Ministry of Attorney General

Justice Services Branch

Family Justice Services Division

A Study to Determine the Feasibility of Documenting the Flow of Family Law Cases in BC Provincial and Supreme Courts

Final Report

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EXECUTIVE SUMMARY

This report explores the feasibility of documenting key aspects of the flow of family law cases in the Provincial and Supreme Courts in British Columbia.

Key methodological components of the study were a limited literature scan, interviews with 20 key respondents in various roles in the family justice system, exploration of several data recording systems that could yield data on key indicators, including a review of Provincial Court files.

One of the products of the interviews with key respondents is a preliminary description of key stages of case flow of family cases in Provincial and Supreme Courts. Respondents were asked to give estimates of the percentage of cases that get settled at various stages of the court process, that are abandoned, or that return repeatedly for further court action, but without a final resolution. These estimates sometimes vary widely depending on the role of the key respondent in the system, but the reasons they provide for their estimates give a sense of the dynamics and issues that impact parties' decisions.

Section 5 of the report documents several sources of data pertaining to family case flow, including the Court Services Civil Electronic Information System (CEIS), Supreme Court files, Provincial Court file, the Legal Services Society Management Information System (MIS) and the Society's client surveys conducted in 2004 and 2006, and the Family Information System related to Family Justice Centres in the province.

Cumulatively, these methodologies contribute to a "menu" of indicators of family case flow which are described in Section 6 of this report, including a recommendation rating of "low", "medium" or "high" in regard to their utility and feasibility.

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1.0 BACKGROUND

This report explores the feasibility of documenting key aspects of the flow of family law cases in the Provincial and Supreme Courts in British Columbia. The Family Justice Services Division (FJSD) of the Ministry of Attorney General hopes that if such documentation is feasible, it could be used as an ongoing planning and measurement tool, and also could increase the capacity of the FJSD to design and assess future services for high conflict families.

Since current data recording by Court Services is primarily conducted for internal operational and policy purposes rather than to address external research requests, it was not known by the FJSD whether there would be data that could be readily aggregated, cross-tabulated and subjected to useful statistical analysis on a regular basis. It was thus foreseen that the research would be highly exploratory, and would need to consider a variety of approaches that together might develop a composite picture of family case flow.

Another reason that this research is exploratory is that unlike an assessment of the feasibility of specific data collection methods for a clearly defined study, there is no proposed study "on the table," and nor is the concept of "case flow" fully defined. Initially, this concept has focused on issues such as: 1) the stages at which family law matters tend to get resolved or collapse; 2) the reasons why cases resolve, collapse or linger in the court system; and 3) the approximate number that linger for extended periods of time.

Consideration of these issues leads more to a menu of different indicators and possible approaches, rather than to a confirmation of the feasibility of a particular plan. In addition, because of the intrinsic difficulties in using court-based data to identify particular aspects of case flow (most notably why individuals drop out of, or never enter, the court system) we have enlarged the scope of the inquiry to include other sources of data or feedback.

In Section 2 the methodology of this study is outlined. Section 3 discusses the results of a brief literature scan. Section 4 presents a description of the flow of family law cases through the courts, with estimates by key respondents of result patterns at each stage of the process. Interviews with key respondents also generated suggestions for indicators that would reflect these result patterns. Section 5 describes a range of sources that can be used to generate data on case flow indicators. Section 6 concludes with a presentation of key indicators reflecting case flow, describes their data sources and feasibility, and gives each indicator a "recommendation rating" based on its utility and feasibility.

2.0 METHODOLOGY

The methodologies used in this study are described in the sections which follow.

2.1 Literature Scan

A small number of recent studies on the pattern and outcomes of family and civil cases in Provincial and Supreme courts in BC were reviewed to gather descriptive data on case flow, to explore the strength and limitations of indicators that were used, and to derive lessons on the practicality of methodologies that were employed. A limited scan of the literature on court usage and issues related to court case flow and provision of services to family justice clients in the English-speaking jurisdictions was also undertaken to supplement these findings.

A bibliography of these resources is provided at the end of this report.

2.2 Key Respondent Interviews

Telephone and in-person interviews were held with 20 key respondents, including twelve lawyers who have active family law private practices, and/or act as duty counsel or are employed by the Legal Service Society, five Provincial Court or Supreme Court Registry staff, one Provincial Court judge, a researcher in family law, and an executive director of a NGO.

The questionnaire shown in Appendix I was used as a framework for most of the interviews, but certain parts of the questionnaire were emphasized depending on the role of the respondents and their particular vantage points for assessing the pathways of parties with family problems. As the key informant interviews progressed, new questions were added to follow up issues or perceptions raised by earlier informants, so the framework evolved in the process.

2.3 Exploration of Existing Indicator Data from the Court System and other Databases

In person meetings and follow-up email and telephone contacts were undertaken with representatives of the Court Services Branch to understand the potential of the Branch's Civil Electronic Information System (CEIS) to contribute to future research on family law case flow. It was intended that the literature scan and key informant interviews would help focus inquiries related to CEIS on certain indicators of relevance.

Preliminary determination was also made on the potential of using non-court databases. Discussions were held with a representative from the Legal Services Society, and

sample data reports examined. Focus Consultants has also had experience using the Family Information System which is used by Family Justice Centres; relevant aspects of this experience are described for this study.

2.4 File Review

A limited review of files was conducted in the Vancouver Provincial Court to explore the consistency of recording of selected indicators in the event that manual file retrieval was determined as an appropriate methodology. The form that was used in the review is shown in Appendix 2. It included most of the indicators that had emerged in the key respondent interviews, as being of potential relevance to the issues of case flow. A second component related to the usefulness of a file review methodology was discussed at a meeting held with the director of a Family Law Project study by the UBC Program on Dispute Resolution to explore the project's experience with file reviews in the Supreme Court.

3.0 FINDINGS FROM THE LITERATURE

There is a large volume of literature on self-litigation, on private and public legal services, and on dispute resolution services related to family law cases in English speaking jurisdictions. However, there is almost no literature that directly addresses the central issues of this study concerning patterns of resolution, "lingering" and vexatious actions by parties, and when and why parties decide not to continue in family cases. In most cases, the researchers in this study used articles that only tangentially dealt with these key issues, attempting to glean any information that might suggest useful methodologies or potential indicators for future research.

Table 1 summarizes key indicator types from the literature scan that could potentially be used to address the main study issues, and describes how they were used or presented to describe outcomes in the original study. For the most part, these indicators are most relevant to the theme of lingering cases or vexatious litigants. The extent of their utility will be seen in relation to the key respondent findings presented in Section 4 and the feasibility issues discussed in Section 6.

Key results of this review are as follows:

- Numbers of appearances and/or motions in specific time periods are potentially useful indicators to identify high conflict cases or vexatious litigants.
- The calculation of time from filing to final disposition is especially appropriate as a case flow indicator for divorce cases, given the fact that in terms of the decree itself, it is a clear, final marker of the case. Of course, the decree is not an indicator of the permanence of custody, access and support arrangements, which can subsequently be varied.
- Several of the studies relate specifically to the provision of particular types of services (e.g. Special Masters in #1) or to policy issues (time of participation in Parent Education Programs in #2). Although these studies were used as a source to define useful indicators, they are also useful for policy and program decision making.

Table 1. Key Court-Related Indicators from Literature Review

	Indicator	Source (see Bibliography)	Study Area to Which Indicator could be Applicable	Comments
1.	Number of court appearances in 1 year period	Kelly, p. 111	Vexatious litigants, lingering cases	This article refers to the use of "Special Masters" for vexatious litigants. A "Special Master" is a role similar to that of "parenting coordinators". Kelly noted, "In one California county, for example, in the year prior to getting a Special Master, 166 cases had 993 court appearances. These same 166 cases had 37 appearances in the year following the appointment of the Special Master." Thus using an indicator such as "5 or more appearances in a 1 year period" could be a way of identifying the files of vexatious litigants. Measuring the proportion of such files as a percentage of overall new files in a given year could indicate patterns of high conflict cases.
2.	Number of court filings (motions) in 12 month period	Ellis and Anderson, pp. 176 – 181	Vexatious litigants, lingering cases	The authors were assessing the impact of participation in a Parent Education Program and the use of court resources. Frequency categories for # of motions were 0, 1, 2-5, 6-10, 11-15, 16-20, over 20. They found that the differences in number of court filings was significantly higher for non PEP participants. The frequency categories may be useful in recommending threshold numbers to describe vexatious litigants.
3.	Numbers of adversarial motions, case lengths, and type of representation.	Mather, p. 153	Vexatious litigants, lingering cases	In an analysis of self-representation in divorce cases, the author notes, ". . . in New Hampshire, our research found that one or more adversarial motions was filed in 37 per cent of the two-lawyer divorces, compared to only 5 percent of the one-lawyer cases and in none of the *pro se* cases. Two-lawyer cases also took longer to reach a final divorce disposition: an average of 253 days compared to 136 days for one-lawyer and 130 days for cases in which both parties were *pro se*. " Note that if type of representation were used as an indicator, and two-lawyer representation was higher than in a previous year, the implication would <u>not</u> be that legal representation is detrimental but simply that a higher percentage of difficult cases were being fought out in court rather than settled in mediation or negotiations between lawyers. As per #2, adversarial motions (however defined) could be counted in a given period as an indicator.

	Indicator	Source (see Bibliography)	Study Area to Which Indicator could be Applicable	Comments
4.	Time from filing of divorce to final disposition	Goerdt pp. 14-17; Metzger	Settlement	Goerdt's study is old (1992), but is frequently referenced. It examines the pace of litigation in divorce courts in 16 US urban jurisdictions. It found that only one of the 16 courts was close to meeting the American Bar Association standard that 98 percent of divorce cases be disposed of within six months, but that mandatory waiting periods had the greatest effect on processing time. The concept of "final disposition" is a feasible one in divorce cases in terms of achieving a final decree, notwithstanding that orders might need to be varied. The Metzger Report in BC advocated the use of time to disposition standards.
5.	Type of representation	Farmer and Tiefenthaler, p. 176	Vexatious litigants	In a study of determinants of pre-trial settlement in divorce disputes, the authors state "our results also indicate that the presence of lawyers is strongly correlated with going to court. If this relationship results from simple correlation (people who want lawyers also want to go to court), then it is not important from a policy perspective. However, if, in fact, lawyers encourage the use of courts, this is an extremely important result from a policy perspective." Thus, like indicator #3, this could be a surrogate indicator for the level of adversarial divorces being brought to court. Responses in the key respondent interviews undertaken in this feasibility study suggest that lawyers in collaborative law practices frequently do not register agreements their clients reach with the other party. This means that when two counsel are listed in court files, one for each party, the parties may in fact be more on the litigious end of the scale.

	Indicator	Source (see Bibliography)	Study Area to Which Indicator could be Applicable	Comments
6.	Time between separation and filing for divorce	Farmer and Tiefenthaler, pp. 176 – 177	Settlement	In a study of determinants of pre-trial settlements in divorce disputes, the authors state "the time between separation and filing for divorce is found to decrease the likelihood of using the courts. The interpretation we provided is that a long separation allows time for the couple to credibly reveal information and work out their disputes on matters of custody, visitation, and property without using the courts." Determining the length of this time period for individual cases would require file research. Lawyers in collaborative law practices interviewed in this feasibility study also seem to reinforce the benefits of "taking time." Several said they encouraged their clients not to immediately bring an application and not to rush to court if their spouse has not responded to service in time. This gives both parties time to work through the emotions of the separation and to consider settlement options.
7.	Whether discovery takes place	Garfield, p. 78	Vexatious litigants	In a discussion of "unbundling" of legal services in mediation, the author states that "discovery is probably the single most expensive component of the entire process . . . an insignificant amount of discovery . . . elicits information that would not have been provided voluntarily or could not have been obtained informally." This suggests that the process of discovery in a case could be a measure of the adversarial intensity.
8.	Number of weeks after referral that parent attends a Parent Education Program	Ellis and Anderson, p. 171	Lingering cases	Ellis and Anderson cite an earlier study by Arbuthnot that found "that 12.5 percent of parents who attended parent education classes within three weeks of receiving a court order to attend at their first court hearing re-litigated during the two-year follow-up period. The comparable figure for parents who attended such classes four or more weeks after their initial court hearing was 60 percent." Although participation in PAS is mandatory in 19 Provincial Court registries before first appearance, in other sites it is voluntary or could take place after first appearance. It is not clear whether the under 4 weeks group is more highly motivated and therefore less likely to be litigious, or whether getting participants into PAS early helps to de-escalate conflict and therefore reduces the likelihood of re-litigation. If this indicator were considered useful, it would not be difficult to amend the PAS participant evaluation form to include the date of referral to PAS and the date of participation.

	Indicator	Source (see Bibliography)	Study Area to Which Indicator could be Applicable	Comments
9.	Settlement; re-emergence of matters that had appeared resolved	Legal Services Society (LSS), p. 17, 39)	Settlement: Vexatious litigants	This data is from a survey of 812 clients of various LSS family services: 66% of issues were completely resolved, and 19% re-emerged after initial resolution. Approximately 60 – 65% of re-emerged issues (or approximately 11% of overall issues) might be characterized as "high conflict" or "vexatious litigant" situations rather than simple changes in the parties' circumstances. Forty-six percent of re-emerged issues (or 8% of overall issues) re-emerged in 1-3 months after initial resolution. This data was from a client survey; "new motions after a final court order" would be a comparable indicator based on court file research.

4.0 THEMES FROM KEY RESPONDENTS

This section describes the flow of family cases through Provincial and Supreme courts, as perceived by a range of key respondents. The description focuses on patterns of activity and outcomes at each stage of the court process. Discussions of these patterns and outcomes in the interviews also laid the basis for suggestions of indicators that could reflect these patterns. They are presented in Section 6 of the report.

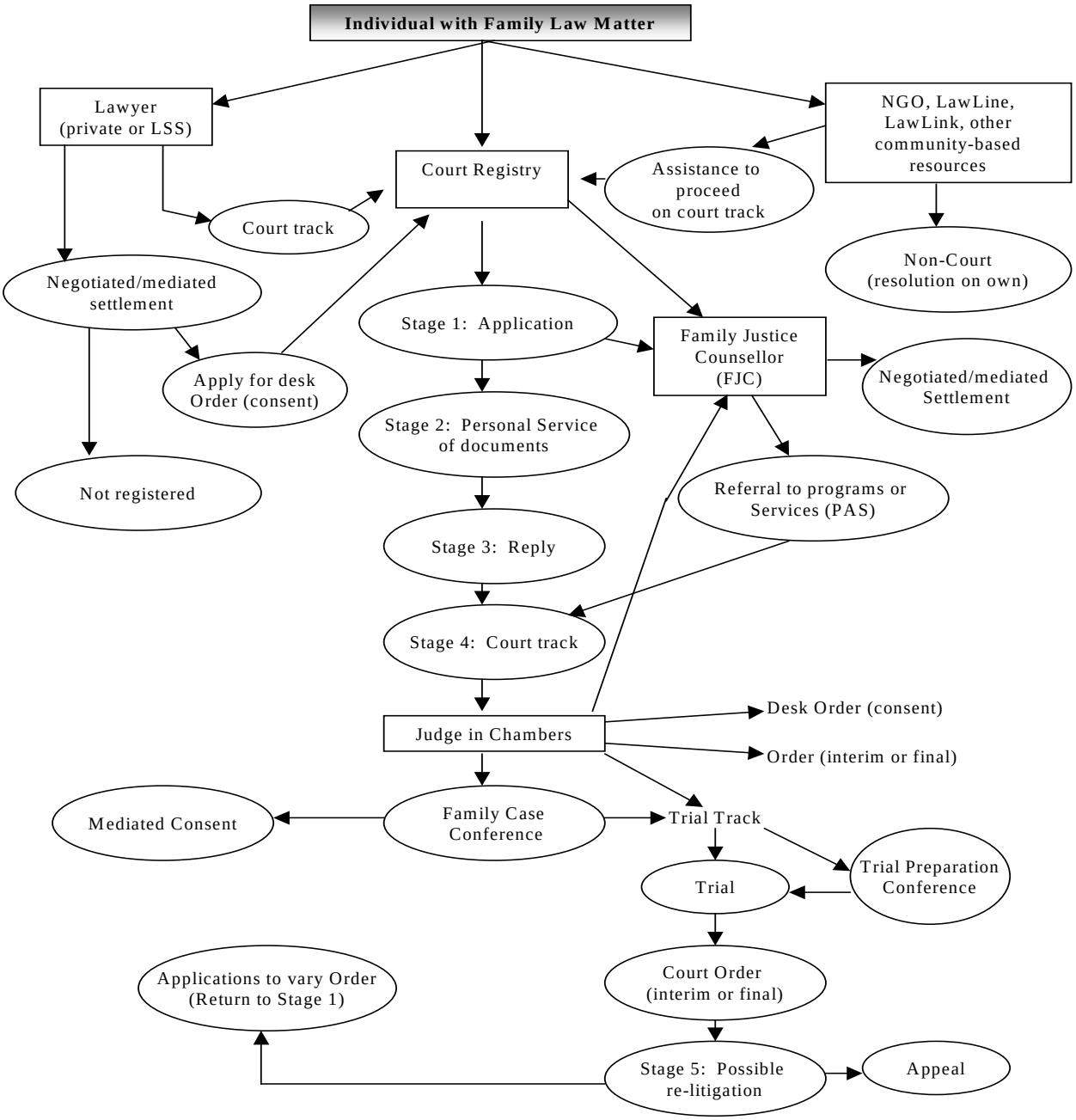
4.1 Case Flow Patterns

The description below follows the sequence of stages and questions in the key respondent questionnaires shown in Appendix 1. These stages are also shown schematically in the case flow diagrams in Figures 1 and 2. The term "stages" only refers to certain developments within the court framework, and is not meant to be prescriptive.

All estimates are subjective assessments by the key respondents, based on their experience and type of contact with clients. Throughout this discussion, the estimates are expressed as ranges of all respondent answers. Comments apply equally to Provincial and Supreme Court, unless otherwise indicated.

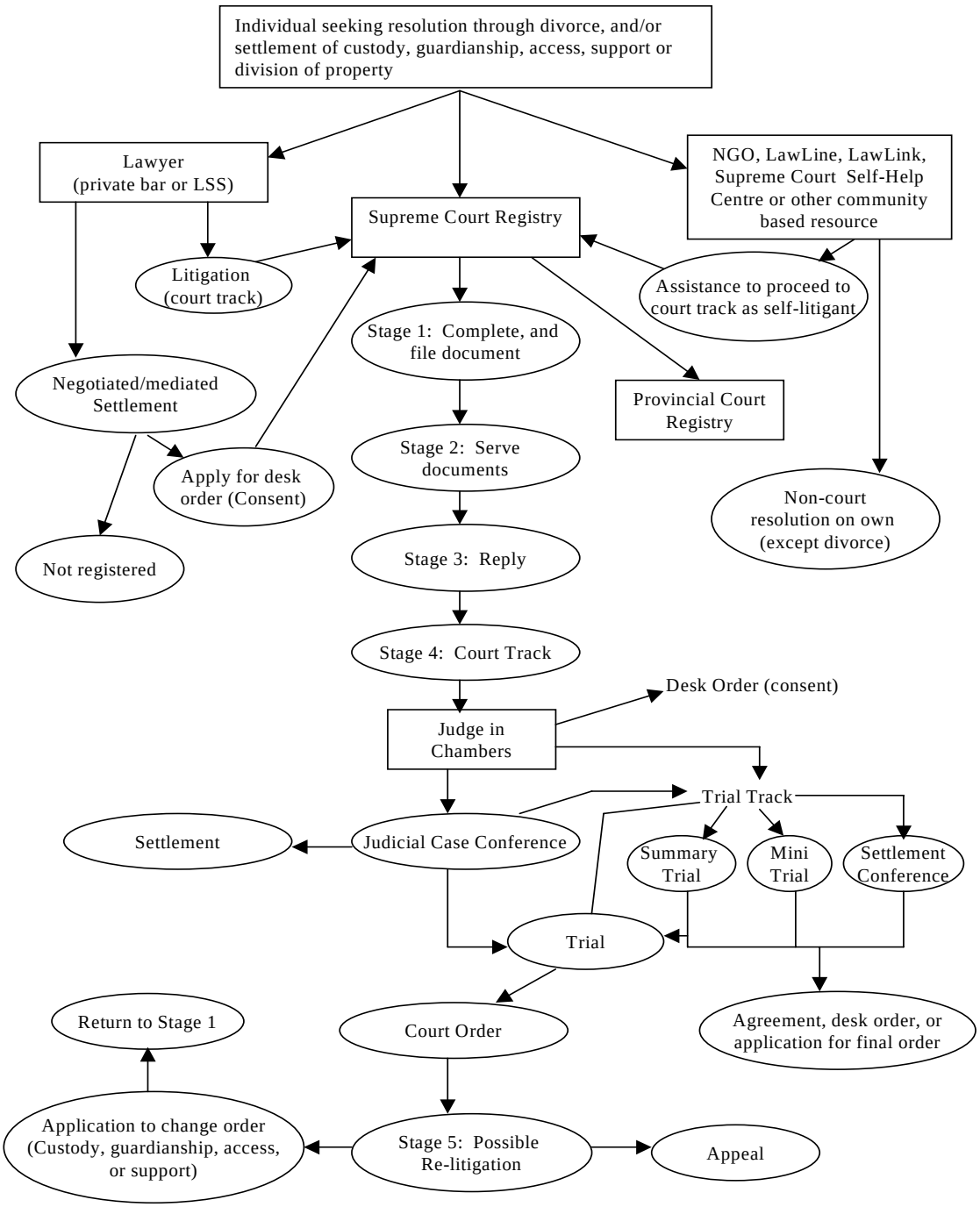
It should be stressed that there are an undetermined number of cases in which individuals with family legal problems either do not approach any resource or are unable to get assistance. In this sense their case may be "abandoned" before the registry stage. Although outside the mandate of this study, these cases have an impact on case flow. For example, a key respondent noted that in many small communities women are unable to access legal aid, the courts, or adequate legal information because of transportation issues, an inability to use the internet, the lack of local legal offices, or enough lawyers to avoid conflicts of interest, or the lack of an interpreter. In 2002 there were significant cuts to the Legal Services Society's tariff for family law cases, in which the number of individuals who received representational services fell by over 50%. Some of those types of cases may subsequently have been accommodated through family duty counsel, or other types of services, but the loss of one type of option may mean that certain cases do not reach the courts.

Figure 1: Case Flow Model: Provincial Court



Notes:
1) "Stage 1,2,3, etc" refers to developments within the court process (as opposed to non-court processes).
2) At any time in the above process, parties may reconcile or reach an agreement on their own, seek legal advice or representation, or decide not to pursue the matter. There may also be applications to vary an order filed after a mediated consent, or after a desk order or other order of a judge in chambers, and therefore a return to stage 1.
3) In Rule 5 sites (Vancouver, Kelowna, Surrey, Nanaimo) referral to a FJC and the PAS program is mandatory.

Figure 2: Case Flow Model: Supreme Court



Notes: 1) "Stage 1,2,3, etc." refers to developments within the court process (not to non-court processes).
2) At any time in the above process, parties may reconcile or reach an agreement on their own, seek legal advice or representation, or decide not to pursue the matter. There may also be applications to vary a desk order or order from a JCC settlement, and therefore a return to stage 1. A non-registered mediated settlement may also collapse and result in litigation or renewed mediation/negotiation.

4.2 Stage 1: Filing

Of individuals who appear at a registry with the intent of addressing a family matter in a legal way, the following patterns are evident:

- Between 70 – 99% actually file an application.
- Of the other 1 – 30% of individuals, some just want information, others are directed to Family Justice Counselors (FJCs), to LawLine, or (if at the Supreme Court Registry) to the Provincial Court Registry. Those who are using a lawyer's services but do not file, are often just wanting to draw up an agreement, and never go to the registry.
- If the location is an urban one or Rule 5 site, there are likely more resources and possibilities for non-court solutions, so more individuals may not file.
- In Supreme Court a higher percentage (a range of 90 – 95%) of individuals file an application on their first day, while in Provincial Court it is estimated to be considerably lower (around 25%) because applicants seek help to gather the necessary information and advice. The remainder of those who then file do so within approximately two or three weeks.
- Supreme Court rates of filing are estimated to be higher because they most frequently concern divorce, which cannot be obtained without a court process. Provincial court matters allow for a greater range of alternative solutions. Supreme Court applicants often have gathered the necessary information prior to coming to the Registry for the first time.

In summary, in terms of attrition from the court process at the filing stage, most of it likely represents either diversion to collect information (which may result in an application at a later stage), or to engage in a non-court method of establishing an agreement. It should also be noted that from the standpoint of the overall legal process, there is likely a significant amount of settlement that occurs without any court involvement at all. For example, two key respondents in collaborative law practices said that the majority of separation agreements of their clients (as high as 80%) are not registered in court. Those that are registered most frequently include child or spousal support, or an uncontested divorce order. One respondent felt it was a "waste of time" to file a separation agreement unless there was a pre-existing order, and the agreement could be filed in the same file. Another lawyer said that he has noticed in recent years that clients have become more reluctant to immediately start proceedings, and are more open to trying to open up communication with the other party to explore settlement possibilities. On the other hand, two lawyers whose practices were at the litigation end of the continuum said that 80% – 90% of their clients initiate court proceedings, and two others said that when agreements are reached by negotiation they are always filed.

Therefore, if one is attempting to determine how settlement plays itself out as part of case flow, one would also have to explore the degree to which lawyers in private practice divert family matters away from the court stream entirely, and thus obviate the need for a court application. It is likely that this is a growing phenomenon, as a result both of government policies and services encouraging mediation, development of a collaborative law orientation within the legal profession, and since 2002 a lower level of funding for family matters by the Legal Services Society.

4.3 Stage 2: Serving

Taking all the individuals who have filed applications as a base number, and then assessing whether they actually serve documents on the other party, respondents identified the patterns below.

- Estimates ranged from 70% – 100% of individuals who have filed an application (as sole rather than joint applicants) actually complete service of the necessary documents. Not surprisingly, the higher end estimates on this continuum are by lawyers who handle service for their clients. Estimates are also highest for Supreme Court applicants.
- Most of the estimates were under two months in regard to time for completing service.
- Reasons why documents are not served include logistics (e.g. inability to locate the other person, lack of automatic search mechanisms in the Supreme Court, inability to afford more complex search processes); situational factors (e.g. the ex-spouse moves away and the applicant moves in with another partner); attempts to reconcile (especially with younger parties); fear (there is a concern that service of documents may trigger an emotional reaction, which is especially frightening if there has been a history of violence in the relationship).
- Assistance of a lawyer or duty counsel is seen as a significant support for those applicants who are fearful of serving a violent partner.
- Lack of knowledge of the location of a partner is considered less a factor in smaller or northern communities than in large urban centres.

If the estimates and assumptions of respondents are correct, there may be a significant proportion of cases which fall out of the court system at the service stage. Registry respondents consistently said they were unaware of any research done at this stage to determine actual service outcomes following the filing of an application. It is also not known what proportion of this drop out represents positive outcomes (e.g. reconciliation) or negative outcomes (giving in to fear or not being able to serve).

However, one respondent felt that when service does not take place, it is unlikely to indicate an attempt at reconciliation. Rather, it could signify a misunderstanding about

how to serve, an inability to locate the other party, or a fear of getting somebody else involved in one's personal matter (i.e. to undertake service for him/her).

4.4 Stage 3: Response

The base in this section refers to parties that have been served. Of this group, the key respondents estimated that:

- In Provincial Court, estimates were that between 5% – 30% of defendants indicate in their response that they agree with the applicant's claim. In Supreme Court the estimates of agreement by registry staff were considerably higher (50% – 85%). Lawyers in litigation-based practices made estimates ranging from 0% - 40%. They include non-responses, which mean that a divorce can still proceed, and therefore constitute de facto agreement.
- Disagreements, including counterclaims, account for a range of 52% - 80% of responses in Provincial Court, and 15% – 50% in Supreme Court for registry respondents, and 60% - 99% for litigation lawyer respondents. Common issues identified with disagreements were assets and spousal support.
- The estimates of the non-response rate range from 1% – 40%.
- The three main categories of non-response were (1) individuals who simply don't understand the process because of lack of education, literacy or language knowledge. They often respond late but are amenable to settlement. They may have started to negotiate with the other party and think they are in a process, but lose sight of the fact that they have to reply. One respondent felt that the defendant should be sent a notice of first appearance, regardless of whether they've filed a response, and that family justice counselors should emphasize the need to respond, regardless of the process the parties are engaged in; (2) individuals who use non-response as a delaying or frustration tactic, and/or who oppose the application and hope it will go away if ignored. They comprise between a third and one-half of the non-response group. They are especially prominent in B.C. Benefits matters; (3) divorce cases in Supreme Court were there are no issues to be worked out.

Several lawyers emphasized that the filing of a counterclaim to documents that have been served is <u>not</u> necessarily an indicator of strong resistance or unwillingness to settle. Rather, it can simply represent the defendant's attempt to map out the framework or "menu" for a settlement discussion. It is essentially the "outside form" of the claim required by the court process.

4.5 Stage 4: Process and Outcomes Following Response and Non-response

This section describes the process and outcomes following the defendant's response as perceived by the key respondents:

- If the defendant agrees with the claim, the most usual procedure in Supreme Court is to proceed by way of a desk order. In Provincial Court the procedures are slightly more varied. Usually the plaintiff will appear in court and obtain a consent order, or the judge will make a court order. Alternatively the process may proceed through a family justice counselor who will assist the parties to develop an agreement, which may then result in a consent order.
- If the defendant does not respond, in Supreme Court the matter still proceeds by way of a desk order in most cases. In Provincial Court the vast majority go to a first appearance. However, since many of the initial non-responders eventually do respond, either when they understand the process or when they find themselves subject to a court order, this may result in applications to set an order aside. Thus, in at least one region of the province, only about 30% of judges will make an order on the first day, whereas in the remaining cases they will set it over to another day. This allows the registry or, in some cases the applicant's lawyer, to attempt to contact the defendant to inform him/her that a case conference has been scheduled. This process is based on the perception that inclusion of the defendant will enhance the possibility of a settlement, and obviate the necessity to set aside an earlier order made in the absence of the defendant.
- Where the defendant disagrees and/or files a counterclaim in Supreme Court, the pathways described by key respondents are:
    - From 0 – 10% stated most cases go directly to trial;
    - Estimates ranged from 75% – 90% that cases settle either in a judicial case conference (JCC), in chambers (for interlocutory applications), summary trials or are diverted from one of these processes to mediation. Most felt that settlement at the JCC itself was low, but that the JCC frequently triggered settlement shortly thereafter. One lawyer who used examination for discovery in approximately 50% of cases but rarely went to a judicial case conferences, said that about 90% of parties settle after discovery, and before trial.
    - Most respondents estimates were in the range of 1% - 20% that matters were considered in the JCC, but were ultimately settled at trial. One estimate was that 90% of these cases went to trial after JCC.
    - From 1% – 15% are abandoned or discontinued and do not proceed to trial.
- One respondent noted that it has become increasingly difficult to schedule a JCC quickly. He feels that this favours the party who has more power in the relationship.
- One key respondent who assessed the level of "did not proceed" cases at 15% felt that approximately half of this group move on from the case emotionally or

move physically and do not resolve the matter, and the other half either lack finances to continue, or become (re)involved with addictive or other dysfunctional behaviour and cannot continue the case. Another respondent felt that "did not proceed" cases are usually ones that lack merit.

- When the defendant disagrees and/or files a counterclaim in Provincial Court, the pathways assessed by the key respondents were more varied. In Rule 5 sites, where parties are required to meet with a family justice counselor (FJC) and attend a Parenting After Separation (PAS) meeting, between 10% – 25% don't meet with the FJC and appear to go no further. A portion of these are considered to have reached informal settlements. A second group, estimated between 20% – 45%, meet with a FJC but do not proceed to first appearance. This group is considered likely to have reached an agreement. Approximately 45% – 55% are estimated to have met with a FJC, not reached an agreement, and then proceeded to a first appearance. For non-Rule 5 sites, it was estimated that 80% – 90% of cases proceed to first appearance, and 10% – 20% of cases appear to go no further. There was uncertainty about why this group of cases does not proceed.
- Of cases that do get to First Appearance, the estimated outcomes were:
    - 0% – 20% result directly in a consent order or court order;
    - 35% – 80% go to a Family Case Conference (FCC) and are either settled there, or at a subsequent FCC. Several respondents noted that there can be several FCCs in one case. Judges may make an interim order and ask the parties to return in 3 or 6 months to another FCC to review how the order has worked. The interim order may then be made final, or further FCCs may be held if the parties' agreement needs further review but they are otherwise working collaboratively. Thus a series of FCCs in a case may indicate a relatively collaborative, rather than adversarial process;
    - 10% – 40% go to trial, either after a FCC or trial preparation conference;
    - 0% – 10% are abandoned or discontinued or otherwise to not proceed to trial.
- Most respondents estimated in the range of 5% – 30% of cases that go to First Appearance go on to receive an interim order and do not subsequently go further to a permanent order. One respondent estimated this group to be as large as 60%. This range of estimates is a subset of the FCCs and trials mentioned in the previous bullet. There was a consensus among the key respondents that in most cases this group saw this outcome as a de facto settlement, and very few (less than 5% by one estimate) attempt to carry the matter further. The exception would be individuals who receive an interim order in a FCC, but are then scheduled to have another FCC.

- There was less clarity among the key respondents about what the small group of cases that do not proceed signifies at this stage. Most felt it likely means the parties have attempted to reconcile. (Evidence of this pattern was that applicants might return a year later and say they want to reactivate the file because their reconciliation attempt failed.) A couple of respondents speculated that the lower level of LSS funding for family matters has actually contributed in some instances to parties' making more concerted efforts to reach settlement on their own. Several respondents felt that no further proceedings at this stage could reflect more negative outcomes for one of the parties such as loss of resources, will or confidence to continue, and that the party was likely to be a lay litigant.
- It is also evident that there is a significant range (35% - 80%) in the estimates of the frequency of settlement in family case conferences. This may in part be due to the fact that there can be more than one FCC, and that some key respondents were only estimating settlement at the first FCC. Further research is required to clarify this issue.
- In terms of assessing the elapsed time necessary to designate a case as "abandoned", the estimates were equally divided between one and two years. One additional respondent estimated 6 months.

Considering the patterns reported above, one can identify several points at which there is a decision not to proceed, where it will be difficult to develop a clear indicator of the outcome this decision reflects. In Supreme Court cases with no response, the presumption appears to be roughly split between negative and positive outcomes. In Provincial Court there is a presumption that most cases that go to an FJC and don't come back into court are in fact settled, whereas there was less certainty about the outcome if applicants went through First Appearance and then dropped out.

4.6 Stage 5: Cases that "Linger" in the Court System

This section describes key respondents' estimates pertaining to cases that linger in the system, occupy significant court time and resources, likely involve "vexatious litigants," and do not seem to achieve lasting resolution.

- Most key respondents estimated this group at between 5% and 10% of cases where a counterclaim has been filed, with one respondent estimating 20%.
- There was a consensus among the key respondents that the predominant issue types of this group are either access or maintenance. To a lesser extent, custody and restraining orders were also mentioned. Usually the main vexatious litigant was said to be a male. Other indicators of vexatious litigants suggested by the key respondents were that there are frequent notices of motion (usually to review or vary an order), frequent allegations of abuse, appeals that are refused (especially if followed by an application to vary the order), and frequent affidavits

of evidence to support maintenance. More generally, as one key respondent mentioned, “a big fat file = a big fat problem!”

- One respondent felt that child support guidelines are an “open invitation to litigate a year later” because they allow for automatic recalculation and for review after a year.
- Most key respondents estimated in the range of 75% – 95% of matters that receive a final court order actually conclude the case. Three respondents estimated much lower, at 20% – 40%, emphasizing that where children are involved, new issues are constantly being generated. However, these cases are not consistently of the kind involving vexatious litigants; rather they may simply reflect changed situations and adjustments reflecting needs as the children grow older. Cases involving young children are more likely to involve frequent litigation.
- When asked to assess how much elapsed time is necessary after a final order has been made to consider a case as truly “settled” (i.e. where no further proceedings have taken place), key respondent estimates were equally divided between one and two years. One said vexatious litigants generally re-litigate within a month of the final order. Responses were similar for interim orders, except that two respondents with heavy litigation practices estimated four and five years respectively.

5.0 CURRENT SOURCES OF CASE FLOW DATA

This section outlines several sources of case flow information data that could potentially be used in future studies or reports related to family law case flow. The main strengths and limitations of each for such purposes are also discussed.

5.1 Civil Electronic Information System (CEIS)

This system was established in 2004 by the Court Service Branch of the Ministry of Attorney General. It is primarily designed as a tool for court operations and related court policy decisions rather than for research and policy development initiatives that are external to the branch. Therefore, depending on the units of definition and the types of linkages required between data sets in any query, and the protocols for what is recorded in CEIS from hard copy files, it may be possible to develop data reports that respond to external data requests.

All raw data for CEIS is inputted from Provincial and Supreme Court registries throughout the province, then is transferred into a Civil Management Information System (CMIS) and placed in six "cubes" (multi-layered spreadsheets) related to:

- cases;
- case status (e.g. events that occurred in a file, differences in time between events);
- documents that have been filed;
- appearances (numbers of);
- sessions (court room hours, judges hours);
- trends (which contain aspects of the above points).

CEIS' primary strengths from a research standpoint are that: 1) information is updated daily so it is current and can be segmented into time periods fairly readily; 2) it is entered from each registry, so it can also provide reports by registry; 3) it can count certain things well; and 4) there is a support group associated with data entry for CEIS which is guided by best practices, thus contributing to a level of consistency and quality in the data.

Nevertheless, it is important to understand the limitations on CEIS' capacity to respond to externally-driven research questions such as those that might be contemplated by the FJSD. These include:

- It keeps track of court resources (e.g., the booking of court rooms), court appearances and court utilization, but aggregation of certain of these data might require significant programming. For example, it can count the cumulative length

of trials in hours, but cannot directly count the number of trials. This requires creating a relation between the scheduling of a trial and the existence of an outcome, from which a trial can be inferred.

- It does not provide data on out-of-court events like discoveries, offers to settle, or interrogations. If a referral is made to a family justice counsellor and an agreement reached there, it will not be recorded in CEIS unless the agreement is filed in court.
- If parties reconcile outside of a court settlement, or if the applicant decides not to continue for any reason, this is generally not recorded in the court file, and is therefore not included in any CEIS fields.
- It provides data on results, but they cannot readily be rolled up into case results. This is a dilemma not just for CEIS, but for research generally in the family law field. A "case" may involve multiple applications and notices of motion with several issues per application. One part of an application may be granted, and another denied. It is therefore possible to determine results of individual issues or to describe orders made, but there is no convenient way to work back to a concept of an overall "case result."
- In CEIS, the "type" of order does not refer to whether the order is for custody or maintenance, but whether, for example, it is a court, desk or consent order. These types of orders can be readily aggregated. If by "type of order" one is referring to the issue involved, it is more complicated, but nonetheless feasible, to determine results by issues. It is necessary to construct a query that links an order to an appearance date in which issues are specified.
- As with any database, there may be issues of data quality (e.g. incorrect identification of motions by registry staff if many documents are submitted and staff are pressed for time; the frequent use of the category "other" when there are too many choices to select from).
- In a case with multiple applications, especially where they are closely connected in time, it is difficult, but not impossible for CEIS to connect each order with its related issue or application. The connection can be made if there is only one application in the case, and possibly if the applications occur far apart and there is an intervening order. If there is no appearance date to which an order can be linked (e.g. with a desk order), it may not be possible to determine the issues decided by that order.
- Until April 1, 2007, the entering of issues has not been mandatory in CEIS, but it has been a business practice to do so. Court Services Branch staff who work with CEIS consider it likely that most substantive family issues (e.g. custody, access, maintenance) in the period prior to March 1, 2007 are entered, with the possible exception of Inter-jurisdictional Support Orders (ISOs) and some procedural matters.

All of these factors affect the scope of research and level of effort required to extract data from CEIS. Feasibility becomes clearer as one considers specific indicators, presented in Section 6 of this report.

5.2 Supreme Court Files

A formal review of data recording and availability in Supreme Court files was not undertaken for this study. Rather, a meeting was held with the Project Leader of the UBC program on Dispute Resolution Family Law Project. The project had undertaken reviews of a sample of 300 Supreme Court files dating between January 1, 2000 and January 31, 2001, and supplemented by a smaller sample of 25 files to the end of 2002. The file reviews were then followed by personal interviews with 42 of the parties. Much of the project's interviewing process focused on characteristics of the cases and parties and is therefore not directly applicable to this study. However, the Project's experience in undertaking the file review was of relevance.

Key observations by the project leader about data availability and the utility of certain indicators in Supreme Court family files include:

- Much of the key substantive materials pertaining to issues under litigation are not in the files, (e.g. examination for discovery documents). Any mediation activities related to the case but outside the court process are also not included. Nor are related provincial court orders. This clearly limits the degree to which researchers can assess case dynamics related to, for example, high conflict or litigiousness.
- Judicial case conference proceedings tend to include a more extensive record of key issues and dynamics.
- There were many files where the process appeared simply to stop, but there was no indication as to whether this signified resolution or abandonment.
- There was no definition of a resolution type or date.
- It was possible to classify the initial type of filing as "joint," "undefended," and "defended." This is a useful categorization, if one assumes that the vast majority of "joint" and "undefended" cases lead to settlement, and that an examination of high conflict cases and their dynamics could therefore be restricted to a sample of defended cases. In the UBC sample, 22% (66/300) of the cases were defended. Since only completed cases were included in the study, and because defended cases tend to take longer than undefended or joint cases, these cases may have been under-represented in the study.
- The number of interim applications was considered a possible indicator of high conflict cases. Nonetheless, it is important to distinguish between natural

changes in a family (children maturing; employment changes) that lead to the need for a new application, and others that are intended to harass the other party. Perspectives on quantitative indicators that might make this distinction are outlined in Section 5.1.5.

- Identification of inflammatory language in affidavits was one way of defining high conflict parties.
- Change of counsel was suggested as a possible indicator of high conflict parties, but the study project leader felt that change of counsel often simply reflected instrumental factors such as the applicant's lawyer moving to another community.
- Custody, access and support matters appeared to generate the greatest ongoing conflict, as they constantly force the parties to be in touch with each other. By contrast, property matters seem to be contentious for a short period, and then the parties move on.
- To allow for sufficient time for cases to be completed, the project leader recommended that the sample be drawn from cases initiated 3 years prior to the research, and that it not include cases in which there has been activity within the previous 6 months.

5.3 Provincial Court Files

A brief review was conducted of a sample of 42 family cases filed in the year 2005 in the Vancouver Provincial Family Court Registry. As with other activities in this study, this review was highly exploratory. Although files were selected randomly, the data presented below is too small to be considered representative. In general terms, the intent was to determine what types of information and documents are in the files that could be useful concerning the primary case flow issues of settlement, high conflict/vexatious litigant behaviour and case abandonment. More specifically, the form shown in Appendix 2 was developed to record the frequency with which indicators identified in the key respondent interviews (see Section 5.2) were reflected in the files.

The quantitative results of the file review are shown in Tables 2 and 3. The following observations are of a more general order:

- The file review process is labour intensive, involves understanding and interpretation of legal documents, and careful definition and monitoring of consistency in the recording of data.
- The main advantage of file reviews is that, unlike CEIS, they can be used to aggregate data to the "case" level. The case level is more reflective of the experience of individuals than reporting by application or orders. Where aggregation of indicators at the case level is not important, CEIS is the more useful and cost effective resource. In the presentation of indicators in Section 6

(Table 4) we do not recommend indicators based on a file review, as CEIS is more cost-effective.

- The data presented in Table 3 shows, as per note #1, that there were 2.2 substantive issues per case. In a client survey of 812 family cases undertaken for the Legal Services Society (October 2006), the average number of issues was 2.1. What this suggests is that a small "snapshot" sample such as the one for this file review, may –for some measures – be able to give a reasonably reliable reading of data related to key indicators.
- For rare events such as a file being seized by a judge or cases that contain allegations of abuse, a larger sample would be necessary to reveal changes from year to year.

Table 2. Summary Results of the Frequency with Which Key Indicators Appear in a Sample of FRA Files, Vancouver Provincial Court

Indicators	Frequency Data (total cases = 42)	Notes
1. Representation Pattern: - Neither party represented - One party represented - Both parties represented	 9 (21%) 15 (36%) 18 (93%)	There were variations in the representation pattern in 15 of the 42 cases; the others remained consistent throughout the case.
2. # of files where there is affidavit of service or either evidence of service in file	26 (62%)	
3. # of files where the statement of defense or counterclaim is in the file	19 (45%)	
4. # of applications with at least one substantial issue in file	54, or 1.3 substantial applications per case	Most substantive applications also included procedural motions
5. # of applications which are solely procedural	5 (12% of cases)	
6. # of orders with at least 1 substantive issue in file	58, or 1.4 orders with substantive issues per case	
7. # of orders which are solely procedural	3 (7% of cases)	
8. # of consent orders	33 (57% of substantive orders)	16 cases had 1 consent order; 5 had 2; 1 had 3 and 1 had 4.
9. # of family case conferences	13 FCCs in 10 cases; there was at least one FCC in 24% of cases (10/42)	3 cases had 2 FCCs.
10. # of trial preparation conferences	2 (5% of cases)	
11. # of trials	1 (2% of cases)	

Indicators	Frequency Data (total cases = 42)	Notes
12. # of appearances	95 (2.3 per case)	Number of appearances per case as follows: 0=10, 1=12, 2=12, 3=3, 6=1, 8=2, 9=1, 19=1).
13. Time since last order: - 0-11 months - 12-23 months - 24+ months	 14 (35%) 22 (55%) 4 (10%)	File opening ranged from January – December 2005. Review was in April 2007. Two cases had no further action after the applicant, so N=40.
14. # or orders to get permission from court to apply	0	
15. Motion to set aside an order	1	
16. # of applications denied or dismissed	0	
17. # of ex parte orders	11	(4 for restraining orders; others for custody and access).
18. Requests to withdraw or set aside order	2	
19. Allegation of sexual abuse in custody/access file	1	
20. # of files with attendance at PAS on record	13	25% of all cases, but the attendance certificate is only required for custody, guardianship access or support matters.
21. # of files with Rule 5 (FJC) and 21 (PAS) exemption filed	4	
22. Files where discovery is noted	0	
23. # of files that are “oversize”	4 (10%)	“Oversize” meant a file that was approximately an inch thick (a hypothesized measure of a “high conflict” case).
24. # of files transferred in or out of Vancouver	3 (7%)	
25. # of files where CFCSA matter also involved	2 (5%)	
26. # of files “seized” by judge	1 (2%)	
27. # of files with FMEP involvement	14 (33%)	Other files which were exclusively FMEP related, were not included in this review

Table 3. Frequency of Issue, Types for Applications and Orders in a Sample of FRA Files Initiated in 2005, Vancouver Provincial Court

Issue Type	Frequency of issue in Applications (N=42)	Percent in Applications	Frequency of issue in Orders	Percent in Orders
Substantive Issues				
Custody	20	48%	8	19%
Maintenance – child	18	43%	13	31%
Guardianship	12	29%	7	17%
Restraining order	11	26%	7	17%
Access	8	19%	7	17%
Restrain from moving child from jurisdiction	5	12%	7	17%
Maintenance – spouse	4	10%	0	-
Vary maintenance – child	4	10%	0	-
Interim custody	2	5%	6	14%
Joint custody	1	2%	1	2%
Interim guardianship	1	2%	2	5%
Interim restraining order	1	2%	2	5%
Change/cancel restraining order	1	2%	1	2%
Change/cancel access	1	2%	1	2%
Set aside attachment order	1	2%	1	2%
Interim access	0	0	9	21%
Joint guardianship	0	0	9	21%
Interim maintenance – child	0	0	5	12%
Interim maintenance – spouse	0	0	2	5%
Set aside order – unspecified	1	2%	1	2%
Vary order – unspecified	1	2%	0	0
Procedural Issues				
Short leave or shorten time (e.g. for service or other process)	14	33%	1	2%
Other individual applications or orders (e.g. adjournments, dispense with service, substitutional service)	8	19%	8	19%

Notes:
1. Since there were more than 1 issue per application or order, and per case, the percentages exceed 100%. There were 92 substantive issues in 42 cases, or 2.2 per case, and 22 procedural issues, or .5 per case.
2. There were slightly fewer orders per case because a decision may not have been reached at the time of the file review, the case may have been dropped, etc.

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5.4 Legal Services Society Data Sources

The Legal Services Society (LSS) is an important source of data on family law case flow from two perspectives; its management information system, and from family law client surveys it has undertaken. These are described below.

5.4.1 LSS Management Information System

Prior to legal aid cutbacks in 2002, which severely restricted family law tariff services, a rough estimate by the Society was that it provided and other assistance to approximately 50% of family cases that went to court each year. While the number of tariff cases is currently down to only 40% of the 2000-2001 total, the Society nevertheless serves a substantial number of family clients, and maintains a management information database that could be useful in assessing various dimensions of case flow. Of particular relevance are measures related to early case termination, the duration of cases, and the extent of negotiation or mediation activity.

Early Case Terminations

Lawyers who provide tariff services for LSS complete a "Family Billing Form" on completion of their involvement in a case. It includes a report on cases of "early termination" with four categories: 1) case abandoned, 2) change of lawyer, 3) client proceeding alone, and 4) client no-show. Approximately 17% of all cases involve early termination through these four categories. "Change of lawyer" suggests that the case is still moving ahead. "Case abandonment," and "client no show" could either involve cases where the client has given up or tried to reconcile with the other party. "Client proceeding alone" could indicate continuation as a self-litigant, or could be a euphemism for giving up or reconciling. The dilemma of determining the meaning of these terms is similar to that of determining the significance of a case in a court file that stops without explanation. However, at a minimum, the LSS data is a second source of interpretation or confirmation. Such data would be more powerful if it were combined with a follow-up survey of a sample of clients in the "case abandoned," "client proceeding alone" and "client no-show" categories.

Duration of Cases

LSS is able to produce a report of family cases from the date of the initial interview to the last service date. This data can be reported in three-month (or other) time segments. A report for intake dates between April 1, 2002 and March 31, 2005 shows that 43% of family cases were completed in 6 months, 70.7% within 1 year, and 93.5% within 2 years. The report can be cross-tabulated by three types of family services with different approval criteria. It is included as item D-2 in Table 4.

The LSS report is a useful complement to the report of the Provincial Court that provides data on time to schedule an FRA hearing (see indicator D-1 in Table 4), as it also deals with the time or pace of family cases.

Negotiation and Mediation Activity

There are several possible ways in which LSS may be able to develop statistical data that reflects shifts towards mediation and negotiation activities rather than court-based activity in family matters. For purposes of this study we have only held preliminary discussions to ascertain the extent of data available. The Family Billing Form that lawyers submit to LSS under the legal aid tariff contains a "Final Results Report" with nine result codes:

- Negotiation
- Mediation
- Interim consent order
- Interim court order
- Final consent order
- Final court order
- Unresolved
- Appeal allowed
- Appeal dismissed

In approximately 31% of cases lawyers submit the Final Results Report with their billings, so without further investigation, it is difficult to comment on the reliability of the data. Tentatively, however, such data could be useful, not only to gauge mediation activity, but also the proportion of consent orders. Those data can also be cross-tabulated by issue categories.

Another area that will require further investigation in reflecting case flow is the actual hours billed to ADR services that since November 2006 have formed part of the family tariff. These comprise, for example, preparation for and/or attendance at:

- A case or settlement conference
- A collaborative process
- A separation agreement
- A mediation

These are all services that can impact the nature and/or extent of court activity.

Finally, there are also "result details" (resolved/unresolved) for negotiation, case continuances (resolve/unresolved) and appearances/hearings (adjourned/interim order/final order) on the family duty counsel billing forms, which over time could show

patterns of resolutions or non-resolution in these forums which could complement court-based data.

5.4.2 LSS Survey of Family Clients

As was shown in Section 4, if one is using court-based data, the most difficult area of case flow to accurately determine is the degree to which clients give up on their case. Since 2004, the LSS has contracted for three surveys with family clients that have produced some answers to this question. Two studies of family duty counsel in 2004 found the rate of abandonment to be approximately 10% of completed cases that were surveyed (Legal Services Society, 2004). A third study of family law clients who used a variety of LSS services found that the non-resolution rate was 7% of completed issues (as opposed to cases). In cases where issues restarted after initial resolution (which occurred in 19% of issues) the non-resolution rate for those issues was considerably higher (37%).

Such surveys are relatively expensive and time-consuming to undertake. It is important to take samples of cases that are old enough that they are complete at the time of the survey. Otherwise, the sample contains too many "pending" cases. This requirement results in many methodological problems in following up clients who accessed the service several years prior to the interview. For purposes of monitoring family law case flow on a regular basis, it is unlikely that surveys would be considered as a feasible tool. Nonetheless, statistics such as those mentioned in the previous paragraph can be used in combination with other indicators to generate a more comprehensive picture of outcomes. For example, if in 30% of court cases there is no recorded outcome, using the statistics cited above, one might feel safer in assuming that 10% of these cases went unresolved and 20% achieved some sort of non-court resolution.

5.5 Family Justice Centres

Family Justice Centres are relevant to the examination of family case flow because referral of matters to the centres (both mandatorily in Rule 5 sites or simply by local practice in other communities where FJCs exist) impacts the volume of cases that proceed to court and shifts the flow of cases into alternative dispute resolution (usually mediation) processes.

The key questions for purposes of this study are:

1. What percentage of cases that are referred to FJCs reach an agreement either there, or through another ADR option to which they are referred by the FJC?
2. Of these agreements, what percentage become formalized as Section 10 (consent) orders or filed under FRA Section 121 (custody, access, maintenance) as a written agreement? These consent orders and agreements can be tracked through CEIS or through file review.

3. What percentage of cases become verbal agreements or memorandum of understanding that are not filed in courts?

The FJCs record data on a database called the Family Information System (FIS).

The FIS has the following outcome fields of relevance to this study:

- Section 10 or 121 developed but not signed
- Section 10 consent order – court involved
- Section 10 consent order – court avoided
- Section 121 agreement – court avoided
- Informal agreement – court avoided
- Memorandum of understanding – court avoided
- No resolution – court avoided
- No resolution – court involved
- Partial agreement – court avoided
- Partial agreement – court involved
- Reconciliation – court avoided
- Referral – court involved
- Referral to other agencies – court avoided
- Section 121 variation – court avoided
- Section 10 variation – court avoided
- Supreme Court application – court avoided

Potentially there is therefore a capacity to determine not only whether settlement is reached, but also whether the case goes back into the court system. The FIS also records where a referral is from, so it is possible to determine which cases have come from the court system, and also to define a portion of overall family case flow that occurs outside the court system (i.e., did not come from the court system, nor enter it after using the FJC).

This said, one cannot assume that data entry is consistent and reliable for all these fields; it would be necessary to do test runs of the desired data. Indeed, in a longitudinal study of dispute resolution in FJCs (BC Ministry of Attorney General, 2007), it was found that the running records maintained by FJCs were more comprehensive and not always in accord with data entry in fields such as those above. Analyzing

running records is obviously a more labour intensive process than using aggregated data. The FIS is currently undergoing revisions that may enhance its consistency. In addition, selected data from the report just mentioned may be useful in fleshing out some of the needed indicators useful in case flow. For example, through analysis of the running records, 24% of FJC agreements could be categorized as informal agreements that were not registered in court (ibid, p. 56).

6.0 INDICATORS FOR MONITORING OF FAMILY LAW CASE FLOW

This section integrates the findings from the literature review (Section 3), key respondent interviews (Section 4), and review of sources of case flow data (Section 5) into a discussion of key indicators and their potential use in future monitoring of family case flow both in and parallel to the court system.

Table 4 presents 21 indicators and a recommendation rating related to the key themes of settlement, vexatious litigants and case abandonment. They are listed together with the rationale for the indicator, the most likely data source, and the feasibility of successfully obtaining data from that source are also addressed. In the final column, the researcher has included a "recommendation rating" of "low", "medium" or "high", a subjective assessment of the usefulness and feasibility of using this indicator. General conclusions about the use of such indicators are also discussed in the sections below.

6.1 Settlement Indicators

There is no possibility of defining a single, unified measure of the rate of settlement of family law cases. This is because:

- The flow of family law cases is not defined exclusively by the court process. Indeed, much of the recent history in this field is to encourage settlement outside of the court process, either through collaborative efforts of lawyers and the parties they represents, the use of family justice counselors, and other venues of mediation.
- Much of the non-court settlement is not registered in court, so there is no way of capturing this dynamic of settlement through court files or CEIS as a data source.
- The concept of "settlement" in family cases is very fluid, and in all cases needs to be combined with some measures of durability of the settlement.

The eight measures of settlement suggested by respondents therefore explore different processes of settlement. A1 and A2 are non-court processes; A3 and A4 start in court but are diverted to FJCs; A5 – A9 all represent court-based settlement, but capture different dynamics of settlement. The feasibility of the indicator varies. A1 is totally dependent on the willingness of the family bar to cooperate in a survey which they may not perceive as having merit. A2 – A4 require use of the FJC database and verification of its consistency in data entry; A5 – A9 are largely feasible using CEIS.

6.2 Vexatious Litigants

The seven indicators related to vexatious litigants are attempts to reflect a concept that is value-laden. They therefore run the risk of being invalid (i.e. creating data that does

not represent what it is purporting to represent). Of the indicators presented, we recommend B1, B2 and possibly B6 (which could also be used in combination) as being both feasible and most likely to reflect vexatious intent.

6.3 Abandonment

This is the most problematic of the three areas of inquiry. Both of the two court-based (C1 and C2) indicators are too specific to be of significant help. When cases do not proceed after application, filing, response or a case conference, there is no reliable way of determining what has happened. It could mean there has been some form of reconciliation or settlement, a valid reconsideration of the merits of the case, or abandonment because the applicant lacks the resources, will or capacity to continue, or has been intimidated in some way. Furthermore, court-based indicators cannot measure "pre-court abandonment," where any of the factors just mentioned may discourage an individual from attempting to resolve their problem, as discussed in Section 4.1.

This aspect of case flow is best captured by survey methods that use informants in organizations that serve vulnerable populations, and may also be addressed in part by use of data that is collected by the Legal Services Society, as described in Sections 5.4.1 and 5.4.2 and in indicators C3 and C4.

6.4 Time Measures

The measure proposed in D1 is a general indicator of case flow (case backlog and delay) and is feasible to collect. D2 is specific to Legal Aid clients, but is a comprehensive measure of case time from start to finish.

Table 4. Indicators Derived from Literature Review, Key Respondent Interviews, and Review of Management Information Systems

Aspect of Case Flow	Stage in Process	Potential Indicators	Data Source	Rationale for Indicator	Feasibility Issues	Recommend-ation Rating
A-1: Settlement	Pre-court	Percentage of cases settled by lawyer without court involvement.	Survey of lawyers	▪ Case flow in the court system is affected by the volume of cases that can be settled by lawyers without court involvement.	▪ Dependent on willingness of members of the family bar to participate in a survey. This willingness has not been tested. ▪ Need to have a cross-section of different types of family practitioners (e.g. orientation to collaborative law, mediation, or litigation).	Low
A-2: Settlement	Pre-court	Cases settled by FJCs without court involvement	FJC FIS database	▪ Case flow in the court system is affected by the volume of cases that can be settled by FJCs, without court involvement. ▪ 24% of FJC agreements were categorized as informal in a study by Focus Consultants (BC Ministry of Attorney General, January 2007, p. 56). These agreements included informal written memorandums of understanding and unsigned FRA Section 121 agreements.	▪ The FIS database for FJC files contains fields for source of referral to the FJC (court or non-court) and also whether the case outcomes avoid (further) court involvement. However, consistency in recording of these outcomes is not fully established (see Section 4.5 of this report).	Medium

Aspect of Case Flow	Stage in Process	Potential Indicators	Data Source	Rationale for Indicator	Feasibility Issues	Recommend-ation Rating
A-3: Settlement	Application, service	Proportion of cases that are referred to FJCs by the court, are then settled by informal agreement at the FJC, and do not return to the court system as a consent order or Section 121 agreement	FJC FIS database	▪ This indicator would help to explain a portion of cases that do not proceed in court, but for which there is no further record.	▪ Same considerations apply as for A-2	Medium
A-4: Settlement	Application, service, response	Proportion of cases that are referred to FJCs by the court, are settled by the FJCs, and then return to the court system as a Section 10 consent order or Section 121 agreement	FJC FIS database	▪ This is the other half of A-3. In combination, they describe the diversion effect of FJC from court referrals	▪ Same considerations apply as for A-2	Medium
A-5: Settlement	Application, service, response	Consent and/or desk orders as percentage of overall final orders.	CEIS	▪ Suggests degree to which parties are willing to work collaboratively rather than adversarially.	▪ This indicator can readily be created by CEIS. ▪ It will be necessary to specify how long an order has existed without further applications or notices of action before it is considered truly "final". An elapsed period of a minimum of 1 year is recommended.	High

Aspect of Case Flow	Stage in Process	Potential Indicators	Data Source	Rationale for Indicator	Feasibility Issues	Recommend-ation Rating
A-6: Settlement	All stages	Final orders and interim orders where there is no subsequent application or notice of motion within a 1 year period, as percentage of overall number of cases.	CEIS	▪ Percentage of cases that achieve settlement could be compared from year to year.	▪ This indicator can be created by CEIS.	High
A-7: Settlement	All stages	Percentage of overall cases involving trial.	CEIS	▪ A diminishing percentage of cases that go to trial would likely indicate more efficient case flow.	▪ Trials are recorded in CEIS if they are scheduled. Therefore, trials that were scheduled but adjourned would have to be subtracted from the total. This can be done through CEIS, but an additional variable would be to specify the length of trial before adjournment that can be counted as a "non-trial." For example, if the trial appearance takes place, but is only 5 – 15 minutes, it is likely that settlement occurred just before the trial, so these cases could also be subtracted from the trial total.	High
A-8: Settlement	Response to service	Percentage of cases where statement of defence, or a counterclaim, is filed.	CEIS	▪ This indicator is likely most useful in Supreme Court. A diminishing percentage of statements of defence over time may indicate increased settlement activity prior to filing (e.g. for divorce). However, as noted in Section 4.1.3, a counterclaim does not necessarily indicate unwillingness to settle.	▪ CEIS is able to count cases where a statement of defence or counterclaim is filed.	High

Aspect of Case Flow	Stage in Process	Potential Indicators	Data Source	Rationale for Indicator	Feasibility Issues	Recommend-ation Rating
A-9: Settlement	Family Case Conferences	2 or more case conferences in 12 – 18 month period.	CEIS	▪ Some respondents felt that several sequential case conferences would indicate a commitment to developing and reviewing agreements in a non-adversarial manner.	▪ This can be done through CEIS	Medium
B-1: Vexatious litigants	After an order	Percentage of cases with 3 or more applications in a 12-month period following an order.	CEIS	▪ Respondents felt that 3 or more applications in a year would likely indicate an attempt to harass the other party. One or two applications are more likely to represent a response to a particular set of circumstances (e.g., a party is denied access granted in an order, so needs to seek relief). ▪ This indicator might reasonably be combined with B2 or B6	▪ As in A-4, CEIS can count final and interim orders. ▪ The types of applications would have to be reviewed to filter out most procedural motions. CEIS can do this. ▪ Once a subset of files is identified, CEIS is able to calculate elapsed time between specified events.	High
B-2: Vexatious litigants	After an order	Percentage of cases with an order to get leave or permission from the court to make further applications.	CEIS and file review	▪ Such an order would indicate that the party is considered to be bringing frivolous actions to court	▪ Would necessitate reading of text “details” fields to determine the type of order, but this can be done in CEIS.	High
B-3: Vexatious litigants	After an order	Frequency of cases where there are 2 counsel (1 for each party) involved.	File review	▪ 2 counsel may suggest a stronger orientation to litigation than to dispute resolution. ▪ May need to be connected with another indicator to reliably indicate a vexatious intent.	▪ For purposes of this indicator it is assumed that all hearings have the same representation pattern, but this may not be the case. If representation varied it would be problematic to select one hearing only for this indicator. ▪ Although legal presentation is recorded for civil cases in CEIS, it is not recorded in family cases.	Low

Aspect of Case Flow	Stage in Process	Potential Indicators	Data Source	Rationale for Indicator	Feasibility Issues	Recommend-ation Rating
B-4: Vexatious litigants	All stages	1 or more allegations of sexual abuse.	File review	▪ Such allegations are associated with a frequent rate of litigation. ▪ A UBC study of 300 Supreme Court family cases found 12 files in which allegations of abuse were made (4%). This figure is roughly comparable to estimates of the percentage of cases involving vexatious litigants.	▪ It is not clear whether such allegations are always recorded in the court file. The UBC study interviews also indicated abuse that had not been evident in file documents.	Low
B-5: Vexatious litigants	After order is made	Applications to set aside an order after the defendant did not initially respond to service.	CEIS and file review	▪ Key respondents report that one strategy of vexatious litigants is not to respond to service, and then later to apply to set the order aside. ▪ Unfortunately this type of response can also simply indicate a defendant who doesn't understand the system of responding to service, so the indicator is not likely as reliable as B1 or B2.	▪ It would be feasible to identify cases containing an application to set aside an order, but tying most applications to prior "non-response to service" would require file research. This is a multi-layered query in CEIS, and may not be feasible.	Low
B-6: Vexatious litigants	When order is made	When an application is denied or dismissed.	CEIS and file review	▪ Denial or dismissal of an application, especially if more than once, may indicate that the court believes the application is frivolous.	▪ Would require examination of text fields where CEIS indicates that an order has been made.	Medium

Aspect of Case Flow	Stage in Process	Potential Indicators	Data Source	Rationale for Indicator	Feasibility Issues	Recommend-ation Rating
C-1: Respondent who gives up	After family maintenance enforcement order	If there has been a default maintenance enforcement order, but no further action for 2 years.	CEIS and file review	▪ In this scenario, a former spouse fails to respond to service on an application for maintenance, so the applicant obtains an ex parte enforcement order. However, there is no further action for a prolonged period (e.g. 2 years) indicating that the respondent may have given up and hopes the situation will go away, but the debt keeps accumulating. This may then be indicated by later events such as attachment orders.	▪ Longer time period and complication of subsequent events may make this indicator unfeasible.	Low
C-2: Individuals who give up	After a restraining order	Following a restraining order, the applicant applies to have the order withdrawn, or there is a general adjournment.	CEIS and file review	▪ Respondents felt that this situation may reflect coercion or intimidation of the applicant. ▪ It is equally possible that an application to withdraw a restraining order is a genuine expression that the applicant no longer feels in danger, so this indicator is not necessarily valid.	▪ Requires reading text field in CEIS to determine if two successive orders reflect the indicator pattern.	Low
C-3: Individuals who give up	Any stage prior to trial	Early case terminations of LSS family tariff clients	LSS management information system (MIS)	▪ “early case termination” is not synonymous with a client “giving up”, but some categories of this indicator give an approximation of numbers involved	▪ It is definitely feasible to produce data from the MIS on early termination.	High

Aspect of Case Flow	Stage in Process	Potential Indicators	Data Source	Rationale for Indicator	Feasibility Issues	Recommend-ation Rating
C-4: Individuals who give up	Any stage prior to trial	Proportion of LSS "early case termination" clients who say they "gave up" on their case	Follow-up surveys of LSS clients in the "case abandoned," "client proceeding alone" and "client no-show categories of "early case termination" reports	▪ A survey of clients would compensate for the limitations in the previous indicator (C-3)	▪ Any client survey may involve attrition of the sample through a high rate of non-contacts, lack of telephone or wrong numbers. ▪ Surveys are labour intensive, and therefore expensive.	Medium
D-1: Time Measure	After response	How long it would take to schedule an FRA hearing.	Provincial court judiciary	▪ This statistic, compiled every 3 months, indicates the extent of backlog in court scheduling of hearings. It is not an indicator of actual time, but of scheduled time. ▪ Unlike the preceding indicators, this aspect of case flow may be significantly affected by resource allocation factors. It should therefore ideally be presented in combination with demand factors such as number of applications.	▪ This data is from the Office of the Chief Judge, Provincial Court of British Columbia	High
D-2: Time Measure	From case initiation	Time from initial interview in Legal Aid family tariff cases to last date of service.	LSS Management Information System (MIS)	▪ Is an indicator of case duration from start to finish. ▪ Is limited to LSS tariff cases.	▪ This is very feasible using the LSS MIS. ▪ See Section 5.4.1	High

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APPENDIX I:

Key Respondent Survey Interview Questionnaire

FAMILY LAW CASE FLOW STUDY
Key Respondent Questionnaire

This survey is part of a study by the Family Justice Services Division to better describe the flow of family cases in Provincial and Supreme Courts, as a preliminary step in increasing and improving flow in the future. This component is intended to explore perceptions of experienced justice system respondents about the flow of family law cases in terms of:

1) The stages at which cases get settled, are abandoned, or "get stuck"
   - "Settled" means either by agreement (consent) or by trial. Some cases which appear to be abandoned because no further action is taken may include some which are settled (i.e. the parties have reached informal understandings or agreements, used mediation, etc.). A passive form of settlement could include cases where one party has simply considered the matter further and decided not to proceed.

   - "Abandoned" is intended to refer to negative circumstances, i.e. one party is coerced into not continuing, or may have a financial, emotional or health reason for not continuing.

   - Cases that are "stuck" or "linger" may involve vexatious litigants who are trying to harass the other party through repeated applications, through adjournments at the last moment, attempts to appeal etc., and/or who are trying to delay a trial. Other cases that appear to linger may be ones that are progressing, but are simply moving slowly.

2) The factors that are associated with these outcomes, e.g.:
   - negative client strategies (e.g. harassment, delay of proceedings).
   - matters involved (custody, access, support, property, etc).
   - representation/non-representation.
   - client characteristics (financial capacity, education, gender, whether children involved).
   - registry or court characteristics (frequency of court sittings, existence of disposition time goals, level of support staff, existence of non-court services).

3) Evidence that might be found in court files or CEIS or in studies/documents that you feel could support perceptions about case flow and factors. Evidence may also consist of things that have frequently been said by applicants or defendants.

Depending on your vantage point in the judicial or court system, you may be able to comment on only certain of the following questions. However, please do not be reluctant to make subjective estimates. For the most part, we anticipate that there is no hard data at present to answer these questions, so subjective assessments by experienced respondents is a useful starting point, and may contribute to the development of data collection mechanisms in the future. We are exploring these questions with lawyers, judges, judicial case managers, trial coordinators and registry staff, and all responses will be kept confidential.

Respondentname: _____
Role/Function:_____

Court Level to which your answers refer:

(1) Provincial
(2) Supreme
(3) Both (Note: If you are commenting about both levels of court, please differentiate your answers where appropriate)

Location: _____

STAGE 1: FILING

1) Of persons who come to the Registry with a family matter that they want to resolve:

   a) Approximately what percentage file documents (either personally, or a lawyer on their behalf) to initiate court proceedings (Application or Statement of Claim) _____

   b) What do the rest of them do? (e.g., just want information, are referred elsewhere) (give approximate percentages for different outcomes)

   _____
   _____
   _____

   c) If they are filing on their own, how soon do they usually file after their first visit to the registry? (or give a range, including filing on the same day)

   _____
   _____

   d) What factors do you feel are associated with what they do? (e.g. they are unrepresented and feel they cannot file on their own; feel they won't be successful)

   _____
   _____
   _____

   e) What evidence do you have for your answers in b) and c)? (e.g., things that people say to you, studies you have seen)

   _____
   _____
   _____

STAGE 2: SERVING

1) Of persons who file an Application or Statement of Claim:

   a) Approximately what percentage have them served on the other party?

   _____
   _____

   b) On average, how long after initial filing does it take before the applicant has completed service?

   _____
   _____

   c) Why do you think the rest don't serve the other party? What do you think has happened? (give approximate percentages for different outcomes)

   _____
   _____
   _____

   d) What evidence do you have for your answer in b)? (e.g. things applicants say to you; fields in hardcopy files or CEIS that record this information; studies)

   _____
   _____
   _____

STAGE 3: RESPONSE OF OTHER PARTY

1) Of parties that are served, approximately what percentage:
   - Agree with the Application/Statement of Claim _____%
   - Disagree with the Application/Statement of Claim _____%
   - File a counterclaim _____%
   - Do not respond _____%

2) What evidence do you have for your answer in 1)? (e.g. rough estimate or actual stats from CE's or files)

   _____
   _____
   _____
   _____

3) Do you have any impression of what the non-response rate signifies? e.g. doing nothing means they agree? They disagree but can't respond? The two parties have got together and worked out an agreement? (e.g. from comments the applicants have made, or from telephone calls by the defendant)

_____
_____
_____
_____

STAGE 4a: PROCESS AND OUTCOMES WHERE OTHER PARTY AGREES

1) In cases where the defendant agrees with the claim, what are the different ways that agreement is either formalized or made evident? (e.g. consent order, written or verbal agreement). (Please give percentage estimates for each category)

_____
_____
_____
_____

2) What evidence do you have for your answer in question 1?

_____
_____

STAGE 4b: PROCESS AND OUTCOMES WHERE OTHER PARTY DOES NOT RESPOND

1) Do you have any way of assessing what is signified by the other party "not responding"? (e.g. does it usually mean they are in agreement with the applicant? trying to irritate or inconvenience him/her? Are they simply unable to organize themselves to respond?)

_____
_____
_____
_____

2) In Supreme Court when the defendant does <u>not</u> respond, what type of document is filed by the applicant? _____ Is it filed in all cases? _____

3) What percentage of cases move forward even though there is no response?

_____
_____

4) What happens in the other cases (i.e. ones where no document is filed by the applicant)?

_____
_____
_____

5) In Provincial Court where the defendant does not respond, approximately what percentage of applicants:
   - (Rule 5 site) Meet with a Family Justice Counsellor (FJC) and do not proceed to a first appearance _____%
   - (Rule 5 site) Proceed to a first appearance after seeing FJC _____%
   - Go directly to a first appearance _____%
   - Other outcomes (explain) _____%

     _____
     _____

STAGE 5A: PROCESS AND OUTCOMES WHERE OTHER PARTY DISAGREES OR FILES COUNTERCLAIM IN SUPREME COURT

1) In family cases where the defendant disagrees with the claim or files a counterclaim in Supreme Court, approximately what percentage of cases:

   a) go directly to trial_____%
   b) go directly to a Judicial Case Conference and are settled there_____%
   c) go to a Judicial Case Conference, and then are settled through either settlement meetings, mediation, judicial settlement conference or summary trial (any estimated breakdown of outcomes would be appreciated) _____%
   d) go to a Judicial Case Conference and then either directly or via mini-trial to a trial, where an order is made_____%
   e) are abandoned or discontinued or otherwise do not proceed to trial_____%

2) In cases that are abandoned or somehow don't proceed, do you have any sense of what happens to them? (i.e. what outcomes does "abandonment" usually signify at this stage?)

_____
_____
_____
_____

3) What evidence do you have for your response in 2)?

_____
_____
_____
_____

STAGE 5B: PROCESS AND OUTCOMES WHERE OTHER PARTY DISAGREES OR FILES COUNTERCLAIM IN PROVINCIAL COURT

1) In cases where the defendant disagrees when the claim or files a counterclaim in Provincial Court, what percentage of applications:
   a) (Rule 5 sites) Don't meet with a Family Justice Counsellor and appear to go no further_____%
   b) (Rule 5 sites) Meet with a Family Justice Counsellor, but do not proceed to First Appearance_____%
   c) (Rule 5 sites) Meet with a Family Justice Counsellor, and then proceed to First Appearance_____%
   d) (Other sites) Appear to go no further_____%
   e) (Other sites) Proceed to first appearance_____%

2) What factors may be at play in answers in a), b) and d) of Question 1?

_____
_____
_____
_____

3) (For Rule 5 sites only) Has the implementation of Rule 5 at your site affected the percentage of cases that proceed to first appearance? _____
   Why or why not?

_____
_____

4) Of cases that go to a First Appearance, approximately what percentage:

   a) result directly in a consent order or Court order_____%
   b) go to a Family Case Conference and are settled there_____%
   c) go to trial, either after a Family Case Conference or trial preparation conference_____%
   d) result in an interim order and do not proceed further_____%
   e) are abandoned or discontinued or otherwise do not proceed to trial _____%

5) Is it accurate to assume that cases that do not proceed further after an Interim Order are fully settled, or can it signify other outcomes?

_____
_____
_____
_____

6) What do you feel a case that appears to be abandoned or at least has not proceeded actually signifies? (e.g. settlement? loss of will or resources by one party? Coercion or pressure brought by one party? Please give approximate percentages that apply to these or other categories)

_____
_____
_____
_____

7) What evidence is there to support your responses to questions 4 – 6? (e.g. comments by plaintiffs, data from file reviews or CEIS, other studies).

_____
_____
_____
_____

8) After how many months of non-action do you feel it would be safe to assume that a case has been abandoned, in order to catch about 90% of such cases accurately?

_____
_____

STAGE 5C: WHERE CASES REMAIN IN THE COURT SYSTEM AND USE AT LEAST SOME COURT RESOURCES, BUT DO NOT APPEAR TO ACHIEVE RESOLUTION

1) a) In cases where the defendant disagrees or files a counterclaim, approximately what percentage remain in the court system and use court resources but do not appear to achieve any resolution? (e.g., applications to vary orders that have recently been made; frequent procedural motions; numerous hearings and adjournments; or appeals but no apparent enduring resolution)

_____
_____

b) Of the group in a), are there any component sub-groups that you can describe, either by their strategies, types of matter, whether and how they are represented, court capacity or other characteristics can you estimate the percentage of this sub-group that they represent?

_____
_____
_____
_____

c) What evidence do you have for your responses to question b)? (comments by clients, other studies)

_____
_____
_____
_____

d) What percentage of final orders resulting from trials actually conclude the case (as opposed to new applications to vary the order, etc? _____%

e) After how many months following a final order where there is no further action do you feel it is safe to assume that a case has been settled, and still catch 90% of such cases accurately? _____

f) What about after an interim order? If no further action has been taken, after how many months would you assume that the interim order is a de facto "settled case", and still catch 90% of such cases accurately? _____

GENERAL QUESTIONS

1) In this questionnaire we have attempted to explore patterns of case flow in terms of various stages in the overall justice process. What do you feel are the key determinants that impact the flow of family cases in Provincial and/or Supreme Court in terms of settling cases, abandoning them or having them linger on without substantial resolution?

_____
_____
_____
_____

2) Over the past 5 – 10 years, or whatever period you can describe, what types of changes have you seen in the way family cases flow through either the Provincial and/or Supreme Court system? What has caused these changes, and on what evidence are you basing these observations?

_____
_____
_____
_____
_____
_____

3) If the Ministry wishes to assess on an ongoing basis whether it is making progress in facilitating settlement of family matters and reducing frequency of case abandonment, "lingering" cases, and barriers to efficient case flow, what key indicators do you feel it would be most useful for the Ministry to track in a database such as CEIS (including existing data items)?

_____
_____
_____
_____

4) What key resources, services or procedures do you think would make the greatest impact on: a) increasing settlement rates; b) reducing the frequency of case abandonment; c) helping to resolve "lingering" cases; d) eliminating barriers to efficient case flow?

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

APPENDIX II:

FLCF Provincial Court File Review Form

APPENDIX 2

FLCF PROVINCIAL COURT FILE REVIEW FORM

1) File #_____

2A) Pattern of representation:
1.Neither party represented
2.Applicant represented, defendant not represented
3.Applicant not represented, defendant represented
4. Both parties represented

2B) Comments regarding changes in pattern:

3) Record of documents filed, events and orders made, and dates:

Note:
1. *Document = anything that is filed that is an application or notice of motion and refers to relief sought. A financial statement is not a document in this sense*
2. *List documents and orders by number, and put "0" beside number if the order is made, "CO" if a consent order, and "EP" if ex parte order. Put date of application, event or order to right*
3. *Events = Service(S), statement of defense or counterclaim (SD), first appearance (FA), family case conference (FCC), trial preparation conference (TPC), trial (T), other unspecified hearings (H)*

Application or order	Event	Date	Application or order	Event	Date	Application or order	Event	Date

4) Summary:

1.	Evidence of service (affidavit)?	1. No 2. Yes
2.	Statement of defense or counterclaim?	1. No 2. Yes
3A.	# of applications with at least one substantive issue	_____
3B.	# of applications which are procedural only	_____
4A.	# of orders with at least one substantive issue	_____
4B.	# of orders which are procedural only	_____
4C.	# of consent orders	_____
5.	# of FCCs	_____
6.	# of TPCs	_____
7.	Trial?	1. No 2. Yes
8.	Total # of appearances	_____
9.	Time since last order (in months)	_____
10.	Order to get leave or permission from court?	1. No 2. Yes

- 2 -

11.	Motion to set aside order	1. No 2. Yes
	If yes, was this after respondent did not initially respond to service?	1. No 2. Yes
12.	# of applications denied/dismissed	_____
13.	Any ex parte orders?	1. No 2. Yes
14.	Any requests to withdraw or set aside restraining order?	1. No 2. Yes

5) Other issues:

1.	Any allegations of sexual abuse in custody/access cases?	1. No 2. Yes
2.	Is attendance at PAS on record in file?	1. No 2. Yes
3.	Is a rule 5 and 21 exemption filed?	1. No 2. Yes
3.	Is discovery noted in the file?	1. No 2. Yes
4.	Is file oversize?	1. No 2. Yes
5.	Has case only been in Vancouver, or has it been transferred in or out?	1. Only Vancouver 2. Transferred in/out
6.	CFCSA/protection involved?	1. No 2. Yes
7.	Was file seized by judge?	1. No 2. Yes
8.	FMEP involved?	1. No 2. Yes