70.2% said that they have been helpful in encouraging settlement by negotiation, 65.7% said that they offer a starting place, and 51.7% said that they are useful for predicting results.

13.1.8 Family violence

Respondents were asked a number of questions regarding the presence of family violence in their family law cases, how the court deals with family violence, and the use of various services in cases of family violence.

- Over two-thirds of lawyers (69.0%) said that they *often* or *almost always* screen for family violence, compared to almost one-half (46.9%) of judges.

- Over one-half of lawyers (53.1%) said that they *never* use a standardized measure or instrument to screen for family violence, and another 25.5% said that they *rarely* do so.
- On average, lawyers reported that family violence is an issue in 21.7% of their cases and judges said that it is an issue in 25.3% of their cases.
- The substantial majority of lawyers (85.6%) said that they are aware of the services that are available for their clients in cases where there is family violence.
- Lawyers and judges differed significantly in their responses to how often a party in a family violence situation is also before the criminal courts. Lawyers (20.6%) were considerably more likely to say that this is *rarely* the case than were judges (3.0%). Judges were more likely to report that a party is also before the criminal courts *occasionally* (54.5%) or *often* (39.4%) than were lawyers (38.3% and 30.5%, respectively).
- The most common ways that the courts addressed family violence *often* or *almost always* were by making a civil order restraining harassment or regulating contact between the parents (lawyers = 54.7%; judges = 71.0%), denying custody to the abusive parent (lawyers = 38.7% judges = 50.0%), and ordering access supervision (lawyers = 36.2%; judges = 54.6%).
- Lawyers and judges differed significantly in their responses to four ways the court addressed the family violence issue: access supervision was ordered; counselling services were used; access was denied to the abusive parent; and the court did not address the issue.

13.1.9 Support enforcement and interjurisdictional support orders

Respondents were asked a series of questions regarding their experiences with support enforcement, the use of interjurisdictional support orders, and the ways in which support payments are collected.

- Lawyers and judges reported that support enforcement issues occur in approximately one-quarter of their cases (lawyers = 27.5%; judges = 22.7%).
- Under one-half of lawyers (42.7%) and just over one-half of judges (53.1%) said that they *often* or *almost always* deal with the provincial/territorial maintenance enforcement program.

- Few respondents said that they deal with provincial/territorial Interjurisdictional Support Orders Designated Authority Office: 78.9% of lawyers and 58.1% of judges said that they *never* or *rarely* deal with this office. However, this difference was significant.
- Lawyers said that they *never* or *rarely* (94.8%) deal with the Department of Justice's Family Law Assistance Services.
- Almost one-half of lawyers (46.0%) said that they have *occasionally* had clients whose federal payments were garnisheed for non-payment of support.
- Two-thirds (65.5%) of lawyers said that having a passport denied or suspended by the federal government has *never* or *rarely* happened to their clients.
- Over one-half (59.7%) of lawyers said their clients *never* or *rarely* had federal salaries and remunerations garnisheed or had federal pensions diverted in order to satisfy support orders or agreements.
- Judges (87.1%) were significantly more likely to report that they have dealt with cases involving provincial/territorial interjurisdictional support orders legislation or Reciprocal Enforcement of Maintenance Orders forms than were lawyers (65.2%).

13.1.10 Unified family courts

Lawyers were asked a number of questions regarding their experiences with and impressions of unified family courts.

- One-half of lawyers (50.0%) said that they have had experience with family law proceedings in a unified family court, and just over one-third of lawyers (34.1%) said that there is a unified family court in the jurisdiction. A substantial majority of lawyers (80.2%) who do not have a unified family court in their jurisdiction said that they would like to have one.

Lawyers who had experience with family law proceedings in a unified family court were asked a number of additional questions.

- Two-thirds of lawyers (66.7%) *agreed* or *strongly agreed* that unified family courts have judges who are more knowledgeable than other judges about family law and related legal principles. Over two-thirds of lawyers (64.7%) *agreed* or *strongly agreed* that unified family courts have judges who are more knowledgeable than other judges about the psychology of separation and the effect of separation on children.

- One-half of lawyers (50.7%) *agreed* or *strongly agreed* that unified family courts have judges who are more effective at settling family cases than other judges.
- Just under one-half of lawyers (44.9%) *agreed* or *strongly agreed* that unified family courts produce outcomes that are more likely to be tailored to individual needs than non-specialized courts.
- One-third of lawyers (31.9%) either *agreed* or *strongly agreed* that unified family courts have simpler processes than other courts. Almost one-half of lawyers (47.8%) *agreed* or *strongly agreed* that unified family courts have simpler rules of court than other courts.
- Almost one-quarter of lawyers (22.9%) *agreed* or *strongly agreed* that unified family courts have simpler rules of evidence.
- Almost one-half of lawyers (47.8%) *agreed* or *strongly agreed* that unified family courts provide easier access to family justice services than other courts.
- One-third of lawyers (32.3%) *agreed* or *strongly agreed* unified family courts provide more timely resolution of family law disputes than other courts.
- Only 18.8% of lawyers *agreed* or *strongly agreed* that unified family courts are less expensive for litigants.

Lawyers who said there is a unified family court in their jurisdiction were asked the extent to which they agreed or disagreed with a number of statements about unified family courts.

- Over three-quarters of lawyers (79.6%) with a unified family court in their jurisdiction *agreed* or *strongly agreed* that the court has a bench specializing in family law disputes.
- Almost three-quarters of lawyers (72.8%) *agreed* or *strongly agreed* that the unified family court in their jurisdiction offers mediation or collaborative settlement processes.
- Over one-half of lawyers (59.1%) *agreed* or *strongly agreed* that their unified family court uses rules of court that are tailored to family law disputes.
- Less than one-half of lawyers (43.2%) *agreed* or *strongly agreed* that the unified family court in their jurisdiction resolves family law disputes efficiently, while

31.8% *agreed* or *strongly agreed* that their unified family court resolves family law disputes speedily.

- Almost three-quarters of lawyers (72.7%) said that they are *satisfied* or *very satisfied* with the overall quality of decision-making in their unified family court.
- Over one-half of lawyers (56.8%) said that they are either *satisfied* or *very satisfied* with the availability of family justice services in their unified family court. Almost one-half of lawyers (45.5%) said that they are *satisfied* with the accessibility of court processes in their unified family court.
- Over one-third of lawyers (38.7%) said that they are either *satisfied* or *very satisfied* with the availability of dates for hearings, and 29.5% said that they are *satisfied* with the availability of dates for trials in their unified family court. There are, however, concerns about lack of resources and delay in the unified family courts.
- Over one-third of lawyers (38.6%) said that they are either *satisfied* or *very satisfied* with the overall quality of the non-adversarial dispute resolution services offered in their unified family court.

13.1.11 Limited-scope retainers

Lawyers were asked a series of questions regarding their knowledge of and experiences with limited-scope legal services.

- Just over three-quarters of lawyers (77.5%) said that they are aware of other lawyers in their jurisdiction providing services on a limited-scope (unbundled) basis.
- Most lawyers (89.3%) said that they have provided some type of service on a limited-scope basis.
- Most lawyers reported that they provide most of the specified limited scope services *rarely* or *never*. Notably a substantial majority reported that they *rarely* or *never* provide:
 - legal research for purposes of the litigation process (79.9%);
 - limited service of representing a litigant in court for all or part of a hearing or trial (72.8%); and
 - representing a litigant in court for all or part of a case conference or settlement conference (72.6%).

- Lawyers said that they more frequently provide advice on strategy in connection with the litigation process, with 37.4% saying that they do this *occasionally*.
- Over one-third of lawyers (36.0%) said that they *occasionally* provide advice on pretrial processes, such as making interim applications, drafting interrogatories and conducting examinations for discovery, during the litigation process, and 23.0% said that they *occasionally* provide advice on trial processes such as examining witnesses, making objections and introducing evidence, during the litigation process.
- Just over one-half (52.2%) of lawyers said that they are *never* or *rarely* retained for the limited purpose of drafting documents during the litigation process, and over three-quarters (77.6%) said that they are *never* or *rarely* retained to prepare written arguments for use during the litigation process.
- Almost two-thirds of lawyers (64.9%) said that they *never* or *rarely* perform the limited service of representing a client in negotiations in connection with the litigation process.
- The most frequent limited-scope activity for lawyers was providing advice on a separation or similar agreement: 46.1% of respondents said that they do this *often* or *almost always*.
- The majority of lawyers (60.0%) said that they *never* or *rarely* deal with self-represented litigants who have retained a lawyer for the limited purpose of representing them in court for all or part of a hearing.
- Almost two-thirds of lawyers (62.8%) said that they *never* or *rarely* encounter self-represented litigants who have hired a lawyer for the limited purpose of representing them in court for all or part of a case conference or settlement conference.
- Almost one-half of lawyers (49.2%) said that they have *occasionally* encountered self-represented litigants who have hired a lawyer for the limited purpose of providing advice on strategy in connection with the litigation process.
- Over one-half of lawyers said they *never* or *rarely* (53.9%) encounter self-represented litigants who have retained a lawyer for the limited purpose of providing advice on pretrial processes, such as making interim applications, drafting interrogatories and conducting examinations for discovery, during the litigation process.

- The majority of lawyers (60.0%) said that they *never* or *rarely* encounter self-represented litigants who have hired a lawyer for the limited purpose of providing advice on trial processes such as examining witnesses, making objections and introducing evidence, during the litigation process.
- Under one-half of lawyers (43.1%) said that they *occasionally* encounter self-represented litigants who have retained a lawyer for the limited purpose of drafting documents for use in the litigation process.
- Over two-thirds (71.1%) of lawyers said that they *never* or *rarely* encounter self-represented litigants who have retained a lawyer for the limited purpose of preparing written arguments for use during the litigation process.
- Almost three-quarters of lawyers (73.4%) said that they *never* or *rarely* encounter self-represented litigants who have hired a lawyer to conduct legal research for them for the purposes of the litigation process.
- Almost two-thirds of lawyers (62.0%) said that they *never* or *rarely* encounter situations in which a self-represented party has retained a lawyer for the limited purpose of representing them in negotiations in connection with the litigation process.
- The limited-scope service that lawyers reported encountering most frequently was when a self-represented party has retained a lawyer for the limited purpose of providing legal advice on a separation or similar agreement: 39.9% of lawyers said that this *often* or *almost always* occurs, and 33.6% said that this happens *occasionally*.

13.2 Discussion

The data collected with the surveys yielded many insights into the experiences and practices of family justice system professionals in Canada. The data also highlighted some differences in the experiences of lawyers and judges. The majority of survey respondents were private practice lawyers who had an average of 20 years' experience dealing with family law cases.

The Institute also conducted a survey funded by the Department of Justice Canada of the attendees at the 2006 National Family Law Program, and some data gathered from that survey are comparable to those collected in the 2016 survey (Paetsch, Bertrand & Bala, 2007). Findings from the 2006 and 2016 surveys were examined to provide an indication of any changes in legal professionals' experiences and practices over the intervening ten-year period.

When discussing the characteristics of their cases, in the 2016 survey, judges were substantially more likely than lawyers to say that a higher proportion of their cases have at least one party whose representation was at least partially funded by legal aid. This is likely because many lawyers do not take on legal aid cases and thus would not have clients who receive legal aid funding. Further, lawyers reported that the other party self-represents in approximately one-fifth of their family law cases, suggesting that there is often a disparity in the ability of parties in family law disputes to afford counsel.

In the 2016 and 2006 surveys, lawyers were, in general, positive about the family justice services available to their clients. They reported that they *often* or *almost always* refer their clients to services such as mediation (2016 = 70%; 2006 = 62%), maintenance enforcement programs (2016 = 70%; 2006 = 77%), parenting education programs (2016 = 63%; 2006 = 60%), and individual counselling (2016 = 57%; 2006 = 65%). In both 2016 and 2006, lawyers reported that the cases of clients who use family justice services were more likely to settle out of court. However, 17% of lawyers in 2006 said such cases were much more likely to settle out of court compared to 8% of lawyers in 2016. Further, 46% of lawyers in 2006 said these cases are somewhat more likely to settle compared to 67% of lawyers in 2016. In 2016, lawyers said that approximately one-third of their clients use non-mandatory family justice services, such as parenting education, counselling, and family law information centres.

Findings from the 2016 and 2006 surveys indicate that legal professionals are adopting terminology other than “custody” and “access” in their orders and agreements. In 2016, a significantly higher proportion of judges (49%) than lawyers (26%) reported that they *almost always* use alternate terminology in their orders compared to 17% of respondents to the 2006 survey. In addition, in 2016, over half of the lawyers (56%) reported using alternate terminology *often* or *almost always* in their agreements whereas 61% of respondents to the 2006 survey reported doing so.

In 2016 and 2006, respondents reported that a relatively small proportion of their family law cases include supervised access or supervised exchanges. The reasons given for supervised access and exchanges in 2016 were the same as those reported by respondents to the 2006 survey. The most common reasons given by lawyers for supervised access orders were allegations of child abuse (2016 = 84%; 2006 = 85%), allegations of substance abuse (2016 = 79%; 2006 = 74%), and allegations of mental health concerns (2016 = 74%; 2006 = 74%). Supervised exchanges are most likely to occur in cases where the parents are in high conflict (2016 = 61%; 2006 = 69%) and when there are allegations of spousal violence (2016 = 60%; 2006 = 63%).

In 2016, lawyers and judges reported that similar proportions of their cases (about 15%) involve a proposed relocation by the custodial parent; the proportion of cases involving proposed relocations was comparable to that reported by respondents to the 2006 survey (13%). In both years, the most common reasons given for proposed relocations were for

an employment opportunity, to be with a new partner, or to be closer to family or friends. In 2016, lawyers and judges were almost unanimous in saying that cases where relocation is an issue are difficult to settle.

In discussing issues related to child support in 2016, both lawyers and judges indicated that the most contentious issues tend to be determination of income and financial disclosure. However, judges (85%) were significantly more likely than lawyers (58%) to say that income disclosure is *often* or *almost always* a problem in child support cases. In 2006, respondents were considerably less likely to report income disclosure as a problem in their experience (47%). In 2016, determination of issues related to special and extraordinary expenses was also a frequent issue for both judges and lawyers. Lawyers and judges both reported that support enforcement issues occur in approximately one-quarter of their family law cases.

Lawyers (49%) reported in 2016 that spousal support is an issue in their cases significantly more frequently than judges did (27%). Findings indicate that the *Spousal Support Advisory Guidelines* (SSAG) have been widely adopted by legal professionals, and are being used much more frequently now than they were in 2006, shortly after they were first introduced. In 2016, almost all lawyers (93%) reported that they use the SSAG *often* or *almost always*, and they reported that the SSAG have been useful in assisting with negotiation, in encouraging settlement of cases by negotiation, offering a starting point, and predicting results. In 2006, only 55% of respondents said that they use the SSAG *often* or *almost always*.

Both lawyers and judges reported in 2016 that they frequently screen for family violence in their family law cases; however, lawyers (69%) were more likely to screen than were judges (47%). In 2006, 72% of respondents said that they make inquiries in every case to attempt to identify family violence. Even though a high proportion of lawyers reported in both years that they screen for family violence, relatively few said that use a standardized instrument to do so. In 2016, 53% said that they *never* use a standardized questionnaire and 26% said they *rarely* do so. In 2006, 87% of respondents said that they do not use a standardized questionnaire to identify cases of family violence.

One-half of the lawyers in the 2016 survey said that they have had experience with unified family courts, and one-third reported that they have a unified family court in their jurisdiction. Overall, lawyers tended to agree that unified family courts have judges who are more knowledgeable than other judges about family law and the effects of separation on children, and that judges in these courts are more effective at resolving family cases without a trial. There were, however, significant concerns expressed about the lack of resources and availability of court dates in unified family courts.

In 2016, 80% of lawyers who do not have a unified family court in their jurisdiction said that they would like to have one. Similarly, in 2006, 72% of lawyers and judges said they would like to have a unified family court.

The use of limited-scope retainers, also known as unbundled legal services, is a relatively new development in family law cases and therefore respondents to the 2006 survey were not asked any questions about them. In 2016, the majority of lawyers said that they are aware of other lawyers in their jurisdiction who provide services on a limited-scope basis and/or that they have provided these services themselves. The most frequent limited-scope work performed by lawyers was providing advice on separation and similar agreements.

References

- Boyd, J.-P. & Bertrand, L.D. (2016). *Comparing the Views of Judges and Lawyers Practicing in Alberta and in the Rest of Canada on Selected Issues in Family Law: Parenting, Self-represented Litigants and Mediation*. Calgary, AB: Canadian Research Institute for Law and the Family.
- Paetsch, J.J., Bertrand, L.D., & Bala, N. (2007). *The Child-centred Family Justice Strategy: Survey on the Practice of Family Law in Canada, 2004-2006*. Ottawa: ON: Minister of Justice and Attorney General of Canada.
- Paetsch, J.J., Bertrand, L.D., Bala, N. & Hornick, J.P. (2005). *The Child-centred Family Justice Strategy: Baseline Information from Family Law Practitioners*. Ottawa, ON: Minister of Justice and Attorney General of Canada.

Glossary

Coding: Analytic process in which qualitative data are categorized into common themes to facilitate analysis.

Mean: The mean is the average response to a question. It is calculated by adding up all of the responses received and then dividing the resulting sum by the total number of responses.

Missing Cases: The number of responses on individual questions that are not available. The most common reason for missing cases in survey data is that the respondent chose not to answer a particular question.

Multiple response data: Multiple response data refers to questions in which respondents are allowed to choose more than one answer. In tables where multiple response data are presented, the percentages presented for individual items will total more than 100.

N and n: N refers to the total number of responses received to a survey while n refers to a subset of the total responses that may be selected for specific data analyses. For example, if 100 men and women respond to a survey, then $N = 100$. If 30 of those respondents identify as women, then $n = 30$ women and $n = 70$ men.

Qualitative data: Refers to data that are descriptive rather than numeric in nature. Asking survey respondents to provide their opinion in their own words is an example of a qualitative question. Qualitative data can frequently be coded into quantitative data by identifying common themes across respondents' answers, and assigning numbers to each of the themes.

Quantitative data: Refers to data that can be quantified using numbers that can then be manipulated mathematically or statistically. Asking survey respondents the extent to which they agree with a statement on a scale with the potential responses being *strongly agree*, *agree*, *neither agree nor disagree*, *disagree*, and *strongly disagree* is an example of a quantitative question. The responses can be assigned numbers ranging from 1 through 5 which can then be averaged across respondents to provide a mean score for the question.

Range: The lowest and highest responses to a question.

Representativeness: The extent to which the responses to a survey are likely to reflect the responses that would be given if every potential respondent could be surveyed.

Response rate: The percentage of completed surveys returned out of the total number distributed to potential respondents.

Statistical Significance: Tests of statistical significance refer to mathematical methods used to determine if the findings obtained with a sample of respondents in a study are representative of the entire population from which the sample was drawn. The commonly used threshold to determine significance is $p < .05$, which means that we can be certain that the findings from the sample are representative of the population 95 times out of 100.

Appendix A: Lawyers' Survey on the Practice of Family Law in Canada

Lawyers' Survey on the Practice of Family Law in Canada

This survey is intended to be completed only by lawyers and professionals other than judges. If you are a judge, please click on this link to complete the judges' survey: <http://fluidsurveys.com/s/NFLP2016-judge-survey/>

The Department of Justice Canada is conducting a survey intended to obtain current information on the characteristics of cases handled by family law practitioners in Canada, and to obtain information from both lawyers and judges concerning family law issues. Some of you may recall completing a similar survey (on paper) at the 2008, 2010 and 2012 National Family Law Programs. We are repeating part of the survey this year to examine trends in family law over time and address emerging issues. The Canadian Research Institute for Law and the Family is conducting this survey on behalf of the Department and has added questions to the survey on unified family courts and the unbundling of legal services.

We appreciate your assistance by completing this survey. Please be assured that your anonymity will be maintained at all times; responses will not be attributed to individuals and data will be expressed only in aggregate.

After the completion of the survey, you will be given a code to present to the Department of Justice's booth at the National Family Law Program between July 12th and 14th in order to obtain a promotional gift.

Thank you for completing this survey.

*** Ce questionnaire est également disponible en français: <http://fluidsurveys.com/surveys/Crllf/french-lawyers-survey/>**

Please answer the following questions according to your experience. Where we ask you to specify a proportion of your cases, we realize that you cannot provide an exact figure; an approximation is fine. Where we ask you to estimate a frequency of occurrence, please use the following scale as a guideline:

Never = 0% Rarely = 1-10% Occasionally = 11-50% Often = 51-90% Almost Always = 91-100%

1.0 DEMOGRAPHIC INFORMATION

1.1 In which provinces and territories do you work?

(please check all that apply)

- ☐ Alberta
- ☐ British Columbia
- ☐ Manitoba
- ☐ New Brunswick
- ☐ Newfoundland and Labrador
- ☐ Northwest Territories
- ☐ Nova Scotia
- ☐ Nunavut
- ☐ Ontario
- ☐ Prince Edward Island
- ☐ Quebec
- ☐ Saskatchewan
- ☐ Yukon

1.2 What is your profession?

(please check one)

- ☐ Lawyer – private practice
- ☐ Lawyer – government or agency
- ☐ Lawyer – clinic
- ☐ Other, please specify... _____

1.3 What is the individual pre-tax income of most of your clients?

- ☐ Under \$15,000
- ☐ \$15,000 to \$29,999
- ☐ \$30,000 to \$49,999
- ☐ \$50,000 to \$69,999
- ☐ \$70,000 to \$120,000
- ☐ Over \$120,000, please specify... _____

2.0 CASE CHARACTERISTICS

2.1 In what proportion of the family law cases that you handled in the past year was your client's representation partly or fully funded by legal aid?

2.2 In what proportion of your family law cases in the past year was the other party self-represented for all or most of the life of the file?

2.3 What proportion of your family law cases dealing with children involve variations of previous orders/agreements?

2.4 In what percentage of your family law cases is there an interim order that is, in effect, the final judicial disposition?

2.5 In your experience, in a variation case, which of the following issues are most likely to require a trial and judicial decision to be resolved?

(please check all that apply)

- ☐ Child support
- ☐ Undue hardship
- ☐ Child support arrears
- ☐ The children's primary residence
- ☐ Decision-making responsibility regarding the children
- ☐ Time with the child
- ☐ Spousal support
- ☐ Spousal support arrears
- ☐ Parental relocation (mobility)
- ☐ Other, please specify... _____

3.0 SERVICES

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

	Never	Rarely	Occasionally	Often	Almost Always
Marriage or relationship counselling	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Individual counselling	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mediation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Arbitration	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Child assessment services	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Collaborative family law processes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Parenting coordination	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Parenting education programs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Domestic violence services	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Supervised access services	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Supervised exchange services	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Maintenance enforcement programs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Financial assistance services	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Legal Aid services/Duty counsel	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Recalculation services	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Interjurisdictional Support Orders	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Designated Authority Office					
Family Law Information Centres	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

3.2 Where do your clients get their information about the services and processes listed above?

(please check all that apply)

- ☐ From me
- ☐ Friends/family members
- ☐ Another lawyer
- ☐ Federal government websites
- ☐ Provincial/territorial government websites
- ☐ International government websites
- ☐ Other non-government websites
- ☐ Court services
- ☐ Parenting education programs
- ☐ Media stories or advertising (e.g., television, radio, newspaper)
- ☐ Books
- ☐ Public legal education and information associations
- ☐ Other, please specify... _____

3.3 In general, what type of information do you provide to your clients about the services and processes listed above?

(please check all that apply)

- ☐ Contact information
- ☐ Website information
- ☐ Location
- ☐ Description of services offered
- ☐ Information materials
- ☐ Other, please specify... _____

3.4 What percentage of your clients use non-mandatory family justice services such as parenting education, counselling, Family Law Information Centres?

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

- ☐ Yes
- ☐ No

3.6 When your clients have gone to one or more family justice services, is their case more likely to settle out of court?

- ☐ Not more likely
- ☐ Somewhat more likely
- ☐ Much more likely

4.0 CHILD'S VIEW

4.1 How often do you seek the child's views in your family law cases involving children?

- ☐ Never
- ☐ Rarely
- ☐ Occasionally
- ☐ Often
- ☐ Almost Always

4.2 How are the views of the child presented?

(please indicate the 3 most frequent used in your practice)

- ☐ Lawyer meeting with the child and reporting to parties and/or court
- ☐ Judicial interview with child
- ☐ Mental health worker interview with child and reporting to parties and/or court
- ☐ Child's testimony
- ☐ Assessment/evaluative report prepared by mental health professional
- ☐ Non-evaluative report prepared by lawyer or mental health professional (sometimes called "hear the child" or "views of the child" report)
- ☐ Legal representative for child
- ☐ Non-legal representative for child
- ☐ Involvement of children in alternative dispute resolution processes

5.0 CUSTODY AND ACCESS

5.1 How often do you request or draft orders relating to children that use terminology other than "custody" and "access"?

- ☐ Never
- ☐ Rarely
- ☐ Occasionally
- ☐ Often
- ☐ Almost Always

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

- ☐ Never
- ☐ Rarely
- ☐ Occasionally
- ☐ Often
- ☐ Almost Always

5.3 Approximately what percentage of your clients have a shared physical custody arrangement according to their order/agreement?

(shared being anywhere between a 50/50 or 60/40 division of the children's time)

5.4 Where you have had clients with shared physical custody arrangements, how long do the arrangements typically last?

- ☐ Less than a year
- ☐ 1 to 2 years
- ☐ Between 2 and 5 years
- ☐ More than 5 years
- ☐ Don't know

5.5 When parents do not comply with their custody/access/parenting orders, what are the reasons?

(please indicate how often this has occurred in your experience)

	Never	Rarely	Occasionally	Often	Almost Always
Access parent does not exercise access	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Access parent is late returning child	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Custodial parent refuses access without appropriate cause (e.g., access parent is a few minutes late)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Custodial parent refuses access with appropriate cause (e.g., access parent intoxicated)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Child refuses visit with access parent	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Custody or access parent tries to change the parenting time schedule	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Safety concerns	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other (please specify below)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

5.5.1 If other, what is the reason?

5.6 What proportion of your cases involving children include supervised access on an interim basis?

5.7 What proportion of your cases involving children include supervised access as a condition of access in the final order?

5.8 Under what circumstances do you recommend supervised access in your cases?

(please check all that apply)

- ☐ Where the parents are in high conflict
- ☐ Where there are allegations of spousal violence
- ☐ Where there are allegations of child abuse
- ☐ Where there are allegations of substance abuse
- ☐ Where there are allegations of mental health concerns
- ☐ Where the child is unfamiliar with the access parent (i.e., reintroduction)
- ☐ Where a child has been abducted or there are concerns that a child may be abducted
- ☐ I don't recommend supervised access
- ☐ Not available in my jurisdiction
- ☐ Other, please specify... _____

5.9 What proportion of your cases with children involved include supervised exchanges?

5.10 Under what circumstances do you recommend supervised exchange in your cases?

(please check all that apply)

- ☐ Where the parents are in high conflict
- ☐ Where there are allegations of spousal violence
- ☐ Where there are allegations of child abuse
- ☐ Where there are allegations of substance abuse
- ☐ Where there are allegations of mental health concerns
- ☐ Where the child is unfamiliar with the access parent (i.e., reintroduction)
- ☐ Where a child has been abducted or there are concerns that a child may be abducted
- ☐ I don't recommend supervised exchange
- ☐ Not available in my jurisdiction
- ☐ Other, please specify... _____

5.11 In your experience over the past five years, are interjurisdictional/international custody matters, including abduction cases:

- ☐ More frequent
- ☐ Less frequent
- ☐ No change

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

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

	Never	Rarely	Occasionally	Often	Almost Always
Employment opportunity	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Educational opportunity	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
To be closer to family/friends	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
To be with new partner	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
To increase distance from other parent	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
No particular reason	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other (please specify below)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

5.13.1 If other, what is the reason?

5.14 In cases where parental relocation is an issue, what type of parental relocation is involved?

(please indicate how often each of the following occurs in your experience)

	Never	Rarely	Occasionally	Often	Almost Always
Custodial parent wishes to move within the city	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Custodial parent wishes to move within the province/territory	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Custodial parent wishes to move to a different province/territory	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Custodial parent wishes to move outside the country	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Access parent wishes to move within the city	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Access parent wishes to move within the province/territory	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Access parent wishes to move to a different province/territory	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Access parent wishes to move outside the country	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other (please specify below)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

5.14.1 If other, what type of relocation is involved?

5.15 In your experience, if relocation is an issue, has this resulted in cases being more difficult to settle?

- ☐ Yes
- ☐ No

5.16 Does a proposed relocation increase the likelihood that the case will be litigated/decided by a judge?

- ☐ Yes
- ☐ No

6.0 CHILD SUPPORT GUIDELINES

6.1 In your experience, in cases where child support is an issue, what are the more contentious issues?

(please check all that apply)

- ☐ Determination of income
- ☐ Income/financial disclosure
- ☐ Shared custody
- ☐ Split custody
- ☐ Ongoing income/financial disclosure
- ☐ Special and extraordinary expenses
- ☐ Undue hardship claims
- ☐ Children the age of majority or over
- ☐ Party standing in place of a parent
- ☐ Party with income in excess of \$150,000
- ☐ Imputation of income where party is a shareholder, director or officer of a company
- ☐ Imputation of income where party has irregular pattern of income
- ☐ Imputation of income where party is unemployed/underemployed
- ☐ Imputation of income where disclosure is inadequate
- ☐ Imputation of income for other reason
- ☐ Other, please specify... _____

6.2 What proportion of your child support cases involve:

children of the age of majority or older when initial arrangements are being made?

variation applications of child support for a child who has reached the age of majority?

undue hardship applications?

shared physical custody situations?

6.3 In your experience, how often are second families a factor with respect to child support?

- ☐ Never
- ☐ Rarely
- ☐ Occasionally
- ☐ Often
- ☐ Almost Always

6.4 In your experience, how often is income disclosure a problem in child support cases?

- ☐ Never
- ☐ Rarely
- ☐ Occasionally
- ☐ Often
- ☐ Almost Always

6.5 When income disclosure is a problem in child support cases, what are the most common reasons identified?

(please check all that apply)

- ☐ Failure to file income tax
- ☐ Refusal to provide pay statement/income tax statement/other financial information
- ☐ Self employed (incomplete or improper disclosure)
- ☐ Self-employed (imputation or determination of income)
- ☐ Income sources are complicated (e.g., income from tax shelters, income from foreign sources)
- ☐ Other, please specify... _____

6.6 In a child support case where income disclosure is a problem, how often is a disclosure order sought?

- ☐ Never
- ☐ Rarely
- ☐ Occasionally
- ☐ Often
- ☐ Almost Always

6.7 Where the court makes an order for disclosure in the course of a child support action, how often does the obliged party fail to comply with the order?

- ☐ Never
- ☐ Rarely
- ☐ Occasionally
- ☐ Often
- ☐ Almost Always

6.8 How often does a party fail to comply with the continuing obligation to provide income information in the years following the making of a child support order?

- ☐ Never
- ☐ Rarely
- ☐ Occasionally
- ☐ Often
- ☐ Almost Always

6.9 In your experience, how often do your clients decide not to pursue a legal entitlement because of lack of disclosure?

- ☐ Never
- ☐ Rarely
- ☐ Occasionally
- ☐ Often
- ☐ Almost Always

7.0 SPOUSAL SUPPORT

7.1 In your experience, in what percentage of your family law cases is spousal support an issue?

7.2 In your experience, when dealing with spousal support cases, how often is income/financial disclosure a problem?

- ☐ Never
- ☐ Rarely
- ☐ Occasionally
- ☐ Often
- ☐ Almost Always

7.3 How often do you use the Spousal Support Advisory Guidelines?

- ☐ Never
- ☐ Rarely
- ☐ Occasionally
- ☐ Often
- ☐ Almost Always

7.4 When do you use the Spousal Support Advisory Guidelines?

(please indicate how often each of the following occurs in your experience)

	Never	Rarely	Occasionally	Often	Almost Always
To negotiate	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
At mediation or arbitration	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
At case conferences, settlement conferences, judicial dispute resolution conferences	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
At trials	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
At interim motions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
At other court proceedings	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

7.5 In your experience, what impact have the Spousal Support Advisory Guidelines had on the determination of spousal support issues in your practice?

(please check all that apply)

- ☐ Offer a starting place
- ☐ Assist in negotiation
- ☐ Predict results
- ☐ Encourage settlement by negotiation
- ☐ Negative impact
- ☐ No impact
- ☐ Other, please specify... _____

8.0 FAMILY VIOLENCE

8.1 How often do you screen for family violence?

- ☐ Never
- ☐ Rarely
- ☐ Occasionally
- ☐ Often
- ☐ Almost Always

8.1.1 How often do you use a standard questionnaire or other tool to screen for family violence?

- ☐ Never
- ☐ Rarely
- ☐ Occasionally
- ☐ Often
- ☐ Almost Always

8.1.2 If you use a standard questionnaire or other tool to screen for family violence, what is the source of the standard questionnaire or other tool?

- ☐ Your law society
- ☐ A bar association
- ☐ A professional practice group
- ☐ A lawyer's journal
- ☐ A mental health organization
- ☐ A mental health journal
- ☐ Your firm

8.1.3 If you use a standard questionnaire or other tool to screen for family violence, what is the name of the standard questionnaire or other tool?

8.2 In your experience, in what percentage of your family law cases is family violence an issue?

8.2.1 In situations involving family violence, how often is a party also before the criminal courts while the family law proceeding continues?

- ☐ Never
- ☐ Rarely
- ☐ Occasionally
- ☐ Often
- ☐ Almost Always
- ☐ Don't know

8.2.2 Where a party is simultaneously involved in criminal proceedings, how often do you liaise with elements of the criminal justice system (e.g., your clients' criminal lawyer, the prosecutor, victims' services, etc.) to help serve your client?

- ☐ Never
- ☐ Rarely
- ☐ Occasionally
- ☐ Often
- ☐ Almost Always

8.3 Are you familiar with the services available for your clients (survivors or abusers) in cases where there is family violence?

- ☐ Yes
- ☐ No
- ☐ No services available in my area

8.4 In your experience with cases involving family violence, how did the court considering the family law issues address the family violence issue?

(please indicate how often this has occurred in your experience)

	Never	Rarely	Occasionally	Often	Almost Always
Assessment services were used	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Child was given legal representation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Access supervision was ordered	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Exchange supervision was ordered	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Counselling services were used	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Parents were educated on the effects of family violence on children	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Access was denied to abusive parent	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Custody was denied to abusive parent	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

	Never	Rarely	Occasionally	Often	Almost Always
Civil order restraining harassment/regulating or restraining contact between parties	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Civil order restraining harassment/regulating or restraining contact between party and child	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Court did not address the issue	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other (please specify below)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

8.4.1 If other, how did the court address the family violence issue?

8.5 In your experience with cases involving family violence, how often are the following services used?

(please indicate how often this has occurred in your experience)

	Never	Rarely	Occasionally	Often	Almost Always
Assessment services were used	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Counselling services were used	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Parents were educated on the effects of family violence on children	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other (please specify below)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

8.5.1 If other, what services are used?

9.0 SUPPORT ENFORCEMENT AND INTERJURISDICTIONAL SUPPORT ORDERS

9.1 In your experience, what percentage of your family law cases involve support enforcement issues?

9.2 In your experience, how frequently do you deal with:

	Never	Rarely	Occasionally	Often	Almost Always
provincial/territorial Maintenance Enforcement Programs?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
the provincial/territorial Inter-Jurisdictional Support Orders Designated Authority Office?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
the Department of Justice Canada Family Law Assistance Services?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

9.3 In your experience:

	Never	Rarely	Occasionally	Often	Almost Always
have any of your clients (or their former spouses) had their federal payments garnisheed by the Department of Justice Canada (e.g., income tax refunds)?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
have you had to deal with situations in which a client (or their former spouse) has had their passport denied or suspended by the federal Government for being in persistent arrears of their support obligations?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
have any of your clients (or their former spouses) had their federal salaries and remunerations garnisheed or had federal pension benefits diverted for the purposes of satisfying support orders or agreements?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

9.4 In your experience, what percentage of your support enforcement cases include:

Dealing with maintenance enforcement programs on behalf of the creditor	<input type="text"/>
Dealing with maintenance enforcement programs on behalf of the debtor	<input type="text"/>
Dealing directly with the debtor on behalf of the creditor	<input type="text"/>
Dealing directly with the creditor on behalf of the debtor	<input type="text"/>

9.5 Have you had any cases involving provincial/territorial interjurisdictional support orders (ISO) legislation or Reciprocal Enforcement of Maintenance Orders (REMO) forms?

- ☐ Yes
- ☐ No

9.6 In your experience as a lawyer, what percentage of your clients are coming to you for advice on ISO/REMO cases?

The following questions in this survey are being asked by the Canadian Research Institute for Law and the Family.

10.0 UNIFIED FAMILY COURTS

10.1 Do you have experience with family law proceedings in a unified family court?

- ☐ Yes
- ☐ No

10.1.1 If yes, in which provinces or territories?

(please check all that apply)

- ☐ Alberta
- ☐ British Columbia
- ☐ Manitoba
- ☐ New Brunswick
- ☐ Newfoundland and Labrador
- ☐ Northwest Territories
- ☐ Nova Scotia
- ☐ Nunavut
- ☐ Ontario
- ☐ Prince Edward Island
- ☐ Quebec
- ☐ Saskatchewan
- ☐ Yukon

10.2 Do you have experience with family law proceedings in a court that is not a unified family court?

- ☐ Yes
- ☐ No

**10.3 To what extent do you agree or disagree with the following statements?
Compared to other courts, unified family courts:**

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know
Have simpler processes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Have simpler rules of court	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Have simpler rules of evidence	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Provide easier access to family justice services	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Provide more timely resolution of family law disputes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Produce outcomes that are more likely to be tailored to individual needs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Have judges who are more knowledgeable about family law and related legal principles	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Have judges who are more knowledgeable about the psychology of separation and the effect of separation on children	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Are less expensive for litigants	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Have judges who are more effective at settling cases	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

10.4 Is there a unified family court in your jurisdiction?

- ☐ Yes
- ☐ No

10.4.1 If a unified family court is in your jurisdiction, to what extent do you agree or disagree with the following statements? The unified family court in my jurisdiction:

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know
Has a bench specializing in family law disputes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Resolves family law disputes speedily	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Resolves family law disputes efficiently	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Uses rules of court that are tailored to family law disputes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Offers mediation or collaborative settlement processes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Accommodates off-site mediation or collaborative settlement processes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

10.4.2 If a unified family court is in your jurisdiction, how satisfied are you with:

	Very satisfied	Satisfied	Neither satisfied nor dissatisfied	Dissatisfied	Very dissatisfied	Not applicable
The availability of dates for hearings	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The availability of dates for trials	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The accessibility of court processes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The availability of family justice services	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The overall quality of the non-adversarial dispute resolution services offered	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The overall quality of decision-making	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

10.5 If a unified family court is NOT in your jurisdiction, would you like to have a unified family court in your jurisdiction?

- ☐ Yes
- ☐ No

10.6 Do you have any comments about unified family courts?

11.0 LIMITED SCOPE LEGAL SERVICES

11.1 Do you provide services on a limited-scope retainer (unbundled) basis?

- ☐ Yes
- ☐ No

11.2 Are you aware of other lawyers in your jurisdiction providing services on a limited-scope retainer (unbundled) basis?

- ☐ Yes
- ☐ No

11.3 How often do you deal with self-represented litigants, on the other side of a file, who have retained a lawyer for the limited purpose of:

	Never	Rarely	Occasionally	Often	Almost Always
Representing them in court for all or part of a hearing or trial	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Representing them in court for all or part of case conference or settlement conference	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Providing advice on strategy in connection with the litigation process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Providing advice on pretrial processes, such as making interim applications, drafting interrogatories and conducting examinations for discovery, during the litigation process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Providing advice on trial processes, such as examining witnesses, making objections and introducing evidence, during the litigation process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

	Never	Rarely	Occasionally	Often	Almost Always
Drafting documents for use in the litigation process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Preparing written arguments for use during the litigation process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Conducting legal research for the purposes of the litigation process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Representing them in negotiations in connection with the litigation process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Providing legal advice on a separation or similar agreement	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

11.4 How often are you retained for the limited purpose of:

	Never	Rarely	Occasionally	Often	Almost Always
Representing a litigant in court for all or part of a hearing or trial	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Representing a litigant in court for all or part of case conference or settlement conference	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Providing advice on strategy in connection with the litigation process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Providing advice on pretrial process, such as making interim applications, drafting interrogatories and conducting examinations for discovery, during the litigation process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Providing advice on trial processes, such as examining witnesses, making objections and introducing evidence, during the litigation process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Drafting documents for use in the litigation process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Preparing written arguments for use during the litigation process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Conducting legal research for the purposes of the litigation process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Representing a client in negotiations in connection with the litigation process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Providing advice on a separation or similar agreement	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

12.0 ADDITIONAL DEMOGRAPHICS

12.1 What is your gender identity?

- ☐ Male
- ☐ Female
- ☐ Other

12.2 How long have you been practicing your profession?

(please enter number of years)

12.3 What proportion of your practice involves family law matters?

Thank you for completing this survey.

Please present the code below to the Department of Justice's booth at the National Family Law Program in St. John's from July 12th - 14th in order to obtain a promotional gift:

Justice 2016

Appendix B: Judges' Survey on the Practice of Family Law in Canada

Judges' Survey on the Practice of Family Law in Canada

This survey is intended to be completed only by judges. If you are a lawyer or other professional, please click on this link to complete the lawyers' survey: <http://fluidsurveys.com/s/NFLP2016-lawyer-survey/>

The Department of Justice Canada is conducting a survey intended to obtain current information on the characteristics of cases handled by family law practitioners in Canada, and to obtain information from both lawyers and judges concerning family law issues. Some of you may recall completing a similar survey (on paper) at the 2008, 2010 and 2012 National Family Law Programs. We are repeating part of the survey this year to examine trends in family law over time and address emerging issues. The Canadian Research Institute for Law and the Family is conducting this survey on behalf of the Department.

We appreciate your assistance by completing this survey. Please be assured that your anonymity will be maintained at all times; responses will not be attributed to individuals and data will be expressed only in aggregate.

After the completion of the survey, you will be given a code to present to the Department of Justice's booth at the National Family Law Program between July 12th and 14th in order to obtain a promotional gift.

Thank you for completing this survey.

* Ce questionnaire est également disponible en français:
<http://fluidsurveys.com/surveys/Crllf/french-judges-survey/>

Please complete the following questions according to your experience. Where we ask you to specify a proportion of your cases, we realize that you cannot provide an exact figure; an approximation is fine. Where we ask you to estimate a frequency of occurrence, please use the following scale as a guideline:

Never = 0% Rarely = 1-10% Occasionally = 11-50% Often = 51-90% Almost Always = 91-100%

1.0 DEMOGRAPHIC INFORMATION

1.1 In which provinces and territories do you sit?
(please check all that apply)

- ☐ Alberta
- ☐ British Columbia
- ☐ Manitoba
- ☐ New Brunswick
- ☐ Newfoundland and Labrador
- ☐ Northwest Territories
- ☐ Nova Scotia
- ☐ Nunavut
- ☐ Ontario
- ☐ Prince Edward Island
- ☐ Quebec
- ☐ Saskatchewan
- ☐ Yukon

2.0 CASE CHARACTERISTICS

2.1 In what proportion of the family law cases that you handled in the past year was a party's representation partly or fully funded by legal aid?

2.2 What proportion of your family law cases dealing with children involve variations of previous orders/agreements?

3.0 CHILD'S VIEW

3.1 How often do you seek the child's views in your family law cases?

- ☐ Never
- ☐ Rarely
- ☐ Occasionally
- ☐ Often
- ☐ Almost Always

4.0 CUSTODY AND ACCESS

4.1 How often do you make or draft orders relating to children that use terminology other than "custody" and "access"?

- ☐ Never
- ☐ Rarely
- ☐ Occasionally
- ☐ Often
- ☐ Almost Always

4.2 When parents do not comply with their custody/access/parenting orders, what are the reasons?

Please indicate how often this has occurred in your experience.

	Never	Rarely	Occasionally	Often	Almost Always
Access parent does not exercise access	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Access parent is late returning child	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Custodial parent refuses access without appropriate cause (e.g., access parent is a few minutes late)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Custodial parent refuses access with appropriate cause (e.g., access parent intoxicated)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Child refuses visit with access parent	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Custody or access parent tries to change the parenting time schedule	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Safety concerns	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other (please specify below)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

4.2.1 If other, what is the reason?

4.3 What proportion of your cases involving children include supervised access on an interim basis?

4.4 What proportion of your cases involving children include supervised access as a condition of access in the final order?

4.5 Under what circumstances do you order supervised access in your cases?
(please check all that apply)

- ☐ Where the parents are in high conflict
- ☐ Where there are allegations of spousal violence
- ☐ Where there are allegations of child abuse
- ☐ Where there are allegations of substance abuse
- ☐ Where there are allegations of mental health concerns
- ☐ Where the child is unfamiliar with the access parent (i.e., reintroduction)
- ☐ Where a child has been abducted or there are concerns that a child may be abducted
- ☐ I don't order supervised access
- ☐ Not available in my jurisdiction
- ☐ Other, please specify... _____

4.6 What proportion of your cases involving children include supervised exchanges?

4.7 Under what circumstances do you order supervised exchange in your cases?
(please check all that apply)

- ☐ Where the parents are in high conflict
- ☐ Where there are allegations of spousal violence
- ☐ Where there are allegations of child abuse
- ☐ Where there are allegations of substance abuse
- ☐ Where there are allegations of mental health concerns
- ☐ Where the child is unfamiliar with the access parent (i.e., reintroduction)
- ☐ Where a child has been abducted or there are concerns that a child may be abducted
- ☐ I don't order supervised exchange
- ☐ Not available in my jurisdiction
- ☐ Other, please specify... _____

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

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

	Never	Rarely	Occasionally	Often	Almost Always
Employment opportunity	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Educational opportunity	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
To be closer to family/friends	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
To be with new partner	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
To increase distance from other parent	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
No particular reason	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other (please specify below)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

4.9.1 If other, what is the reason?

4.10 In cases where parental relocation is an issue, what type of relocation is involved?
(please indicate how often each of the following occurs in your experience)

	Never	Rarely	Occasionally	Often	Almost Always
Custodial parent wishes to move within the city	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Custodial parent wishes to move within the province/territory	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Custodial parent wishes to move to a different province/territory	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Custodial parent wishes to move outside the country	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Access parent wishes to move within the city	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Access parent wishes to move within the province/territory	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Access parent wishes to move to a different province/territory	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Access parent wishes to move outside the country	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other (please specify below)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

4.10.1 If other, what type of relocation is involved?

4.11 In your experience, if relocation is an issue, has this resulted in cases being more difficult to settle?

- ☐ Yes
- ☐ No

4.12 In your experience over the past five years, are interjurisdictional/international custody matters, including abduction cases:

- ☐ More frequent
- ☐ Less frequent
- ☐ No change

5.0 CHILD SUPPORT GUIDELINES

5.1 In your experience, in cases where child support is an issue, what are the more contentious issues?

(please check all that apply)

- ☐ Determination of income
- ☐ Income/financial disclosure
- ☐ Shared custody
- ☐ Split custody
- ☐ Ongoing income/financial disclosure
- ☐ Special and extraordinary expenses
- ☐ Undue hardship
- ☐ Children the age of majority or over
- ☐ Party standing in place of a parent
- ☐ Party with income in excess of \$150,000
- ☐ Imputation of income where party is a shareholder, director or officer of a company
- ☐ Imputation of income where party has irregular pattern of income
- ☐ Imputation of income where party is unemployed/underemployed
- ☐ Imputation of income where disclosure is inadequate
- ☐ Imputation of income for other reason
- ☐ Other, please specify... _____

5.2 What proportion of your child support cases involve:

children of the age of majority or older when initial arrangements are being made?

variation applications of child support for a child who has reached the age of majority?

undue hardship applications?

shared physical custody situations?

5.3 In your experience, how often is income disclosure a problem in child support cases?

- ☐ Never
- ☐ Rarely
- ☐ Occasionally
- ☐ Often
- ☐ Almost Always

5.4 When income disclosure is a problem in child support cases, what are the most common reasons identified?

(please check all that apply)

- ☐ Failure to file income tax
- ☐ Refusal to provide pay statement/income tax statement/other financial information
- ☐ Self-employed (incomplete or improper disclosure)
- ☐ Self-employed (imputation or determination of income)
- ☐ Income sources are complicated (e.g., income from tax shelters, income from foreign sources)
- ☐ Other, please specify... _____

5.5 In a child support case where income disclosure is a problem, how often is a disclosure order sought?

- ☐ Never
- ☐ Rarely
- ☐ Occasionally
- ☐ Often
- ☐ Almost Always

5.6 In your experience, how often are second families a factor with respect to child support?

- ☐ Never
- ☐ Rarely
- ☐ Occasionally
- ☐ Often
- ☐ Almost Always

6.0 SPOUSAL SUPPORT

6.1 In your experience, in what percentage of your family law cases is spousal support an issue?

6.2 In your experience, when dealing with spousal support cases, how often is income/financial disclosure a problem?

- ☐ Never
- ☐ Rarely
- ☐ Occasionally
- ☐ Often
- ☐ Almost Always

6.3 When do you use the Spousal Support Advisory Guidelines?
(please indicate how often each of the following occurs in your experience)

	Never	Rarely	Occasionally	Often	Almost Always
To negotiate	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
At mediation or arbitration	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

7.0 FAMILY VIOLENCE

7.1 How often do you screen for family violence?

- ☐ Never
- ☐ Rarely
- ☐ Occasionally
- ☐ Often
- ☐ Almost Always

7.2 In your experience, in what percentage of your family law cases is family violence an issue?

7.3 In situations involving family violence, how often is a party also before the criminal courts while the family law proceeding continues?

- ☐ Never
- ☐ Rarely
- ☐ Occasionally
- ☐ Often
- ☐ Almost Always
- ☐ Don't Know

7.4 In your experience with cases involving family violence, how is the family violence issue addressed?

(please indicate how often this has occurred in your experience)

	Never	Rarely	Occasionally	Often	Almost Always
Assessment services were used	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Child was given legal representation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Access supervision was ordered	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Exchange supervision was ordered	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Counselling services were used	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Parents were educated on the effects of family violence on children	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Access was denied to abusive parent	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Custody was denied to abusive parent	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Civil order restraining harassment/regulating or restraining contact between parties	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Civil order restraining harassment/regulating or restraining contact between party and child	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Issue was not addressed	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other (please specify below)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

7.4.1 If other, how was the family violence issue addressed?

7.5 In your experience with cases involving family violence, how often are the following services used?

(please indicate how often this has occurred in your experience)

	Never	Rarely	Occasionally	Often	Almost Always
Assessment services were used	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Counselling services were used	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Parents were educated on the effects of family violence on children	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other (please specify below)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

7.5.1 If other, what services are used?

8.0 SUPPORT ENFORCEMENT AND INTERJURISDICTIONAL SUPPORT ORDERS

8.1 In your experience, what percentage of your family law cases involve support enforcement issues?

8.2 In your experience, how frequently do you deal with:

	Never	Rarely	Occasionally	Often	Almost Always
provincial/territorial maintenance enforcement programs?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
the provincial/territorial Inter-jurisdictional Support Orders Designated Authority Office?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

8.3 Have you had any cases involving provincial/territorial interjurisdictional support orders (ISO) legislation or Reciprocal Enforcement of Maintenance Orders (REMO) forms?

- ☐ Yes
- ☐ No

Thank you for completing this survey.

Please present the code below to the Department of Justice's booth at the National Family Law Program in St. John's from July 12th - 14th in order to obtain a promotional gift:

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