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FAMILY LAW ADMINISTRATION: COURT SERVICES

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FAMILY LAW ADMINISTRATION: COURT SERVICES

PREFACE

In 1972 we issued a Working Paper entitled "Family Court" in which we tentatively recommended that a unified family court be established to administer all family law, and that social and other support services be attached to it. We are now issuing two final reports dealing with the subject-matter of the Working Paper: Report No. 25, Family Law Administration: The Unified Family Court; and this Report No. 26, Family Law Administration: Court Services. We are at the same time issuing a third report, Report No. 27, Matrimonial Support, which deals with court services for the enforcement of support obligation. Our reason for the separation of the discussion of court services from the discussion of the unified family court is that we think that the recommendations for court services in this Report No. 26 and in Report No. 27 can be considered and, if acceptable, given effect to, without waiting for the establishment of a unified family court. We think that it is possible to design and install the services so that they can serve the people of Alberta and so that they can be adapted to the structure of a unified family court when that structure is decided upon and the court established.

Since the date of our Working Paper there have been important developments in connection with the services available to courts administering family law. One example is the Unified Family Court Pilot Project in Richmond, Surrey, and Delta, British Columbia, in which substantial social services have been attached to the courts involved in the project. A second is the conciliation project which has recently been commenced in the Ontario Provincial Court (Family Division) at Toronto. Of the most importance to Alberta, however, is the development of the Family Court

Conciliation Service, which since 1972 has been part of the services attached to the Family Court at Edmonton, and the more recent development of the Custody Investigation Unit as part of the services attached to the same court. Both provide service to the Supreme Court of Alberta and to the District Court of Alberta.

In order to complete our project on Family Courts we convened two committees early in 1976. One was the Committee on Administration of Family Law, which was asked to consider the judicial structure of the courts administering family law, including proposals for a unified family court. The second was the Social Services Committee which was composed of people in the social work field, senior government administrators, a lawyer then associated with Student Legal Services, and members of the legal staff of the Institute. After extensive investigation and deliberation, the Social Services Committee prepared a report (Appendix B) which describes social and legal services which in the Committee's view should be available to a court administering family law and to the litigants in such a court, whether or not the court is a unified family court. The report was circulated to all Family and Juvenile Court judges, regional offices of the Department of the Solicitor General and of the Department of Social Services and Community Health, police forces who may be affected, and persons in other agencies. We have had the benefit of some comment and also of a meeting attended by the Social Services Committee, representatives of the Edmonton Family Court Conciliation Service, the Assistant Chief Judge of the Family Court and the Calgary Senior Family Court judge.

We are in general agreement with the principal ideas of the Social Services Committee in connection with the parts described by them as the Intake Process, the Negotiation Process and the Investigation Process, and we will deal with

those subjects in this Report. We are also in general agreement with their principal ideas in connection with the Prosecution Process, though we have not considered that part of its proposals which relate to the Juvenile Court. Indeed, we have decided, for reasons which we will give below, to refrain entirely from discussing matters within the jurisdiction of the latter.

While we are in general agreement with what the Committee says with regard to the Enforcement Process, we will discuss that subject separately in our Report No. 27, Matrimonial Support.

It is because of the importance which we attach to the report of the Social Services Committee, and so that it will be available in connection with subjects not fully dealt with in this Report, that we have attached it as an appendix.

We have directed our study and our Working Paper towards the court services which should be provided in connection with matrimonial disputes. While the Social Services Committee very properly went on to consider the Prosecution Process in the Juvenile Court, we do not think that the Institute should deal with it in this Report. That is because the Board of Review, Provincial Courts, has issued its Report No. 3, the Alberta Juvenile Justice System, which deals with the subject, and because of the continuing uncertainty as to what federal legislation will be enacted on the subject of juvenile delinquency. We are accordingly directing this Report only to the subject matter which we have mentioned, namely, the court services which should be provided in matrimonial disputes.

I
INTRODUCTION

Family law is now administered by six courts. The principal involvement of the Trial Division of the Supreme Court is in divorce and in maintenance and custody ancillary to divorce, though it also has jurisdiction in judicial separation, nullity, alimony and custody apart from divorce, and a number of other family law matters. The principal involvement of the District Court as a court is in affiliation, adoption and permanent wardship, though its judges also exercise divorce jurisdiction as local judges of the Supreme Court. The judges of the District Court are also the judges of the Surrogate Court and in that capacity exercise jurisdiction in guardianship; we will in this Report refer to the Surrogate Court as a separate court and will not, as we did in the Working Paper, include its functions with those of the District Court. The Family Court has jurisdiction in custody under the Family Court Act and in maintenance under Part 4 of the Domestic Relations Act. It also enforces maintenance orders granted by itself or by the Supreme Court or by courts in other provinces. Judges of the Provincial Court exercise the jurisdiction of the Family Court where the Family Court does not sit. The Juvenile Court is also involved in the administration of family law as we define it, although we will not, for reasons we have given, deal in this Report with juvenile matters.

In this Report we are concerned primarily with the social and legal services which have been developed over the years in conjunction with the Family Courts. In the Edmonton Family Court, where the most substantial developments have taken place, there are four social services. Family Court counsellors provide an "intake" service. A separate group of counsellors, the Edmonton Family Court Conciliation Service, provide a conciliation service. Family Court counsellors also

provide an investigation service, with one group specifically devoting their services to investigations for the Supreme and District Courts. The clerks of the Family Courts in conjunction with Family Court counsellors also provide an enforcement service. The Attorney-General's Department provides legal services for the Family Court counsellors and probation officers.

II

NATURE OF COURTS ADMINISTERING FAMILY LAW

We said in our Working Paper, and the two committees advising the Institute have also said, that a court adjudicating a family law matter is and should continue to be a court of law in which a decision is made by an independent judge who judicially decides the facts and who makes orders which establish and protect the rights which arise from those facts. However, family law problems have special characteristics which give rise to special needs, and these require special facilities in and for the courts administering family law.

The special characteristics of family law matters which require special facilities to alleviate them are these:

1. Family law problems are numerous. They are often of great urgency. They often involve small amounts of money or none at all, and they often involve people whose financial resources are small. While most litigants in Supreme Court matters are represented by lawyers retained by themselves or paid by Legal Aid, traditional forms of legal assistance are not readily available to many family law litigants. Information about court procedures and other steps available to litigants, assistance in

instituting summary proceedings, and in seeing that unrepresented cases are got into court, are needed. That requires an "intake" service.

2. Family law disputes between husband and wife arise from the breakdown of close personal relationships involving an institution fundamental to our society, the family. To preserve families and their members from unnecessary harm there must be an institutional means, available to those who want it, of resolving disputes without formal adjudication or by agreed orders. That requires a "negotiation" or "conciliation process."

3. Family law disputes between husband and wife often affect children whose interests may be overlooked in the conflict. That requires an investigative service to investigate the facts of custody cases, and it requires some institutional arrangement either to ensure that all of the facts are put before the court or to ensure direct representation of the interests of children.

4. Most support orders provide for monthly payments. Efficient collection depends upon systematic attention and the bringing of collection proceedings upon default, and is not practicable for unassisted dependants. That requires a collection service, though, as we have said, we will deal with that subject in our Report 27, Matrimonial Support.

Courts administering family law should be supplemented with the special services which are needed to meet the special and difficult problems of administration of family law, just as

courts administering other areas of law should have facilities necessary to meet problems there. A court is no less a court of law because necessary special services are available to it or to persons with legal problems which fall within its jurisdiction.

The need for the services we have mentioned has already been recognized in the province, and all of them exist to some extent in some places. What is needed is agreement about the purpose and pattern of the services, agreement about the design of the services with a view to making them available as far as practicable throughout the province, and agreement about the organization and administration of the services so that they will function in a consistent manner and in accordance with a consistent policy and without being oppressive to either side of a dispute.

The services that have been developed are associated with or attached to the Family Courts established under the Family Court Act, though some of them are available to other courts. It appears to us that an arrangement of that kind is suitable under the present system of courts. We wish, however, to make it clear that some of the services, notably "negotiation" or "conciliation" and the investigative service, should be readily available to the Supreme Court and to Supreme Court litigants and, in the case of the investigative service, to the Surrogate Court. The "intake" process will as a matter of practicality be available only at the Family Court because in practice most litigants in the Supreme Court have lawyers, and we will speak of it as a service of the Family Court. The "enforcement" process, which is dealt with in Report 27, will be available only at the Family Court, but Supreme Court orders can be filed in the Family Court for enforcement and the service will therefore be effectively available to Supreme Court litigants. The general form of

the services will be suitable to a unified family court, but the services will have to be reviewed for adaptation to the structure of the unified family court if and when it is established.

Recommendation #1

(1) That the need for special services in family law disputes be formally recognized.

(2) That general agreement be reached in accordance with this Report, upon

(a) the purpose and pattern of the services,

(b) the design of services with a view to making them available as far as practicable throughout the province, and

(c) the organization and administration of the services so that their functions may be performed in a consistent manner and in accordance with a consistent policy.

(3) That upon the establishment of a unified family court the services be reviewed to adapt them to the structure of that court.

III

STRUCTURE OF COURT SERVICES RELATING TO MATRIMONIAL DISPUTES

Our Working Paper referred to the necessity of ensuring that those who provide social services must not be so closely associated with a court that litigants may reasonably think that the court is unduly influenced by them. The Committee on Administration of Family Law, which has advised us on the structure of a unified family court, has emphasized that the judicial function must be kept separate from the various service functions. So has the Social Services Committee, and so do we. The special characteristics of family law matters

require some special treatment, but they do not suggest a blurring between the judicial function of deciding facts and applying law, on the one hand, and the service and therapeutic functions of the support services, on the other. We agree with the Social Services Committee when it says that the judiciary should not be expected to supervise or participate in the administration of social services, though a judge should of course be able to call on the various services for assistance when he thinks that that assistance would be useful. We would not want to be understood, however, as saying that the judges and those involved in social services should work in isolation and without understanding each other; on the contrary, we are satisfied that steps should be taken to see that they do understand each other and that they understand the functions of both in satisfying the needs of litigants and prospective litigants.

Recommendation #2

(1) That the judicial function and the social service functions should be kept separate and that the judiciary should not be expected to supervise or participate in the administration of the services.

(2) That the Attorney-General's Department in consultation with the judiciary take steps to make available to the judiciary information about the nature of the services available to them and to litigants and about the extent to which the services can be useful.

(3) That the Attorney-General's Department provide for those involved in the social services education in the respective functions of the judiciary and of the services.

Service can be given efficiently only if the person giving it understands its purpose and function. That requires, we think, that the service functions we have mentioned be

separately conceived and identified, whether or not one person may be engaged at different times in performing different functions. It also requires a form of organization which will ensure a common understanding of purpose and function, and which will ensure both the co-ordination of a service throughout the province and the co-ordination of different services in the same part of the province.

At the time of the writing of this Report, Family Court services in Edmonton are the responsibility of the Attorney-General, while elsewhere they are the responsibility of the Solicitor General. We think, however, that it follows from what we have said that efficiency requires that there be one organization, and that one department of the government should be responsible for it. No doubt there were circumstances in the past which suggested the division of responsibility between the two departments but we think that the provision of the best possible service in the future requires a change. We do not see any other way to achieve a consistent administration of the services which takes into account the circumstances and needs of the whole province.

The Social Services Committee recommended that the social services be brought together in one Social Services Branch. They did not make any recommendation as to which department of the government should undertake the responsibility, considering that subject to be beyond their scope. We think, however, that there are considerations which suggest an answer. The Attorney General is responsible for the administration of justice and is therefore fixed with responsibility for the courts themselves. He must also, we think, be responsible for all legal services in and to the courts. It follows that if all services are to be the responsibility of one department, that department will have to be the Department of the Attorney General. Even more important,

however, we think that the services discussed in this report should be regarded as an integral part of the administration of justice and should be under the minister responsible for the administration of justice. We tentatively made that recommendation in our Working Paper, and we went on to recommend that there be a director of Family Court Services whose duty it would be, in consultation with the Family Court, to see that the supportive services (including administrative as well as social services) are operated in such a way as to meet the needs of the court and the litigants appearing before it (Working Paper, p. 95). We have not received any suggestion that that recommendation was wrong, and we affirm it here. We will deal specifically with responsibility for the conciliation service when we discuss that service.

For the sake of clarity we should say again that we are not dealing with matters under the jurisdiction of the Juvenile Courts and we should say also that we are not suggesting that child welfare services be detached from the Department of Social Services and Community Health. Nor are we suggesting that the maintenance and recovery services of that department should be detached from it or brought into the services attached to courts administering family law.

Recommendation #3

(1) *That the different functions of the family law court services be separately conceived and identified.*

(2) *That the services be given a form of organization which will ensure a common understanding of purpose and function, and which will ensure co-ordination of a service throughout the province and of different services in the same part of the province.*

(3) *That all family law services provided for in this Report be the responsibility of one department of the government.*

(4) That the responsible department be the Department of the Attorney-General.

IV

THE INTAKE PROCESS

We agree with the Social Services Committee that there should be an "intake" service attached to the Family Court. Experience has shown the usefulness of that service. Its function should be to give litigants necessary information about court procedures and assistance in instituting them, and to see that unrepresented cases are got into court. Court counsellors should provide the necessary information and assistance. They should be familiar with counselling resources attached to the courts and in the community and in proper cases should direct litigants to such resources. They should also have access to lawyers attached to the court or in the Attorney-General's Department to obtain legal information needed in their work. Use of the intake service should be voluntary.

The intake counsellors should not purport to give legal advice, but should rather describe to a person using the service the various alternatives available, being adjudication, agreement, and the use of a counselling service within or without the court for reconciliation or for negotiation or conciliation. They should also assist an applicant in completing the forms necessary to commence a Family Court proceeding and to arrange for the hearing. They should also be prepared to give the same kind of help to a respondent and, in particular, should be prepared to help him to complete a statement of financial information required under our recommendations in Report No. 27, **Matrimonial** Support.

We think that the intake counsellors should be prepared

to interview both spouses to see whether they truly wish to continue with legal proceedings, or whether they will accept a referral to some community or court counselling agency, or even whether the respondent is prepared without litigation to pay an amount of support acceptable to the applicant where it is support that is in issue. At this point the function begins to merge into the "negotiation" or "conciliation" function, and where that happens the intake worker should refer the couple to the service which performs that function.

A question which relates to the separation between the judicial and social service functions is that of the physical location of the intake service. In our Working Paper (Recommendation #14) we recommended, subject to one strong dissent, that the premises of the intake service should be closely related to the court premises but be somewhat separate as, for example, by being upon a different floor of the building in which the court is located, a recommendation which still seems to us to be appropriate. We did not think it necessary to deal in such detail with the other services in the Working Paper, but it seems to us that considerations of efficiency and workability both for staff and litigants require them all to be located in the same building as the Family Court, while considerations of the substance and appearance of judicial impartiality suggest some separation.

We are concerned about the provision of intake services outside the main population centres where maintaining a fulltime intake counsellor cannot be justified. It appears to us that this is one case in which interdepartmental co-operation should be attempted. The help of probation officers for that purpose might, we hope, be negotiated with the Solicitor General's Department. Alternatively, local offices of the Department of Social Services and Community Health might provide the service if the Minister approves, or the staff of the clerks of the court might be given appropriate

training. This illustrates one of the practical limitations upon our proposal for unitary direction of the social services, but all practicable steps should be taken to see that such alternative arrangements function in accordance with the general policy of the intake service.

In our Working Paper we suggested, though not unanimously, that information received by an intake counsellor be available to an investigative counsellor as a basis for the latter's investigation, though absolutely privileged in court. Having considered the comments of the Social Services Committee and others, we now recommend that the information be kept entirely confidential.

Recommendation #4

(1) That there be an intake service attached to the Family Court.

(2) That the service be provided by qualified Family Court counsellors who should be familiar with counselling services attached to the courts and in the community and who should have access to general legal information from lawyers attached to the court or in the Attorney-General's Department.

(3) That the services of the intake service be available to all litigants, whether applicants or respondents, and

(a) that it provide information about the various courses of action open to the parties, including legal proceedings, counselling, and agreement,

(b) that it be prepared to interview both parties to see whether there is a substantial dispute and whether they will accept a reference to a community or court counselling agency,

(c) that, where appropriate, it refer the parties or either of them to a community or court counselling agency or for legal advice,

(d) that where an applicant decides to apply for custody or maintenance by summary procedure it

(i) assist the applicant to complete the necessary forms and to put the applicant's financial and other information into required form,

(ii) arrange service of the notice and supporting material, and

(iii) arrange a time and place for the hearing, and

(e) that it assist a respondent to complete the necessary forms and to put his financial information into required form.

(4) That the premises of the intake service be in the same building as the court premises, but be somewhat separate from them.

(5) That the information given to an intake worker, other than that contained in forms prepared for the court, be absolutely privileged in court and that its secrecy be preserved, even from the investigation service.

(6) That where population and volume of cases do not justify the maintenance of a full-time court worker, the responsible minister negotiate for the provision of the service by probation officers of the Solicitor General's Department or alternatively by local offices of the Department of Social Services and Community Health or by the staff of the clerks of the Family Court, but that all practicable steps be taken to see that such alternative arrangements function in accordance with the general policy of the intake service.

V

THE NEGOTIATION OR CONCILIATION PROCESS

The Social Services Committee in its report, Appendix B, preferred the word " negotiation" to the word "conciliation." That word attracted some criticism from members of the Edmonton Family Court Conciliation Service. It does not appear, however,

that there is a substantial divergence of opinion as to the nature of the process, which is a form of counselling intended to help a couple to work out the problems arising from the breakdown of their relationship. The counselling may go so far as to assist them to decide to come together again, or, failing that, it may enable them to cope better with the fact of breakdown or to come to agreement on specific problems such as custody or maintenance. It is an important alternative to the judicial process. It is also an important preliminary means of facilitating that process by reducing the number of issues which the court must decide and by lessening the bitterness of the parties over those which remain.

We do not express an opinion about the nomenclature. We think that a "negotiation" or "conciliation" service should be provided as a service attached to the Family Court. We think that it should be available to litigants or potential litigants in that court or in the Supreme Court when the parties themselves or their solicitors ask for it, or upon reference from the intake service or the judge. The Edmonton Family Court Conciliation Service is now available directly to litigants or by reference from bench or bar, and it appears to us that that service has proved its value and is in fact being used. The proposed service should not be designed to give long term counselling, which we think is outside the function of a court-centered service. Because the volume of business will be less elsewhere the service would probably operate in the two major cities and give some service to the rest of the province from them. The existence of a service centered in the court should not in any way preclude the use of counselling services in the community.

In our Working Paper (p. 80) we thought that the court should be empowered to direct the parties to appear and engage in the conciliation process. The Social Services

Committee in its report, however, emphasizes that the use of the service should be voluntary, and we accept its view. That does not detract from the power of a divorce court, and indeed its duty, to adjourn divorce proceedings to afford the parties an opportunity of becoming reconciled if reconciliation appears to be a possibility. Nor does it detract from the power of any court administering family law to adjourn a matter at any stage of a matrimonial proceeding to allow an opportunity for counselling. It is now possible, and it will remain possible, for the litigants to be referred back into the negotiation or conciliation service at any time during proceedings, though not against the opposition of the litigants and not with a view to persuading them to come together against their wishes, particularly when there is a history of violence.

As in the case of the intake service, we think it necessary to assure the parties that they can participate in the negotiation or conciliation process without fear of prejudice. Accordingly, information given to a counsellor in the negotiation or conciliation process should be absolutely privileged and secrecy maintained.

It may well prove desirable to provide conciliation services through the Department of Social Services and Community Health, though that is beyond the scope of this Report. Where social assistance is involved, such a service would usually have the advantage of being available sooner than a court-centered service, and might well keep many cases out of the courts entirely. We do not think that a court-centered service would duplicate a service provided at social assistance offices. It would deal with those cases in which social assistance is not applied for and those cases in which respondents refuse conciliation until the pressure of court proceedings causes them to look seriously at their positions. Then, we would expect that some husbands and wives will not

trust a conciliation service offered by a government department which has a financial interest in keeping them together, and a court-centered service would be able to deal with those cases, too. Nor do we think it best that one court-centered service should be under the jurisdiction of an outside department. It is necessary that the conciliation service work in harmony with the intake service during the proceedings leading up to an order for support, and it is necessary that it work in harmony with the clerks of the court and the enforcement service. We think that the best way to provide the framework for the co-operative and consistent functioning of the various services is to have them responsible to one administrative authority so that they can operate under one policy and so that provision can be made for the resolution of conflicting views about policy. We accordingly recommend that the court-centered conciliation service be the responsibility of the Attorney-General's Department.

Recommendation #5

(1) That there be a negotiation or conciliation service attached to the Family Court and available to litigants or potential litigants in that court and in the Supreme Court.

(2) That the service be provided by qualified Family Court counsellors.

(3) That the function of the negotiation or conciliation service be

(a) to assist a couple to decide whether or not they should be reconciled,

(b) to assist the couple to minimize the effects of the breakdown of their relationship upon themselves and their children, and

(c) to assist the couple to come to agreement

on specific problems such as custody and maintenance.

(4) That the service be maintained in Edmonton and Calgary and other population centres in which the volume of cases justifies it, and that where practicable it be made available elsewhere in the province from these centres.

(5) That the use of the service be voluntary, but that the courts remain free to adjourn matters at any time in order to give the parties an opportunity to engage in negotiation or conciliation.

(6) That information given to a counsellor engaged in the negotiation or conciliation process be absolutely privileged and that secrecy be preserved except with the consent of the husband or wife who provides the information.

VI

THE CHILD CUSTODY INVESTIGATION SERVICE AND THE CHILD ADVOCATE SERVICE

1. Child Custody Investigation Service

The law recognizes that children must be cared for and nurtured, and in so doing founds itself upon one of the fundamental feelings of human nature as well as upon a vital public interest. It accordingly imposes upon the child's parents an obligation to maintain and care for the child. It must, however, deal with the situation which arises when disharmony occurs between the parents or conflicting claims to the custody of the child otherwise arise, and it does so by giving a court power to make orders for the guardianship and custody of the child. The law is that a judge who makes such a decision must have regard to the best interest of the child; in other words, he must somehow identify the child's best interest and then make an order to carry it out.

The judge may see all who claim custody of the child, or he may not. He may see the child or he may not. The parties may adduce evidence as to the suitability of one or both parents or someone else to have custody of the child, or access to the child, or they may not. The parents may try to advance the best interests of the child or they may not: in their bitterness against each other they may try to use the child and its custody as a weapon; or in making an agreement for divorce or maintenance which one of them is especially anxious to have, they may use the custody of the child as a bargaining counter. An adversary process in which the interests of the parties are in conflict with the interest of the child may not provide enough information to enable a judge to make a well-informed decision, and it may provide information of doubtful validity. The judge may not in such cases be able to perform his function adequately unless he has independent help in obtaining the facts.

For these reasons we agree with the Social Services Committee that there should be a child custody investigation service available to judges of the Supreme Court, the judges of the Surrogate Court, and the judges of the Family Court, in matters involving the custody of children or access to them. The service should be attached to the Family Court and staffed by qualified counsellors. Its function should be, upon request by the court, to investigate and report upon the circumstances and suitability of the parties claiming custody of or access to a child. The counsellor's report and any other material seen by the judge should be made available to the parties before the hearing and the counsellor should be available for cross-examination. These conclusions do not extend to matters under the Child Welfare Act, which as we have indicated, are not within the scope of our study.

The integrity of the judicial process demands that the

court be seen to be an impartial arbiter. We therefore think that the premises occupied by counsellors who provide the investigation service should be clearly separated from the premises occupied by the court so that unduly close contact between counsellors and judges will not suggest undue influence. The integrity of the judicial process also requires that the investigation should be separated from what has gone before: no counsellor who has been concerned with a party at the intake stage or the negotiation or conciliation stage should take part in the investigation, and, as we have previously said, no files or information from the earlier stages should be available to the investigating counsellor.

The counsellor must be free to express himself as he thinks the interest of the child requires, and his duty may require him to say things which are defamatory of someone involved. He should therefore be protected from court action for what he says. We think also that his informants should be protected, though only if they are not motivated by malice. We think that that is the best balance between the public interest in favour of obtaining information for the better protection of the child and the public interest in protecting people against malicious gossip.

The child custody investigation service will probably have to be established only in major population centres and to serve smaller places from there. In the Edmonton Family Court at the present time, Family Court counsellors perform the investigative function for the Family Court, and a separate group of counsellors perform it for the Supreme and Surrogate Courts. Elsewhere, probation officers on the staff of the Solicitor General perform it. What is important is that the service be made as generally available as possible, and that it be provided under one administration and one consistent policy.

Recommendation #6

(1) That there be a child custody investigation service available to judges of the Supreme Court, the Surrogate Court, and the Family Court.

(2) That the service be attached to the Family Court and be staffed by qualified Family Court counsellors.

(3) That the function of the service be, upon request by the court, to investigate and report upon the circumstances of the child's parents and of the parties claiming custody or access, and upon their suitability to have custody or access.

(4) That the report of the investigation and any material to be seen by the judge be made available to the parties before the hearing and that the counsellor be available for cross-examination.

(5) That legislation be enacted providing that

(a) no action lies against

(i) a person conducting a child custody investigation upon the request of the court, or

(ii) a person who gives information to a person mentioned in sub-paragraph (i)

for anything done in good faith in the course of an investigation, and that

(b) a person referred to in sub-paragraph (a)(i) may not be compelled to disclose the identity of an informant whose information is not referred to in the report of the investigation.

(6) That the premises occupied by the counsellors providing the service be separate from the premises occupied by the court.

(7) That the service be established at major population centres, depending upon need, and serve smaller places from there.

2. Child Advocate Service and Amicus Curiae

The child custody investigation service goes some way to protect children's interests. We think that in some cases it is necessary to go further and to provide in some way for the protection of those interests by legal representation or by legal assistance for the court. We think that a decision on the Child Advocate Service suggested by the Social Services Committee, which would provide legal representation, should be deferred for the time being. Our reason is that we think that the whole question of the protection of children's rights should be studied thoroughly before institutional arrangements are made which may prove difficult to change.

By letter dated April 14th, 1977, we recommended to the Deputy Attorney General that the "amicus curiae" system as it is described in our Working Paper, and as it has evolved since then, be continued for the time being, and that the Attorney General undertake the responsibility of funding it and making personnel available. The amicus curiae in this context is a lawyer appointed by the court to bring to the court's attention the facts necessary to enable the court to protect the interests of a child. It is his function to see that a proper investigation is made, and he should accordingly have access to the child custody investigation service. His function is also to see what facts are needed by the court and to draw them together to put before the court. We think that it should also be his function to see that evidence put forward by anyone claiming custody is properly tested by cross-examination, though the lack of clarity in the powers of the office has so far had an inhibiting effect on that function. The amicus curiae is not, however, the child's lawyer and is not required to act on the child's instructions. He is a "friend of the court" whose function is to assist the court by seeing that what is required by the child's interest is before it.

It is imperative that the "amicus curiae" system, including custody investigation services, be continued until definitive institutional arrangements are made for the protection of children's rights; indeed, it is quite possible that that system or an adaptation of it may prove the most satisfactory solution. Our letter to the Deputy Attorney General and our memorandum attached to it are reproduced as Appendix C, and the subject is discussed in them in more detail.

Recommendation #7

(1) *That the Attorney General undertake the responsibility of providing the services of a lawyer to act as amicus curiae upon appointment by a judge or local judge of the Supreme Court or by a judge of the Surrogate Court. It appears to us that the service may be provided most efficiently through departmental solicitors, though it may be more efficient to retain private practitioners in areas in which there is no departmental solicitor stationed. We think, that the work will be better done if it is concentrated in the hands of as few lawyers as possible so that those who do it will quickly acquire experience and sensitivity to the needs of the procedure and those involved in it. Provision should also be made, however, for an occasional case in which the court's view is that the qualifications of a particular private practitioner are required in a particular case.*

(2) *That the Attorney General provide or arrange for such social, psychological and sociological services as the amicus curiae may properly require. Counsellors attached to the Family Court, where available, are an obvious source of social services, and there is a unit of counsellors in the Edmonton Family Court which provides such services. The Child Guidance Clinics seem to us to be an obvious source of psychiatric services. However, where services are provided for by persons in government service it should be as part of their duties and not as special additional services provided by them personally in their own*

time. If special budgetary arrangements are necessary so that the services of persons employed by other departments of government can be made available without requiring personal sacrifice or interfering with their own duties, we think that such arrangements should be made.

(3) That the amicus curiae advise the court of costs incurred so that the court will be able to exercise its discretion as to costs in the light of that information.

(4) That budgetary provision be made for the provision of all services.

(5) That these recommendations be carried out on an interim basis pending a general study of the protection of children's rights.

VII

LEGAL SERVICES

1. Prosecution Process: Juvenile Delinquency and Child Welfare

The report of the Social Services Committee makes recommendations with regard to the "Prosecution Process" in juvenile delinquency and child welfare matters. Since our Report does not deal with those matters generally, we will not deal with the prosecution process in relation to them.

2. Presentation of cases

1. Supreme Court

Divorce matters are dealt with as adversary matters in the Supreme Court. The petitioner is usually, though not necessarily, represented by a lawyer retained privately or by the Legal Aid Society, who presents the case. The same is true with nullity matters and judicial separations. We do not suggest a change.

2. Family Court

One or both spouses may have legal assistance in a custody or support matter in the Family Court. That is not the rule, however, and the lack of someone to present the case gives rise to a problem. Few applicants have the skill, knowledge and temperament to present their own cases. The judge often must take charge of a case and elicit the evidence under an inquisitorial procedure. That must, we think, inevitably create an appearance in many cases that the court is on one side or other, usually, in support matters, on that of the applicant wife. If the judicial system is to command respect, that sort of appearance must be avoided.

If both sides are represented by lawyers the problem does not arise. We would like to see that situation, but it does not appear practical to expect the majority of litigants in Family Court to provide their own lawyers or to expect society, through the government, to provide lawyers for them. If the applicant alone is represented there is someone to present the case, though other problems may arise, and we understand that it is the government's intention to be represented by lawyers in cases in which social allowances are being paid. That leaves cases in which the applicant is not in receipt of a social allowance and has no lawyer.

What can be done? One solution would be to have a member of the court staff present to ask the questions needed to elicit the basic information from both sides, leaving them both free to tell their stories and to cross-examine. The questions asked would follow a prescribed routine and it might well be that the judge would still have to take more part than he would in another court. It does not seem practical to suggest that there be a lawyer on the premises

to perform the function. The best that we can suggest is that some member of the social service staff receive special training for the function, and that one of them who has not been involved previously in the particular case perform it. We put forth this proposal with much diffidence, as it suggests imposing upon social workers a function which may be difficult to understand and is foreign to their normal training, and we do so only because it seems to us that there is a real difficulty to which no better solution presents itself. It would be desirable to enter upon it only after careful preparation and on an experimental basis.

Recommendation #8

(1) That where the applicant is not legally represented a member of the social service staff be present to assist the court.

(2) That his function be to elicit basic information from the parties as to the facts necessary for the court's decision.

(3) That nothing in this recommendation affect the rights of the parties to adduce evidence and cross-examine or to be represented by counsel.

3. Duty Counsel

It is only necessary to look at the present system from the respondent's point of view to see that it is likely to appear to him to be biased against him. An intake worker informs and assists the applicant. Someone associated with the court system serves him with process. In court, unless he has a lawyer it is likely to appear to him that the function of everyone present, including the judge, is adverse to him. To the extent that there is an enforcement or collection function, that is clearly directed against him. He is likely to start with negative views of the

process which will be reinforced by these appearances and by feelings of confusion and futility.

The reason for the development of the intake service was that many applicants do not know what their rights and obligations are and do not understand the court system. That applies to respondents, though probably to a lesser extent, and it applies to them whether they come into contact with the court system through their own volition or by being required to appear under sanction.

We think that respect for law and the court system is among the important objectives which should not be overlooked in setting up court services. So is the protection of the rights of all persons before the court, including respondents. Some machinery should be set up to ensure fairness and the appearance of fairness.

For the month of January, 1977, the services of a lawyer were made available to respondents (as well as applicants) in support matters in the Edmonton Family Court. The lawyer's experience tended to confirm a need for such services. Firstly, respondents often need help in understanding and asserting their legal rights, as do applicants. Secondly, a substantial number of respondents whom he spoke to felt that the court and all its services were on the side of applicants and that the respondents would therefore not get justice, an appearance which, however unfounded it may be, militates against respect for the legal system. Thirdly, he found that in many cases respondents who were properly advised agreed to reasonable payments so that unnecessary disputes were avoided. Finally he found that he could organize the respondent's information and thus save court time. The experiment does not appear to have been carried on long enough or broadly enough to justify the making of final conclusions but it does appear

to us to be sufficient to justify further experiments.

A permanent service along the lines of the recent experiment we have mentioned above would give rise to problems. One is expense. The second is the appearance of conflict in the position of a government lawyer if he must advise a respondent from whom the government is trying to collect money. These considerations suggest that the most practical method of providing some advice and assistance would be through the duty counsel system. Duty counsel are already available in the Juvenile Courts in Edmonton and Calgary and it would appear that the most satisfactory way to proceed would be to negotiate with the Legal Aid Society of Alberta to see how that service could be extended to the Family Court itself on an experimental basis with a view to extending it to the extent that it proves practical and valuable. We think that duty counsel should be available to respondents when applications for support or enforcement of support orders are being made and that his function should be restricted to interviews with respondents to advise them of their rights and obligations. During an interview duty counsel might help a respondent to fill out a financial information form to file with the court. If a respondent, upon being advised of his rights, is disposed to make an offer of payment, duty counsel might also advise him as to how to put it forward. He would also in a proper case advise a respondent to consult a lawyer. Duty counsel should not appear in court for the respondent.

Recommendation #9

(1) That arrangements be made with the Legal Aid Society of Alberta to provide duty counsel in support and enforcement matters in the Family Court.

(2) That the function of duty counsel be to interview respondents, advise them of their

legal rights and obligations, assist them in completing financial information forms, advise them to obtain legal assistance when desirable, and advise them how to put forward proposals when they are disposed to do so.

(3) That duty counsel be made available on an experimental basis and be extended only as his services prove practical and valuable.

4. Legal advice for Family Court Services

The Social Services Committee recommended (Appendix B, p. 69) that a staff lawyer service be available to provide legal information and advice to social service personnel. It also recommended that the service be responsible for the in-service legal training of the staff of the Intake, Negotiation, Enforcement and Prosecution Services. We agree with those recommendations. The service can be provided by a solicitor attached to a Family Court or by a solicitor in the Department of the Attorney General designated for the purpose. Continuity will be important, and access should be easy.

Recommendation #10

(1) That a staff lawyer service be provided either by a lawyer attached to the Family Court or by a lawyer in the Attorney-General's Department designated for the purpose, with continuity and easy access.

(2) That the function of the service be

(a) to provide general legal information and advice to Family Court workers.

(b) to assume responsibility for in-service legal training of the staff of the Family Court Services, including the matters referred to in Recommendation #2.

VIII
THE ENFORCEMENT PROCESS

Since receiving the report of the Social Services Committee we have given a great deal of thought to the process by which, in particular cases, the support obligation is quantified and the award collected. We think that the present system does not work as it should, and it may not be too strong to use the word "failure" as the Committee does. We do not think, however, that the failure should be described as a failure of the Family Court, because the Family Court has had to work within the confines of an inadequate system.

Apart from that comment we agree generally with the Social Services Committee's recommendations with regard to the enforcement process. We have thought it desirable, however, to deal with the enforcement process in our Report #27, Matrimonial Support, because we think that it would be better to consider what the Social Services Committee has said on the subject, as well as the additional thinking that has gone into the subject, in the context of enforcement generally rather than in the context of the social services attached to the Family Court.

IX
TRAINING/EDUCATIONAL PROGRAMMES

The Social Services Committee report contains an analysis of the skills and qualifications which Family Court counsellors should have. We have no way of evaluating the analysis, and accordingly can only pass it on as advice tendered by a group in whom we have confidence.

X

CONCLUSION AND RECOMMENDATIONS

It seems to us that a clear case has been made out for the availability of specific social and legal services to a court which deals with disputes involving husbands, wives, and children. An intake service is necessary to enable unrepresented persons to make informed decisions as to whether or not to enter the system or get assistance elsewhere. A negotiation or conciliation service is necessary to keep the social damage from marriage breakdown as low as possible, and to provide an alternative means of settling their disputes for those who want it. An investigation service and some form of protection of children's interests are necessary to enable the court to make provision for the proper care and upbringing of the children of parents who are in conflict. Some mechanism which will see that proper support is awarded and paid is necessary to ensure that spouses bear their proper responsibility for the support of each other and of their children.

We therefore recommend that social and legal services be made available in accordance with this Report. Some matters dealt with in the Social Services Committee's Report are not dealt with in it, and that report is available as a source of suggestions about them.

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R. P. FRASER
W. H. HURLBURT
ELLEN JACOBS
J. P. S. McLAREN
W. A. STEVENSON
W. E. WILSON

BY: _____
CHAIRMAN

_____
DIRECTOR

April, 1978

APPENDIX A

SUMMARY OF RECOMMENDATIONS

Recommendation #1 (p. 8)

(1) That the need for special services in family law disputes be formally recognized.

(2) That general agreement be reached in accordance with this Report, upon

(a) the purpose and pattern of the services,

(b) the design of services with a view to making them available as far as practicable throughout the province, and

(c) the organization and administration of the services so that their functions may be performed in a consistent manner and in accordance with a consistent policy.

(3) That upon the establishment of a unified family court the services be reviewed to adapt them to the structure of that court.

Recommendation #2 (p. 9)

(1) That the judicial function and the social service functions should be kept separate and that the judiciary should not be expected to supervise or participate in the administration of the services.

(2) That the Attorney-General's Department in consultation with the judiciary take steps to make available to the judiciary information about the nature of the services available to them and to litigants and about the extent to which the services can be useful.

(3) That the Attorney-General's Department provide for those involved in the social services education in the respective functions of the judiciary and of the services.

Recommendation #3 (p. 11-12)

(1) That the different functions of the family law court services be separately conceived and identified.

(2) That the services be given a form of organization which will ensure a common understanding of purpose and function, and which will ensure co-ordination of a service throughout the province and of different services in the same part of the province.

(3) That all family law services provided for in this Report be the responsibility of one department of the government.

(4) That the responsible department be the Department of the Attorney-General.

Recommendation #4 (pp. 14-15)

(1) That there be an intake service attached to the Family Court.

(2) That the service be provided by qualified Family Court counsellors who should be familiar with counselling services attached to the courts and in the community and who should have access to general legal information from lawyers attached to the court or in the Attorney-General's Department.

(3) That the services of the intake service be available to all litigants, whether applicants or respondents, and

(a) that it provide information about the various courses of action open to the parties, including legal proceedings, counselling, and agreement,

(b) that it be prepared to interview both parties to see whether there is a substantial dispute and whether they will accept a reference to a community or court counselling agency,

(c) that, where appropriate, it refer the parties or either of them to a community or court counselling agency or for legal advice,

(d) that where an applicant decides to apply for custody or maintenance by summary procedure it

(i) assist the applicant to complete the necessary forms and put the applicant's financial and other information into required form,

(ii) arrange service of the notice and supporting material, and

(iii) arrange a time and place for the hearing, and

(e) that it assist a respondent to complete the necessary forms and to put his financial information into required form.

(4) That the premises of the intake service be in the same building as the court premises, but be somewhat separate from them.

(5) That the information given to an intake worker, other than that contained in forms prepared for the court, be absolutely privileged in court and that its secrecy be preserved, even from the investigation service.

(6) That where population and volume of cases do not justify the maintenance of a full-time court worker, the responsible minister negotiate for the provision of the service by probation officers of the Solicitor General's Department or alternatively by local offices of the Department of Social Services and Community Health or by the staff of the clerks of the Family Court, but that all practicable steps be taken to see that such alternative arrangements function in accordance with the general policy of the intake service.

Recommendation #5 (pp. 18-19)

(1) That there be a negotiation or conciliation service attached to the Family Court and available to litigants or potential litigants in that court and in the Supreme Court.

(2) That the service be provided by qualified Family Court counsellors.

(3) That the function of the negotiation or conciliation service be

(a) to assist a couple to decide whether or not they should be reconciled,

(b) to assist the couple to minimize the effects of the breakdown of their relationship upon themselves and their children, and

(c) to assist the couple to come to agreement on specific problems such as custody and maintenance.

(4) That the service be maintained in Edmonton and Calgary and other population centres in which the volume of cases justifies it, and that where practicable it be made available elsewhere in the province from these centres.

(5) That the use of the service be voluntary, but that the courts remain free to adjourn matters at any time in order to give the parties an opportunity to engage in negotiation or conciliation.

(6) That information given to a counsellor engaged in the negotiation or conciliation process be absolutely privileged and that secrecy be preserved except with the consent of the husband or wife who provides the information.

Recommendation #6 (p. 22)

(1) That there be a child custody investigation service available to judges of the Supreme Court, the Surrogate Court, and the Family Court.

(2) That the service be attached to the Family Court and be staffed by qualified Family Court counsellors.

(3) That the function of the service be, upon request by the court, to investigate and report upon the circumstances of the child's parents and of the parties claiming custody or access, and upon their suitability to have custody or access.

(4) That the report of the investigation and any material to be seen by the judge be made available to the parties before the hearing and that the counsellor be available for cross-examination.

(5) That legislation be enacted providing that

(a) no action lies against

(i) a person conducting a child custody investigation upon the request of the court, or

(ii) a person who gives information to a person mentioned in sub-paragraph (i)

for anything done in good faith in the course of an investigation, and that

(b) a person referred to in sub-paragraph (a)(i) may not be compelled to disclose the identity of an informant whose information is not referred to in the report of the investigation.

(6) That the premises occupied by the counsellors providing the service be separate from the premises occupied by the court.

(7) That the service be established at major population centres, depending upon need, and serve smaller places from there.

Recommendation #7 (pp. 24-25)

(1) *That the Attorney General undertake the responsibility of providing the services of a lawyer to act as amicus curiae upon appointment by a judge or local judge of the Supreme Court or by a judge of the Surrogate Court. It appears to us that the service may be provided most efficiently through departmental solicitors, though it may be more efficient to retain private practitioners in areas in which there is no departmental solicitor stationed. We think, that the work will be better done if it is concentrated in the hands of as few lawyers as possible so that those who do it will quickly acquire experience and sensitivity to the needs of the procedure and those involved in it. Provision should also be made, however, for an occasional case in which the court's view is that the qualifications of a particular private practitioner are required in a particular case.*

(2) *That the Attorney General provide or arrange for such social, psychological and sociological services as the amicus curiae may properly require. Counsellors attached to the Family Court, where available, are an obvious source of social services, and there is a unit of counsellors in the Edmonton Family Court which provides such services. The Child Guidance Clinics seem to us to be an obvious source of psychiatric services. However, where services are provided for by persons in government service it should be as part of their duties and not as special additional services provided by them personally in their own time. If special budgetary arrangements are necessary so that the services of persons employed by other departments of government can be made available without requiring personal sacrifice or interfering with their own duties, we think that such arrangements should be made.*

(3) *That the amicus curiae advise the court of costs incurred so that the court will be able to exercise its discretion as to costs in the light of that information.*

(4) *That budgetary provision be made for the provision of all services.*

(5) *That these recommendations be carried out on an interim basis pending a general study of the protection of children's rights.*

Recommendation #8 (p. 27)

(1) That where the applicant is not legally represented a member of the social service staff be present to assist the court.

(2) That his function be to elicit basic information from the parties as to the facts necessary for the court's decision.

(3) That nothing in this recommendation affect the rights of the parties to adduce evidence and cross-examine or to be represented by counsel.

Recommendation #9 (pp. 29-30)

(1) That arrangements be made with the Legal Aid Society of Alberta to provide duty counsel in support and enforcement matters in the Family Court.

(2) That the function of duty counsel be to interview respondents, advise them of their legal rights and obligations, assist them in completing financial information forms, advise them to obtain legal assistance when desirable, and advise them how to put forward proposals when they are disposed to do so.

(3) That duty counsel be made available on an experimental basis and be extended only as his services prove practical and valuable.

Recommendation #10 (p. 30)

(1) That a staff lawyer service be provided either by a lawyer attached to the Family Court or by a lawyer in the Attorney-General's Department designated for the purpose, with continuity and easy access.

(2) That the function of the service be

(a) to provide general legal information and advice to Family Court workers.

(b) *to assume responsibility for in-service legal training of the staff of the Family Court Services, including the matters referred to in Recommendation #2.*

APPENDIX B

FAMILY COURT PROJECT
REPORT OF THE SOCIAL SERVICES COMMITTEE
TO THE INSTITUTE OF LAW RESEARCH AND REFORM

TABLE OF CONTENTS WITH RECOMMENDATIONS

FAMILY COURT PROJECT
REPORT OF THE SOCIAL SERVICES COMMITTEE
TO THE INSTITUTE OF LAW RESEARCH AND REFORM

PREFACE

The Board of Directors of the Institute approved the establishment of a committee on January 27, 1976, to propose a method or methods of integrating existing social services into a unified Family Court should one be established.

Membership of this Social Services Committee included:

(1) Walter Coombs, Executive Director, Canadian Mental Health Association (Alberta Division), who acted as the Committee Chairman;

(2) Rheal LeBlanc, Deputy Minister, Alberta Department of the Solicitor General;

(3) David Stolee, Deputy Minister of Social Services, Alberta Social Services and Community Health;

(4) Margaret Donnelly, Director, Legal Research and Analysis, Alberta Department of the Attorney General;

(5) Professor Gayle James, Faculty of Social Welfare, University of Calgary, in Edmonton;

(6) Professor Richard Ramsay, Faculty of Social Welfare, University of Calgary;

(7) William Hurlburt, Q.C., Director, Institute of Law Research and Reform, University of Alberta;

(8) William Pepler, Legal Officer, Institute of Law Research and Reform, University of Alberta.

From time to time the following also sat with the Committee:

(1) Eugene Dubord, Consultant, Alberta Social Services and Community Health Department;

(2) Samuel Nahirney, Special Projects Officer, Alberta Department of the Solicitor General;

(3) Joanne Veit and Emile Gamache, Alberta Department of the Attorney General;

(4) James Robb, Director, Student Legal Services, Faculty of Law, University of Alberta.

The Committee had its first meeting on February 16, 1976 and has met frequently since that date in the preparation of this report.

PURPOSE OF THE COMMITTEE

The Committee assumed the responsibility to develop an approach to the provision of adequate social services to the Family and Juvenile Courts.

CHAPTER I

PHILOSOPHY OF FAMILY COURT SOCIAL SERVICES

It is impossible to structure or to implement a social policy change in which an implicit or explicit imposition of values is totally absent. Such value statements cannot be subjected to scientific investigation. They are, rather, beliefs, preferences and assumptions about what is desirable or good for mankind; they do not speak to how the world is but rather how people prefer it to be.

Some of the values implicit to our Committee's discussions are:

1. That while the individual is a primary concern of society there is an interdependence among individuals in society;

2. That there are human needs common to each person and yet each person is unique and different from others;

3. That an essential attribute of democratic society is provision for realization of the potential of each individual, and the assumption of his participation in society;

4. That society, likewise, has a responsibility to provide resources, opportunities and services for the realization of the potential of each individual.

In implementing the philosophy of the proposed social services we foresee the following benefits:

i. Enhancing the problem solving and coping capacities of people in family relationships;

ii. Linking people with other community resources that provide services and opportunities;

iii. Promoting the effective and humane operation of the family court system;

iv. Contributing to the development and the improvement of social/legal policy, with particular reference to family matters in law.

v. Alleviating emotional distress.

A. What the Services Should Be

The Committee was fortunate to have at its disposal a wealth of current material describing what support services ought to be attached to a unified family court. The support services described in the Institute's 1972 Working Paper on Family Court included:

(1) Intake
(2) Reconciliation/Conciliation
(3) Enforcement
(4) Prosecution Services
(5) Staff Counsel

(6) Investigation

(7) Child Advocate

These are consistent with the research and pilot projects begun since 1972 in other Canadian jurisdictions:

- The Law Reform Commission of Canada, Report on Family Law, 1976
- The Ontario Law Reform Commission, Reform of Family Law, Part V, 1974
- His Honour Judge Selbie's report in British Columbia
- the First Report of the Royal Commission on Family and Children's Law, British Columbia, 1974
- the Honourable Emmett Hall's report in Saskatchewan, 1974
- The Quebec Civil Code Revision Office, Report of the Family Court, 1975
- the Prince Edward Island Unified Family Court 1975
- the Edmonton Family Court Conciliation Project

To supplement the literature our Committee conducted site visits to a number of Alberta Family Courts and community-related resources. Members of our Committee spent:

4 1/2 days in Calgary
3 days in Lethbridge
1 day in Camrose
1 day in Edmonton
2 days in Medicine Hat

Three members of our Committee, together with two members of the Judicial Committee, spent 3 days visiting the Unified Family Court projects at Richmond, Surrey and Delta, British Columbia.

These site visits provided us with an array of opinions and information not available in the literature. These will be reflected throughout this Report.

The intention of our Committee was to visit at least the 8 originating Family Courts because we are of the opinion that it is important to involve those who will be affected by the recommended changes. This Report will be distributed to those we have visited. The Committee recommends that this report to the Board of the Institute be available for distribution and discussion during the remaining site visits. Revisions, if any, will be incorporated in a supplementary report to the Board.

B. Purpose of the Basic Court Services

As the work of our Committee progressed, a clearer definition of the purposes of the support services evolved. These are:

(1) To provide an additional process to the judicial one for the resolution of family disputes;

(2) To modify the adversary system in those family disputes involving children where judicial solutions are required or preferred.

REASONS FOR CHANGE

An additional process for family dispute resolution is desirable because of the inherent limitations of the judicial process.

The adversary process, which is the hallmark of judicial dispute resolution, is often protracted and expensive. It militates against reconciliation of the parties and limits the judge to deciding on the facts the advocates present. This last limitation may have devastating consequences for the children who are not represented in their parents' divorce actions.

A second limitation arises from the inability of the judicial process to adequately resolve post-disposition conflict. These problems relate to custody of and access to children, and compliance with maintenance orders.

On our site visits the Committee was told of countless cases of flagrant disregard of orders to pay maintenance and of the apparent inability of the Court to enforce compliance. A collateral consequence of this post-disposition conflict is the expense involved in social allowance payments to families who are unable to have their maintenance orders enforced, and the expense involved in trying to enforce payments.

As well, we were advised of many cases where fathers were awarded "reasonable access to their children" and immediately found themselves again embroiled in battle with their former spouses over the meaning of the term "reasonable." The inability of the courts to resolve finally these disputes brings the whole process of the law into disrepute, as well as leading to bitterness, acrimony and isolation for the disputing parties.

We believe that problems arising from the family relationship call for consideration separate from that of other legal problems. The word "family" is a flexible word which can have a variety of meanings. For the purposes of this Report, it must be taken to mean a group of persons who stand to each other in the relationship of husband and wife or parent and child.

CHAPTER II

FAMILY COURT SOCIAL SERVICES

Our Committee views the new Family Court of Alberta as comprising two complementary features: the Judicial Services and the Social Services. The Social Services components are described herein.

1. THE INTAKE PROCESS

A. Objectives of the Intake Process:

To provide responsive access to the Family Court Services and existing community resources.

B. Operation of the Intake Process

The Intake Service will be the main point of entry into the Family Court Social Services.

1) Information

The Committee recommends that the information service be responsive, accessible and appropriate to inquiries about family relationship problems and matters in family law.

The service should be capable of providing pertinent information about the legal and social service resources available within the community or the region. From our site visits, we have learned that many of the information needs are similar, and it seems entirely possible that a variety of methods can be developed for the distribution of information.

The Committee recommends that the intake personnel have available to them legal services which can provide information on specific legal questions. In Edmonton and Calgary a solicitor from the Attorney General's Department has been seconded to the Family Court services. These lawyers provide a variety of services, one of which is the giving of legal information.

2) Assessment

In many cases the provision of reliable information will be the end of a particular contact; however, there may be a request for services. The Intake Process must be able to assess the request for service and make the appropriate referral.

3) Referral

The referral will be:

a) to a Family Court counsellor for negotiation
b) to the court process for adjudication
c) to any of the community resources available.

It is not possible for our Committee to identify all of the resources available to any one community. The Intake Process of each Court will develop its own linkages with community resources. Generally, the referrals will be to Legal Aid or to the private bar and to established social agencies in both the public and private sectors.

The Intake Process should also follow up the referral to see that the service was appropriate and effective.

In the event that the disputants are referred for adjudication, the Intake personnel must be able to prepare the necessary documents.

4) Evaluation

On our site visits we noted an inconsistent and inconclusive system of recording information. Generally, neither the frequency nor the nature of inquiries was recorded in any manner usable for research and planning purposes.

The Committee sees good record keeping as a key to good service provision and evaluation. *Our Committee recommends that a standard intake form be adopted throughout the province as an aid to evaluation.* The form will reflect the information desired or required by the social services at any particular time. As well, an appropriate record keeping system will provide a source for current study of family matters in law.

C. Benefits of the Intake Process

The public will have at its disposal a centre where reliable information on family dispute matters may be obtained.

The individual user of the Intake Process will benefit by having recourse to a competent, and responsive service. The screening and referral service should avoid duplication of services and should direct people to an appropriate source of help.

D. Special Considerations Related to the Intake Process

The Committee has stated that the Intake Process will be the main point of entry into the Social Services. We wish to make clear however, that there is no compulsion to make use of the social services and they may be by-passed completely in favour of direct access to adjudication.

Our Committee foresees a number of special considerations facing the Intake Process:

1) We recognize that social, economic, cultural, geographic factors, and population distribution, may interfere with the use of the Intake Process.

2) We have learned from our site visits of the problems confronting the police in family dispute matters. Much of police activity is devoted to "domestic disputes" which frequently occur in the night hours when community resources are not available. As one officer described it to us, "The policeman on the beat must be a walking information post." The Committee thinks that the Intake Process ideally should be available on a 24 hour basis. There is a pilot project presently operating out of the Unified Family Court at Richmond, B.C., in which a member of the Court staff accompanies the police on night patrol. A variation is of course, having intake personnel available by telephone. Our Committee recognizes the staffing problem and expense of implementing this aspect of the Intake Process.

3) The Committee has recommended that the Intake personnel have available to them a solicitor to provide information on specific legal questions. Again, we realize the difficulties in implementing this proposal. A possible solution is provided in the section dealing with staff lawyer services in this Report.

II. THE NEGOTIATION PROCESS

Although the word "conciliation" is in common usage in connoting the processes described here, the Committee has decided to use the term "negotiation" in its stead, for it reflects more accurately what in fact occurs: to "confer (with another) with a view to compromise or agreement."

A. Objectives of the Negotiation Process

There are two objectives:

1) to achieve satisfactory solutions to family disputes.

2) to avoid adjudication or reduce the number of issues that require adjudication.

B. Operation of the Negotiation Process

The Committee foresees the following steps in the process:

1) The Family Court counsellor will receive a referral through the Intake Process. This referral will provide a limited history of the parties and identify the presenting problem.

2) The Family Court counsellor will meet with the disputants, explain the service, offer assistance, and establish a working relationship.

3) The Family Court counsellor will collect data to determine the problems to be solved.

4) The Family Court Cpunsellor will then make an assessment and determine the willingness of the disputants to negotiate their specific problems.

5) The role of the counsellor in the negotiation process is to help the disputants come to an acceptable agreement to each specific problem. If an agreement cannot be reached then it will be understood that the dispute may be taken to the Court for adjudication. The focus in the negotiation process is not on the treatment of individual psychopathology. Some difficulties will result in a referral to an appropriate counselling service if the pathology is so pervasive as to interfere with the negotiation process.

The worker must also determine with the disputants the method of intervention and the time limits on the negotiation process.

Any agreement reached may be written or oral and where it is written the disputants will have the further option of filing it with the Court. The importance of the agreement will be stressed by filing with the Court and filing provides recognition that the disputants have successfully negotiated a private settlement of their differences. However, the parties to a negotiated agreement are free to re-open negotiations or to seek adjudication. *The Committee recommends the filing of the written agreement with the Court.*

The Committee recommends that legal consultation be available to the Family Court counsellors. A lawyer will be able to clarify legal issues for the counsellor.

The Negotiation Process we have recommended will provide people involved in family disputes with a viable alternative process to adjudication. A report prepared for the Institute of Law Research and Reform by Downey Research Associates states that 92 per cent of the litigants responding

to the questionnaire were of the opinion that greater use should be made of counselling services before people go to Court with family problems. Further evidence of this need is illustrated by the use made of the Edmonton Family Court Conciliation Service.

While the Committee has recommended the introduction of negotiation processes as a means of resolving family disputes, we do not recommend that they be made compulsory. We note that in some jurisdictions there is a requirement that the litigants participate in at least one counselling session before adjudication. In other jurisdictions, the judge is conferred with a power to refer people to the service at any stage of the trial proceedings. We have had some difficulty with this question because of the potential for blurring the roles of the adjudication and negotiation processes. We have concluded that the negotiation process, must be voluntarily entered and for that reason do not recommend that the judge have power on his own motion to compel the litigants to participate in negotiation. The parties may of course seek an adjournment to pursue a negotiated settlement, and the Court may recommend such a course of action, but there will be no compulsion.

The very nature of dispute resolution is that the dispute be resolved quickly. We do not recommend any specific limitations, however, in terms of hours or numbers of visits that any particular disputant(s) may have with the Family Court counsellors. The training programmes provided for the Family Court counsellors, together with proper supervision, will ensure that the negotiation sessions will provide short-term professional assistance as opposed to long-term support or psychotherapy.

The process is separate and distinct from the adjudicatory process and functions best when there is free and full disclosure between the disputants. To assure this free communication the Committee thinks that communications between

disputants and the Family Court counsellor be barred from introduction at any adjudication. We do not think that a privilege, which may be waived, is an adequate protection to the counsellor or provides sufficient security to people using the Intake and Negotiation Services. *The Committee recommends an amendment to the Evidence Act making such communications between disputants and Family Court counsellors inadmissible in a court of law.*

C. Benefits of the Negotiation Process

The process is applicable to disputes that arise before adjudication and is also applicable to post disposition or post-agreement conflict resolution.

D. Special Considerations Related to the Negotiation Process

The Negotiation Process we have described has two built-in conditions:

1) The first is that individual psychopathology is not a focus of the services either for treatment or assessment. *While the Committee recognizes the debilitating effect of a personality or character disorder on family relationships the Committee recommends that long-term treatment be conducted outside of the Family Court Social Services by a community resource.* There are two reasons for this recommendation:

a) The training and skills for this therapeutic service are different from those required of a Family Court counsellor. Further, there is a considerable body of literature that suggests that short-term, relationship-focussed interventions are at least as effective as traditional psychotherapeutic interventions.

b) Our terms of reference called for developing existing social services for a unified family court. Our efforts have been directed at establishing a beneficial social service structure which may be implemented across Alberta and not only on a pilot project basis in major urban areas.

2) The second condition arises from our recommendation that any issues covered by a negotiated agreement be open to renegotiation and adjudication. Negotiated settlements, as distinguished from judgments of a court of law, are more likely to be respected in matters of family relationships. As well, the option of further renegotiation and adjudication, should the agreement prove unworkable, is an advantage to the negotiation process.

There are also two limitations related to the use of the negotiation process.

a) The first arises because of the important role of language skills in negotiation. People with language difficulties (either because of a foreign language or because of a specific language disability) may not be able to use the process to advantage.

b) The second limitation relates to the problem of state intervention.

The process of dispute resolution which we have described should work well for internal family problems. The application of the process to family problems where the state has intervened is less clear. Juvenile delinquency and child neglect will serve as examples of this problem.

i. Juvenile delinquency, involving as it does criminal activity, increases the number of people involved in any particular negotiation. The family members, the police, the victims of the crime, and quite possibly the insurance companies have an interest in the outcome. We believe, as for disputes in family matters, that juvenile offenders should whenever appropriate be handled by social services. The recent activity surrounding the Young Persons in Conflict with the Law Act is indicative of the changes that may be made in this area.

While we believe in negotiation of disputes involving juveniles, the application of the recommended processes to all juvenile matters at this time is not free from doubt.

ii. In the child welfare area the Alberta Social Services and Community Health Department has social workers actively involved in investigating complaints of abuse and neglect. Again, it is not clear that the social services attached to the Family Court should become directly involved in the negotiation of disputes in this field. We do see, however, the Information Process being available.

III. THE ENFORCEMENT PROCESS

A. Objectives of the Enforcement Process

There are three objectives:

1) to find the defaulter
2) to collect relevant economic information
3) to commence the enforcement process

B. Operation of the Enforcement Process

The failure of the Family Court in the area of maintenance enforcement was brought to the attention of our Committee on every site visit. The causes of this failure are numerous and include:

1) the difficulty in locating defaulters;
2) the irregular application of the process in bringing defaulters before the Court;
3) the inadequacy of evidence presented on show cause hearings.

The remediation of these three difficulties in the present system has become the objective of our proposed enforcement process. There are two additional problems of the present system.

1) The first problem arises because most Supreme Court Orders for maintenance are filed with the Family Court for enforcement. Under this process the defaulter is brought to court on a "Show Cause Summons." The defaulter must show cause for nonpayment. Frequently, the defaulter advises the Family Court that he has applied to the Supreme Court for variation of the order and requests an adjournment of the Show Cause Hearing until that

application has been heard. The adjournment is usually granted resulting in further delay in payment. The Judicial Committee has recommended that the Family Court have jurisdiction in all family matters in law and thus this limitation of the present system will be corrected.

2) The second problem arises because of the inconsistency in maintenance orders. It is reported that at a Family Court Judges Conference in Banff in 1976 awards of maintenance on a hypothetical question varied from between $50 and $400. Comments made to our Committee on site vists bear out that this variability exists in practice as well.

Earlier in this report we recommended the establishment of a negotiation process. Negotiation of maintenance payments will more truly reflect the amount of money that can and will be paid. It is expected that the negotiation of payments will greatly reduce the number of orders in default. Our Committee contends that people are more willing to comply with arrangements they have made themselves. This contention is borne out in the family court pilot projects in British Columbia where it is reported that there is significant compliance with maintenance orders that have been negotiated.

Orders for maintenance will still be required, however. *Therefore, the Committee recommends the establishment of a process to ensure that maintenance orders are respected.*

In the current system the services of Alberta Social Service and Community Health in locating defaulters is available to a person who is on social allowance. *The Committee recommends that the Enforcement Process be available to all users of the Family Court.*

On one of our site vists, members of the Committee attended Court to observe show cause hearings. The lack of sound evidence on the defaulters' economic position was one of the most salient feature of these proceedings. In British Columbia the Court enjoys the assistance of a debt counselling service provided by a separate agency. It is only with a thorough economic analysis that the Court can determine the ability of the spouse to pay. *The Committee recommends that the Court have power to call for an economic report on its own motion. The Committee recommends that the Enforcement Process provide economic reports to both the Court and the litigants.*

The Committee recommends that the Enforcement Process be separate from the Negotiation Process. It is inappropriate for family court counsellors involved in the negotiation process to find themselves at a later stage involved in enforcement of either an agreement or a court order.

The Enforcement Process we have described is applicable as well to affiliation proceedings and the Committee recommends that the Enforcement Process be available in affiliation proceedings.

C. Benefits of the Enforcement Process

The general public will benefit from the efficient operation of the enforcement service in two ways:

1) The Court will be able to obtain compliance with its orders, saving the court process from disrepute.

2) Additional collections will reduce the cash outflow on social allowance.

Individuals will benefit from having the assurance that support obligations will be enforced.

D. Special Considerations Related to the Enforcement Process

Cases will inevitably arise where the cost of enforcing collections will outweigh the monetary gains. On one of our site visits we were told of a flying expedition by a social worker to several oil drilling operations to locate a defaulting spouse. In this instance, the expense of such an investigation exceeded all expectation of recovery.

IV. THE PROSECUTION PROCESS

A. Objectives of the Prosecution Process

The objective of the Prosecution Process is:

1) to represent the Crown in cases coming before the Family Court.

B. Operation of the Prosecution Process

During our site visits we observed that police officers and social workers have primary responsibility for prosecution in three areas of law relating to family matters:

1) Juvenile Delinquency
2) Child welfare
3) Maintenance collection

Only in certain cases are lawyers provided by the Attorney General's Department.

The Committee recommends that special prosecutors be appointed to represent the Crown in these three areas of family law relating to family matters: juvenile delinquency, child welfare, and maintenance collection. We are mindful of the

increase in cost should these special prosecutors be solicitors. Further, there is considerable uncertainty that full legal qualification is required. We note that in Toronto, child protection matters are prosecuted by paralegals, usually social workers trained specifically for the role.

C. Benefits of the Prosecution Process

We see two benefits:

1) The Crown, and hence the community at large, will be properly represented in Family Court.

2) The judge will have the benefit of skilled counsel, for martialling and presenting all relevant evidence. In the current system the judge frequently plays the role of the inquisitor, hence blurring his role as an impartial arbitrator of the dispute before him.

D. Special Considerations Relating to the Prosecution Process

The primary consideration of the Prosecution Process we have recommended is the cost of implementation should qualified solicitors be used. *Accordingly, the Committee recommends the study of the use of paralegals for child welfare and maintenance collection matters.*

The Committee recommends that the prosecution role in juvenile matters be performed by solicitors.

V. THE STAFF LAWYER SERVICE

A. Objective of the Staff Lawyer Service

The objective of the staff lawyer service will be:

1. to provide legal information and advice to the Family Court social services.

B. Operation of the Staff Lawyer Service

The Committee has recommended the establishment of Intake, Negotiation, Enforcement and Prosecution Processes. In our discussion of these services we have noted the need for the assistance of a solicitor to provide legal information and advice to the social services personnel.

From our site visits we have determined that such legal services are not required on a full time basis.

The committee recommends that a unit be established to provide legal services to the Intake, Negotiation, Enforcement, and Prosecution Processes as they are required. We do not foresee this unit requiring a great number of lawyers. Most information will be provided by telephone, and only infrequently will it be necessary for the lawyer to attend at any particular Court.

The Committee recommends that the unit be responsible for assisting in the in-service legal training of the staff of the Intake, Negotiation, Enforcement, and Prosecution Processes.

C. Benefits of the Staff Lawyer Service

The public will benefit from receiving accurate legal information. The staff of the social services will benefit from having the back-up of solicitors where they are required.

D. Special Considerations Relating to the Staff Lawyer Service

The primary limitation of the service is the cost of its implementation even though the number of lawyers required is small. However, their services will improve the quality of the recommended processes.

VI. THE INVESTIGATION PROCESS

The Investigation Process, and the Child Advocate discussed in the next section of this report, are directed primarily at modifying the adversary system in those family disputes involving children where judicial resolutions are required or preferred. *It is the opinion of the Committee that* the best interests of the child may not be met within the traditional adversary system, particularly when the child is not a party to the action; for example, in the divorce of the parents of the child.

A. Objectives of the Investigation Process

The two objectives of the Investigation Process are:

1) to gather all relevant information, (employment, behavior, etc.) which will have a bearing on the judicial disposition.

2) to make objective proposals to the Court that are in the best interests of the children [in the context of their family.]

B. Operation of the Investigation Process

The Committee recommends that the Court have power on

its own motion to call for an investigation report in all cases involving children. Further, the Committee recommends that an order for an investigation report may be made on the application of either party. We have purposely given the Court a discretion in this regard for two reasons:

1) a complete investigation report will not be necessary in all cases.

2) any party applying in order to use the application as a tactical delay will be prevented from doing so.

The Committee recommends that any report prepared be presented to the parties prior to the hearing and that the person conducting the investigation present himself for cross-examination.

The Committee is of the opinion that the Investigation Process should be a separate service unit within the Family Court Social Services. The personnel must be trained for thorough investigation and objective reporting. We disagree with the Institute's working paper, Family Court, 1972 which would allow the Investigation Process to see the files prepared by the Intake and Conciliation Processes. While this may mean a duplication of effort we think that the confidentiality at the earlier stages should not be infringed.

C. Benefits of the Investigation Process

The Investigation Process will assure that most of the information on which to base a decision is before the court together with objective proposals.

D. Special Considerations Related to the Investigation Process

The value of the Investigation Process will be lost if the judiciary merely "rubber stamps" the proposals without adjudicating.

The Investigation Process is clearly appropriate for custody and access questions. However, other litigation involving children, (juvenile delinquency, wardship, adoption, affiliation and maintenance proceedings) are not so clearly benefited by the Investigation Process.

Juvenile probation services provide pre-sentence reports to the Courts which are designed to provide relevant information about the child and the appropriateness of probation supervision in the community. This is a firmly established service and it seems inappropriate that the proposed Investigation Process of the Family Court duplicate this.

In the matter of wardship, abuse,and neglect the Alberta Social Services and Community Health Department provides the investigation services required. Again, it seems inappropriate that the proposed Investigation Process duplicate this work.

As well, the child advocate service proposed in the next section of the report will assure that the children's rights are protected. Affiliation and maintenance proceedings are appropriately served by the Enforcement Process.

VII. THE CHILD ADVOCATE SERVICE

In recent years there has been a slow turning away from the informal procedures adopted by the Juvenile Courts of this and other jurisdictions. The decision of the United States Supreme Court in the Application of Gault is indicative of these changes. The essence of that decision is that nothing must be done "in the best interest of the child" which deprives him of his legal rights.

Our Committee also wishes to advance the proposition that children must be fully recognized as equal participants in the resolution of family disputes.

A. Objectives of the Child Advocate Service

The objective of the Child Advocate Service is:

1) to protect the rights of children who may come before the Court, directly as parties to the litigation, or indirectly, where they are the subject of a custody dispute.

B. Operation of the Child Advocate Service

Elsewhere in this report we have recommended that all persons coming before the Family Court have the opportunity to be represented by a solicitor from the private bar. *The Committee now recommends that the Court have power on its own motion or on application to order a child advocate to intervene on behalf of any child or children involved in a dispute before the Court.*

The Committee recommends that a child advocate enlist the aid of the Investigation Process of the Family Court and any other special service he may require.

The Committee also recommends that the Child Advocate service be staffed by solicitors.

C. Benefits of the Child Advocate Service

1) The rights of children before the Court will be protected.

2) The recommendations of this Committee and the Judicial Committee that the Family Court be comprised of two separate services--judicial and social--will mean a more formal adjudicative process. The Child Advocate Service will assist in the preservation of that formality by supplying counsel to represent the rights of children.

D. Special Considerations Related to the Child Advocate Process

The Committee has had considerable difficulty in defining the role of the Child Advocate in relation to the role of the Director of Child Welfare under the Child Welfare Act. We note that the Child Advocate in the Family Court pilot projects in British Columbia represents the interests of both the child and the Director. We are not content, however, that their interests are the same in all cases. For example, from our site visits we have determined that where the parents consent to an order for temporary wardship, no evidence is presented to the Court. In effect the Court rubber stamps the agreement made between the Department and the parents with no representation or Court adjudication to determine that the agreement is in the best interests of the child. The Committee thinks that it is important that the judge have evidence presented in all cases where the future of the child is affected, particularly in the cases of temporary wardship.

CHAPTER III

IMPLEMENTATION OF THE FAMILY COURT SOCIAL SERVICES

I. STRUCTURE

A. General Considerations

There are four primary considerations in our proposals for implementing the social services we have recommended in this report:

1) the geography and population distribution in the Province of Alberta

2) the definition and maintenance of roles for the Family Court Services, judicial and social

3) the making of proposals which provide the least disruption to existing institutions

4) minimizing the additional costs of the proposed services to the Family Court.

1) geography and population distribution

The establishment of the judicial and social services of the Unified Family Court throughout the province has concerned both Committees. At present, family and juvenile matters receive judicial service from:

(a) the Family and Juvenile Courts which have 8 originating courts and 28 circuit locations, and

(b) the Provincial, District and Supreme Courts of the province.

It is not expected that the new Unified Family Court will be able immediately to meet the needs for service in all regions of Alberta. This will necessitate the Provincial, District and Supreme Courts preserving some of their family and juvenile jurisdiction.

The social services to the Court are primarily provided by the Department of the Solicitor General which has regional offices throughout the province. In the City of Edmonton these services are provided by the Attorney General's Department. As well, there are a variety of other public and private social services available to the court.

A principal difficulty in the delivery of social services to the Court has been the lack of co-ordination.

From our site visits we have determined that in some locations there is not enough Family Court activity to demand the services of a full time Court social worker. This will mean, that unless there is a substantial increase in activity, resulting from our proposed services, the social worker may be required to perform other kinds of functions. For example, in one community we visited the social worker divided his time between Family Court matters and adult probation.

2) the definition and maintenance of the roles of the social and judicial services of the Family Court

We have learned from site visits that one of the critical problems facing judges and social workers relating to family matters in law, is the absence of clear role definition. For a variety of reasons, including the lack of solicitor representation before the Court, the judges have found themselves placed in a position where they have had to play the role of judge, lawyer

and social worker. It is our view that when a family dispute reaches the adjudication stage, the judge must find the facts, apply the law and make a decision.

Family Court counsellors have had difficulty in defining their role in the Court. It is our view that the counsellors appearing in Court should be there solely as witnesses and not as advocates or judges for one or other of the disputants. In their proposed role as negotiators they will assist the parties, even if failing to reach an ultimate agreement, by defining the issues and narrowing through negotiations the number of issues that must necessarily reach adjudication.

This blurring of roles has had a profound effect on our decision regarding the administration of the social services. Our first consideration was whether the services should fall under judicial authority. We rejected this form of administration for two reasons:

a) it is our contention that if the judges are responsible for the administration of the social services the role distinctions will be lost. This contention has two parts:

   i) the internal organizational structure-- the social services if under judicial authority would not develop their separate and independent role in family dispute resolution.

   ii) how the public will view the social services as a separate process for dispute resolution if that process is administered by the judiciary.

One of the difficulties we have noted on our site visits is that proximity of the social services to the judicial services may lead to a blurring of identities in the mind of the user of the court services. On the other hand, the advantages of having social workers and judges in the same facilities are clear. The court facilities at the British Columbia pilot projects in Richmond, Surrey and Delta, where social workers and judges share the same accommodations, has worked well in most cases. It is our view that adequate supervision and administration will adequately prevent the blurring of role identities if the judicial and social services are in the same building but administratively separated.

b) The second reason for rejecting this form of administration is that judges should not be expected to supervise, direct and develop the services of a different professional discipline.

A further consideration was the establishment of a separate commission to administer and to develop the social services. We ultimately rejected this proposal primarily because we favour ministerial responsibility for the conduct of the social services.

The Committee considered in turn each of the three government departments presently active in the Family Court. This brought us to the recommended organizational structure for implementing our proposals.

3) proposals which provide the least disruption to existing institutions

There are now three government departments participating in the work of the Family Court. They are:

a. The Department of Social Services and Community Health

b. The Department of the Attorney General

c. The Department of the Solicitor General

Our proposals are directed at preserving, where possible, the interests of each in the activities of the Family Court. The thrust of our recommendations is directed at the co-ordination and further development of these activities.

a. Alberta Social Services and Community Health

This Department has regional offices distributed throughout the province. The primary Family Court activity of the Department is in the area of child welfare, juvenile delinquency, and in assisting social allowance recipients in maintenance and recovery.

b. The Department of the Attorney General

This Department has the responsibility for Court administration in the province of Alberta. It also provides the counselling staff to the Edmonton Family Court and presently funds the Edmonton Family Court Conciliation Service. It is the opinion of the Committee that the duties associated with the administration of the social services are so unlike those of the Court administration branch that they ought to be maintained separately.

c. Department of the Solicitor General

This Department outside of the City of Edmonton, assumes responsibility for the provision of counselling services to people appearing before Family Court.

4) Minimizing the Additional Costs of the Proposed Services to the Family Court

This consideration is closely tied with the previous one. By recommending the use of the current services we hope to minimize the additional costs. As well, through proper co-ordination we hope to off-set the cost of the additional proposed services. We recognize, however, that the recruiting and training of specialized staff to perform the duties outlined in this report will not be inexpensive.

B. Remaining Recommendations

1) *The Committee recommends that a separate Social Services Branch be established.* This Branch will absorb the employees currently employed in Family Court matters.

The Family Court Social Services Branch should be headed by a director, the status of which will enable the Director to maintain the role separation between the social and judicial services. It will be the responsibility of the Director to coordinate and implement the recommendations contained in this report; to this end the Director will work in close liaison with the appropriate governmental departments which are also affected by the recommendations of this Report.

2) *The Committee recommends the implementation of training and educational programmes designed to prepare existing and new personnel of the Intake, Negotiation, and Investigation Services to perform the duties described earlier in this report.*

At present there is no educational programme available within the province to meet the specific needs required by our proposed Social Services. The education and training programme we have recommended later in this Report will meet this need.

During our site visits we learned that one of the present problems with the development of special skills in the Family Court area relates to the fact that most of the counsellors are in the Department of the Solicitor General and are therefore closely identified with the work of probation officers. It is our opinion that the establishment of a separate branch will give these workers assurance that the development of special skills will give them an advantage in their career lines and assurance of continuous employment in this special area.

The skills level of the existing staff varies. Many workers have considerable expertise in relation to many of the problems to be encountered by Family Court counsellors. As well, the Conciliation Service of the Edmonton Family Court has developed an expertise in this area. We note that the counsellors in the British Columbia Family Court pilot projects come from a variety of backgrounds.

3) *The Committee recommends the development of informational material, for general distribution to the public.* A few examples of such materials are: answers to legal questions in family relationship matters, how the Unified Family Court works, and where to locate existing community resources.

4) *The Committee recommends that in non-urban areas where Family Court Social Services are lacking that local people be trained to provide a comparable service.*

5) *The Committee recommends the development of a standard form agreement acceptable for filing in the Family Court. Such a form is currently in use in the British Columbia pilot projects.*

6) *The Committee recommends the design and development of a record keeping system to collect basic information for research purposes to ensure standards of service, and also to accommodate the collection of special information that may be required for short term purposes.*

7) *The Committee recommends the development of a special program designed to encourage the use of the Family Court services, judicial and social, in instances where particular problems of access arise.*

8) *The Committee recommends that the appropriate staff from the Departments of the Attorney-General and the Solicitor-General and the Edmonton Family Court Conciliation Services form the proposed Family Court Social Services.*

II. TRAINING/EDUCATIONAL PROGRAMS FOR THE INTAKE, NEGOTIATION AND INVESTIGATION SERVICES

Our Committee is of the opinion that a variety of educational and training experiences must be available to those who are now Family Court counsellors and to those who will be employed in that capacity.

A. Objectives of the Training/Educational Programs

1) To assist counsellors in reaching a baseline academic and experiential standard for Family Court counsellors, that ensures a quality service to clients.

2) To develop specialized Family Court counsellors.

3) To strengthen family law services by providing a province-wide training/educational program, and by providing a mechanism for continuing education and staff development, as new theories and practices evolve in social work and law in family matters.

B. Operation of the Training/Educational Programs

The counsellors employed in the Intake, Negotiation and Investigation Processes must exhibit a variety of skills, perform a variety of interdependent functions, and perform a variety of roles. The focus of their interventions is on the relationships between and among individuals within a family, or between family members and the state, rather than on the individuals themselves. The skill areas and functions are elaborated below.

1) Skills

The broad skill areas required by the family counsellor to fulfill the purposes of the Intake, Negotiation, and Investigation Processes include:

a) Problem assessment

- identifying and stating the problems to be solved (extent, number, duration, severity)

- analyzing the dynamics of the social situation

- establishing goals (short-term vs. long-term; feasibility on a possibility vs. probability scale)

- determining the resources which can be brought to bear on the intake, negotiation, and investigation processes

- determining the resistances and difficulties likely to be encountered

- determining the tasks, activities, and strategies required to meet established goals.

b) Data collection

- questioning, observation, use of existing records

- planning a data collection strategy

c) Forming relationships

- communications skills

- creating a physical, temporal, and affective climate in which negotiation can occur

- awareness of motivations and resistances to change

- planning which people to involve and in what sequence

d) Negotiating working agreements

- gaining informed consent to undertake the intake, or negotiation, or investigation process

- determining which activities will be undertaken by the client and which by the counsellor

- determining explicitly with whom, where, when, and how these processes will occur.

- being aware of the ambivalence, manoeuvering for position and control, mutual trust and acceptance, and willingness to work together to reach a common goal, all of which can be part of the negotiation process

e) Contacting and involving other people and community resources as needed

- referrals to other parts of the Family Court system or to outside community resources and personnel (psychologists, Debtor's Assistant Board, Legal Aid, educational specialists).

f) Maintaining and co-ordinating contacts with other people and community resources

- up-dating knowledge of community resources

- improving access to community resources

g) Exercising influence to reach goals

- both the counsellor and the Family Court Services must have some bases of influence for the client, i.e., legitimate authority, status and reputation, knowledge and expertise, and personal attractiveness.

h) Terminating the working agreement and evaluation of the intake, negotiation, and investigation processes

- stabilizing the intervention (e.g. filing the negotiated agreement)

- facilitating closure once the dispute has been resolved

- facilitating access to adjudication if the dispute(s) remain unresolved

- determining the bases on which a new working agreement may be initiated or the agreement may be renegotiated

- determining the value and effectiveness of the counsellor's interventions

The skills enumerated above are interdependent. The tasks and activities which are manifestations of these broad skill areas will vary, depending upon whether the counsellor is working in the Intake, Negotiation, or Investigation Service of the Family Court Social Services.

2. Functions

The seven general functions to be performed by counsellors include:

a) enhancing people's problem-solving capacities (e.g. the negotiation process itself

b) establishing linkages with other resources, individual or community (e.g. referral for psychological or medical assessment, or parent effectiveness training; forming a self-help group for recently divorced people to help them adjust to their new status)

c) facilitating interaction with other resources, individual or community (e.g. case conferences, liaising with social allowance workers around income maintenance, following up referrals to other agencies)

d) facilitating interaction within one's own branch of the Family Court Services (e.g. recommending changes in internal functioning, modifying programs that are working at cross-purposes)

e) influencing social policy in law relating to family matters (e.g. documenting the need for changes in the Divorce Act--this type of function implies that the counsellor is aware of the continuum between private troubles and public issues)

f) serving as agents of social control (e.g. interpreting the state's norms as embodied in such legislation as the Child Welfare Act and the Domestic Relations Act).

The discipline which most clearly embodies the foregoing is social work. *The Committee recommends that social work be the practice model in the Intake, Negotiation, and Investigation Service.*

3. Specific Knowledge and Skill Requirements

Family Court counsellors require specialized knowledge of and expertise in:

a) the development and practices of the Family Court, including administration, supervision, and program evaluation.

b) legislation pertaining to family matters.

c) selected theories of intervention: problem-solving models, crisis theory, family therapy, and systems theory.

d) family development--changing norms, customs; alternate family life styles.

4. Implementing the Training/Educational Programs

The Committee recommends:

a) Dividing the implementation of the training/educational programs into two phases:

- *short-term staff development*
- *long-term training and education*

b) Appointing a Director of Staff Development (responsible to the Director of Family Court Services) whose responsibilities in training/education and continuing education would include:

- *negotiating credit and non-credit training and education contracts with Alberta universities (in the Faculties of Social Welfare, and Law, and their Continuing Education divisions), community colleges (Edmonton, Red Deer, and Calgary), and community resources (existing staff development departments in government, senior professional employees in the Departments of Social Services and Community Health, Attorney-General, and Solicitor General)*

- *negotiating with educational institutions for Family Court practica and joint faculty appointments*

- *establishing policies for assisted and unassisted educational leave, including bursaries and scholarships*

- *negotiating training sites so that any rural/urban problems of access are minimized*

- *establishing a library of publications, video-tapes, etc. to which Family Court counsellors have immediate access*

- *establishing the individual training and educational needs of staff*

- *training people with intake responsibilities, who are not Family Court social workers*

c) *That the short-term staff development phase be brief, (i.e. maximum of a week), followed by regular in-service sessions (i.e. 1/2 day per week for a year, or an equivalent arrangement).*

C. Benefits of the Training/Educational Programs

The Committee anticipates these advantages:

1. Availability of Family Court counsellors whose professional and experiential preparation which allows for transfer and employment mobility.

2. The educational training program improves the likelihood of receiving competent and constructive

recommendations from direct-service staff regarding administrative/policy/planning/service decisions.

3. Improved quality of service to clients.

D. Special Considerations Related to Training/Educational Programs

1. Duplication of effort by replicating educational resources within the Family Court Services structure should be avoided.

APPENDIX C

THE INSTITUTE OF LAW RESEARCH
AND REFORM

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April 14th, 1977.

R. W. Paisley, Esq., Q.C.,
Deputy Attorney General,
Madison Building,
9919 - 105th Street,
EDMONTON, Alberta,
T5K 2E8.

Dear Mr. Paisley:

Re: Protection of Children's Rights
The "Amicus Curiae"

We strongly recommend that for the short term the Attorney General assume the responsibility of making available to the Supreme Court, including local judges, in divorce and other matters involving the custody of children, and to the Surrogate Court in guardianship matters, the services of an "amicus curiae" as that term is used in Alberta, including the social psychiatric and sociological services which the amicus curiae has been making available to the court. More specifically we recommend:

1. That the Attorney General undertake the responsibility of providing the services of a lawyer to act as amicus curiae upon appointment by a judge or local judge of the Supreme Court or by a judge of the Surrogate Court. It appears to us that the service may be provided most efficiently through departmental solicitors, though it may be more efficient to retain private practitioners in areas in which there are no departmental solicitors stationed. We think that the work will be better done if it is concentrated in the hands of as few lawyers as possible so that those who do it will quickly acquire experience and sensitivity to the needs of the procedure and those involved in it. Provision should also be made, however, for an occasional case in which the court's view is that the qualifications of a particular private practitioner are required in a particular case.

2. That the Attorney General provide or arrange for such social, psychological and sociological services as the amicus curiae may properly require. Counsellors attached

to the Family Court, where available, are an obvious source of social services, and there is a unit of counsellors in the Edmonton Family Court which provides such services. The Child Guidance Clinics seem to us to be an obvious source of psychiatric services. However, where services are provided for by persons in government service it should be as part of their duties and not as special additional services provided by them personally in their own time. If special budgetary arrangements are necessary so that the services of persons employed by other departments of government can be made available without requiring personal sacrifice or interfering with their own duties, we think that such arrangements should be made.

3. That the amicus curiae advise the court of costs incurred so that the court will be able to exercise its discretion as to costs in the light of that information.

4. That budgetary provision be made for the provision of all services.

We make these specific recommendations on an interim basis only. We propose to make a general study of the protection of children's rights in court and expect to make a report and recommendations which we hope will assist in making final decisions. In the meantime, however, we think that the Attorney General should make formal provision for a service which has demonstrated its value, and should make provision for it in his budget for the next and succeeding fiscal years until decisions are made for the indefinite future.

I attach a memorandum setting out our reasons for these recommendations.

Yours very truly,

W.H. HURLBURT.

WHH:sr
Encl.

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M E M O R A N D U M

PROTECTION OF CHILDREN'S RIGHTS:
THE AMICUS CURIAE

1. Policy of the Law

The law recognizes that children must be cared for and nurtured, and in so doing founds itself upon one of the fundamental feelings of human nature as well as upon a vital public interest. It accordingly imposes upon the child's parents an obligation to maintain and care for the child. It assumes that the parents will perform their obligation properly until it is demonstrated that they are not doing so, at which point it provides for taking the child out of their hands and into the care of the state. It must also deal with the situation which arises when disharmony between the parents occurs, and does so by making provision for a decision to be made by a court as to how the child will be cared for.

Judges and local judges of the Supreme Court are charged with the responsibility of deciding as to the custody of the children upon divorce and in some other cases. Judges of the Surrogate Court make similar decisions in guardianship matters. The law is that a judge who makes such a decision should have regard to the best interests of the child; in other words, he must somehow identify the child's best interest and then make an order in accordance with it.

The judge may see both parents, but in a great many cases he will not. The parties may adduce evidence as to the suitability of one or both parents to have custody of the children, or access to the children, or they may not. The parents may be trying to advance the best interests of the child or they may not: in their bitterness against each other they may try to use the child and its custody as a weapon; or in making an agreement for divorce or maintenance which one of them is especially anxious to have, they may use the custody of the child as a

bargaining counter. It follows that the adversary process often will not provide enough information to enable a judge to make a well-informed decision, and that what information is provided is in many cases suspect, so that unless the judge has assistance available he will not be able to perform his function adequately.

This discussion is restricted to proceedings in the Supreme and District Courts. The interests of the children must also be cared for in Family Court proceedings involving custody, but the "amicus curiae" procedure with which this memorandum is primarily concerned has not been used there and other facilities have been relied upon.

2. Representation of Children in Other Places

The need for representation of the child's interest in some way is widely felt. Without referring to the extensive literature on the subject, we mention a resolution passed at the 1974 meeting of the International Association of Youth Magistrates attended by judges and magistrates from approximately 44 countries. It is as follows:

> "In any court proceedings where there is a conflict of interest between the parent(s) and the child, the child should be separately legally represented, if necessary at public expense."

We have not done research to see how children's interests are protected throughout the world, but information at hand shows that steps have been taken in England, the United States, Australia and New Zealand, and Canada, to provide some protection. In some places the court is charged with the duty of seeing that custody arrangements are made in the interests of the child, and in some of those places special services being available to the court to enable it to assess the arrangements. In other places the court is given power to appoint a lawyer to represent the interests of the child. Alternatively the court may be able to obtain a report from a social worker. In other places there is a state functionary outside the court, who may be called "Law Guardian" or "Official Guardian", whose duty it is to examine every case in which custody is involved, or special cases. In British Columbia, in the Unified Family Court Pilot Project there is a lawyer attached to the court itself, called a "Family Advocate" who intervenes where he considers it right to do so. While we are not now able to say which is the best system, nor whether one uniform system should be applied throughout Alberta and in every court, we are prepared to say that the existence of various provisions in so many different places shows that the need is there and should be met.

3. The Amicus Curiae in Custody Cases in Alberta

(1) History

In 1966 Mr. Justice M. E. Manning, in a custody dispute arising following a divorce, became conscious that there was a good deal of bitterness between the parents. He suggested to the lawyers for the parties that he would like to have a third lawyer appear whose interest would be only that of the two children, and characterized his request as one for the appointment of an "amicus curiae", or "friend of the court". Counsel for the parents acceded to the proposition, and Mr. Bruce Rawson, then a lawyer with the government, accepted the assignment and arranged for a child psychiatrist and a social worker to investigate the matter, with the result that an extensive report was made available to the court. This procedure was followed from time to time and was developed in a systematic way by Mr. Alexander Hogan, then Deputy Public Trustee, and now Director of Civil Litigation. It has since been followed in a great many cases. The amicus curiae is usually a lawyer in government service who has access to assistance by social workers, psychiatrists, and occasionally sociologists, as required.

(2) Description of Amicus Curiae Procedure

In our 1972 Working Paper on Family Courts we described the procedure as follows:

> "A procedure has been developed in the Supreme Court and used in cases where the bitter feelings of the parents have reached the point where they are not willing or able to give dispassionate consideration to the needs of the children. The procedure goes back to the order of Mr. Justice M. E. Manning in Woods v. Woods, 1966, No. 41784, and has been followed in some 85 cases, mostly in Edmonton. The procedure is most often adopted upon the initiative of the trial judge but apparently in some cases at least upon the agreement of counsel for the parties followed by a consent order. There being no published description of the procedure, we will describe it at some length.
>
> "The order appointing the amicus curiae is as follows:
>
> (1) It recites that it appears desirable and in the best interests of the children or the court, with the consent of counsel to request that an amicus curiae represent the infant and make an investigation and recommendation on the issues of custody and access.

(2) It recites that it is desirable to adjourn these issues until the investigation and recommendation have been conducted and completed, and orders accordingly.

(3) It appoints an amicus curiae 'for and on behalf of the infant children . . . ' and provides that as such amicus curiae he 'may conduct such investigations and employ such persons for the purposes thereof, and seek such expert assistance and guidance as he may deem necessary and that upon completion of such investigation he shall make a recommendation to the court on the issue of custody of the children and access thereto and in making such recommendation may call and tender any evidence he deems necessary subject to right of cross-examination, the paramount consideration to be the best interests of the children.'

"The amicus curiae is the lawyer. The first one appointed was Mr. Bruce Rawson, now a Deputy Minister of Health and Social Development. The great bulk of the appointments have been undertaken by Mr. Alexander Hogan, Deputy Public Trustee, in whose hands the procedure has developed to its present stage.

"The amicus curiae enlists the help of a trained social worker or counsellor, whose function is to conduct the detailed factual investigation and prepare a report. The amicus curiae also obtains the help of a psychiatrist. The psychiatrist will make use of the counsellor's report. He will make such inquiries as he thinks fit from interested persons such as parents or the new spouse of the parent claiming custody. He will consider any available agency reports and any available examinations for discovery if litigation has been involved. He will occasionally attend the home, though that is more often the function of the counsellor. The function of the psychiatrist is to formulate recommendations.

"The functions of the amicus curiae himself are the traditional lawyer's functions of providing structure, retaining his expert advisers, gathering together and putting in an appropriate form for presentation the facts and opinions made available by these procedures. The amicus curiae leads the evidence of the others but does not consider himself free to cross-examine.

> "It is possible for the amicus curiae to be authorized to bring the matter back if the parent to whom custody is awarded does not properly look after the child. There are procedural difficulties in the way, as he is not technically a party and his right to make an application or to initiate proceedings is in doubt. However, the matter can probably be brought back on the motion of the judge or of the other party."

While there have been some variations in the procedure and in the function of the amicus curiae since that description was written, we do not think that they affect the essence of what we are saying in this memorandum.

No funds have been made specifically available for the amicus curiae. The work of the amicus curiae himself has usually been done by a lawyer in the government service so that no cost is incurred for his services, though occasionally an outside lawyer has been appointed and in some cases the Attorney General has been able to find the money to pay his account. Most of the assistance by social workers has been provided by counsellors in the government service, and their expenses have been paid. Until fairly recently they did the work in addition to their regular duties but now in Edmonton a unit has been constituted which does the work as part of its normal duties. In many cases psychiatrists have done the work without pay or for small pay, and again, if they are in the government service, the work is done at least in part on their own time. The accounts of private psychiatrists have upon occasion been paid by the Attorney General's Department.

(3) Evaluation of the Procedure

We are satisfied that the procedure has been of great value. In the cases in which it has been used it has provided the court with independently obtained information, and at least one writer has found that it has had the result of resolving a substantial number of custody disputes. We have no doubt that the institution of the procedure was an innovative and creative act, and that, at least until something better is found, it should be available at the instance of judges and local judges of the Supreme Court and judges of the Surrogate Court dealing with guardianship matters.

The use of the amicus curiae, however, cannot really be described as a "system" because it has never been regularized and made available on a sufficiently orderly basis. It has had to depend too much on the good will of a number of dedicated people, mostly in the government service. For those reasons its use has been sporadic and has varied substantially from judge to judge and place to place, having been most

available in Edmonton, available to some extent in Calgary, and rarely elsewhere.

(4) Relation of Amicus Curiae to Judicial System

So far we have discussed the procedure in relation to its tangible value in particular cases. We should at this point stand back somewhat further and look at it in relation to the function of the amicus curiae in the court and in the legal system generally.

We do not propose to discuss the question whether the amicus curiae whom we have discussed fits within the traditional categories of amicus curiae. We do, however, think that the term "friend of the court" does describe his position. He is not a lawyer who is acting for the child in any usual sense; while he may well be able to perform a useful function in seeing that the child's true wishes are placed before the court, he is not in any way required to act on the child's instructions. His function is rather that of obtaining independent evidence for the use of the judge, though we do not think that he should be precluded from going on to test by cross-examination the evidence put forward by the litigants.

(5) Alternatives

There are other ways in which the same objective can be pursued. It is possible for a social worker or other professional to be asked by a judge to make a report. It would also be possible to set up a system under which a lawyer or other professional, known as a "Law Guardian" or "Family Advocate" is charged with the function of looking at cases as they go through the courts and intervening on the child's behalf when he considers it desirable to do so. Alternatively, lawyers in private practice could be assigned through a legal aid system or otherwise. We think that the ultimate choice of the means by which the court is to be assisted should be left until the general subject of representation of children's rights can be considered.

4. Costs

An important question is: who should pay the cost? There is an important philosophical question involved and we do not think that a definitive answer should be given until the views of all concerned have been canvassed. It can be forcefully argued, on the one hand, that our law and our society regard parents as responsible for meeting the needs of the child; that those needs include proper arrangements for custody; that the costs of the amicus curiae are a necessary part of the cost of making those arrangements; and that the whole procedure is made necessary by the breakdown of the parents' marriage. On the other hand, it may also be forcefully argued that it is the state which is intervening to

protect an interest separate and apart from the interest of the parents and that the parents should not be saddled with a cost which neither of them may have approved and which in their view may not only be unnecessary but be an invasion of their parental rights. We think that the situation should in the meantime be left fluid and that that can best be done by having the amicus curiae advise the court of any costs incurred so that the judge will have that information when he exercises his discretion as to costs.

5. Conclusion

We think that it is beyond doubt that some special provision should be made for the protection of the interests of children in at least some cases in which custody must be dealt with by the courts. We think it inescapable that the state, which in this case means the province, should accept the responsibility for doing so, and we will so recommend.

We do not think that final recommendations should be made on the information presently available. We think that final recommendations should await the results of a study which we propose to make of the general subject of the representation of children in court matters.

In the meantime, we are strongly of the opinion that the amicus curiae procedure which has developed in Alberta should be continued for the time being, and should be given institutional and budgetary recognition so that it may be followed on an orderly basis when a judge or local judge of the Supreme Court considers it desirable in a particular case. That involves:

(1) The assumption by the Attorney General for the time being of responsibility for making the services of the amicus curiae and other professionals available when called upon by a judge or local judge of the Supreme Court.

(2) The provision of a budget for the Attorney General.

(3) The assignment by the Attorney General of staff lawyers to undertake the work.

(4) Arrangements with other departments for the services of other professionals in the government service, with any necessary budgetary provisions.

(5) Arrangements for approval and payment of accounts of independent professionals where required.

ACKNOWLEDGEMENTS

The Institute acknowledges the continuing grant from the Alberta Law Foundation which, together with the funds provided by the Attorney-General and the University of Alberta, makes the Institute's work possible.

As in the case of Report 25, Family Law Administration: The Unified Family Court, the work on which this Report is based has its genesis in the work of the Law Society committee of which Stuart S. Purvis, Q.C. was chairman, and we refer to the remarks which we have about Mr. Purvis made in the acknowledgements attached to Report 25. We also refer to the remarks there made about the help we have received from other law reform bodies.

We have referred extensively in this Report to the report of the Social Services Committee which advised the Institute on court services, and we think that the importance of the Committee's work as a principal foundation for this Report is apparent in it, so that we need not refer to it further. We wish to record our sense of indebtedness to the Committee, the members of which were as follows:

(1) Walter Coombs (Chairman), Executive Director, Canadian Mental Health Association in Alberta;

(2) Rheal LeBlanc, Deputy Solicitor General, Province of Alberta;

(3) David Stolee, Deputy Minister, Alberta Social Services and Community Health, Province of Alberta;

(4) Margaret Donnelly, Director, Legal Research and Analysis, Department of the Attorney General, Province of Alberta;

(5) Professor Gayle James, Faculty of Social Welfare, University of Calgary, in Edmonton;

(6) Professor Richard Ramsay, Faculty of Social Welfare, University of Calgary;

(7) James Robb, then Director, Student Legal Services, Faculty of Law, University of Alberta;

(8) William Pepler, then of the legal staff, Institute of Law Research and Reform, University of Alberta.

It is unfortunately impossible for us to recognize here all those who gave time and help to the Social Services Committee and, through them, to us. They include staffs of various court services under the Departments of the Attorney-General and the Solicitor General and the Department of Social Services and Community Health, including the Edmonton Family Court Conciliation Service. They also include members of police forces in the province. We have mentioned some of them in the acknowledgements to Report 27, Matrimonial Support, but there are many others.

We should make particular reference here to the kindness and help of the British Columibia Family Court Pilot Project, and in particular of Alison Burnet and B. C. Vinge, the Director and Assistant Director; Flora Hogarth, Bergen Amren, and Judge Keenleyside. They made it possible for the Social Services Committee to understand the valuable work which the pilot project has done and to use the fruits of that work in the Committee's Report.