

AN EVALUATION OF ALBERTA'S *FAMILY LAW ACT*

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EXECUTIVE SUMMARY

Introduction

The Alberta *Family Law Act (FLA)* was enacted on October 1, 2005 in an effort to modernize, rationalize and consolidate Alberta family law, streamline court procedures, and provide a non-adversarial approach to resolving family conflict in the best interests of children and families. With funding from the Alberta Law Foundation, the Canadian Research Institute for Law and the Family (CRILF) conducted a two-year evaluation of the legislation in order to determine whether the procedural and substantive changes are fair, effective, and efficient.

The objectives of this study were to:

1. Develop a detailed evaluation framework, including measurement tools and instruments. CRILF worked with the Steering Committee to determine what was feasible in terms of data collection and measurement. The evaluation framework guided the remainder of the project;
2. Evaluate the impact of the procedural changes that have resulted from the *FLA*. A significant change under the *Family Law Act* was the streamlining of court procedures. The project examined the impact of this change on workload to see if the *Act* has been successful in its objectives of procedural effectiveness, efficiency, and accessibility;
3. Evaluate the impact of the substantive changes outlined in the *FLA*. Substantively, the *Family Law Act* deals with all aspects of family law in a non-divorce context. The *Act* recognizes changing social conditions and updates key legal concepts. It is important to assess whether the changes have been fair, effective, and efficient; and,
4. Inform recommendations to improve the effectiveness of the *FLA* and to fine tune provisions.

Methodology

The primary purpose of this project was to evaluate the impact of the procedural and substantive changes to family law in Alberta introduced by the *Family Law Act*, and inform recommendations for change. To achieve these ends, the project was divided into two phases: (1) a development phase, occurring from April 2007 to March 2008, producing a detailed evaluation framework, including measurement tools and instruments; and (2) an evaluation phase, occurring from April 2008 to March 2009, involving the implementation of the evaluation framework.

Research questions for this evaluation examined the impact of both the procedural and substantive changes introduced by the *FLA*. The following research questions were addressed:

1. How have procedural changes under the *FLA* impacted workload and human resources in Alberta's Provincial Court, Court of Queen's Bench, and Family Justice Services?
2. How has the use of alternative dispute resolution programs and processes impacted cases, processes and outcomes under the *FLA*?
3. How has the response process impacted procedures and outcomes under the *FLA*?
4. Have procedural changes under the *FLA* made the processes more efficient?
5. Have procedural changes under the *FLA* made processes simpler and more accessible for self-represented litigants (SRLs)?
6. Is the *FLA* effective in serving the best interests of children and families?
7. Have the substantive changes introduced by the *FLA* made family law more fair and effective?
8. Is the language of the *FLA* more appropriate, easier to understand, and more effective?

To answer the research questions, four research methodologies were utilized for the evaluation:

1. A legislative review, which examined the changes made to family law in Alberta with the enactment of the *FLA* and compared the *Act* with family law legislation in other jurisdictions. The strengths and weaknesses of the *Act* were highlighted and possible areas for change were identified;
2. A caseflow and outcomes analysis using data from JOIN (Justice Online Information Network), CASES (the Alberta Court of Queen's Bench database), and relevant family court programs and services;
3. A survey of professionals working with the *FLA* (i.e., judges, lawyers, court staff, Family Justice Services' staff); and
4. Interviews with self-represented litigants (SRLs) who have proceeded under the *FLA*.

Discussion

Alberta's *Family Law Act* was the response to the need for a simpler, more effective, efficient, and accessible provincial family law system, one that took into consideration the best interests of children and families, minimized the negative impact of family breakdown, and modernized Alberta family law. To achieve these ends, a

number of key procedural and substantive changes were introduced with the *Act*. It was the purpose of this evaluation to determine whether these changes improved family law in Alberta in the desired ways.

Family Law Procedure in Alberta

The evaluation set out to examine whether the new processes and procedures introduced with the *FLA* simplified family law in Alberta, improved accessibility for self-represented litigants, supported alternatives for resolving separation issues, and streamlined court procedures, providing for a more efficient, effective, and accessible provincial family law system. These factors were explored using analyses of caseflow and outcomes data, surveys of professionals, and interviews with self-represented litigants.

Overall, the data suggest that the *FLA* has resulted in an increased workload and human services demand for Provincial Court, Court of Queen's Bench and associated services (e.g., Family Justice Services). Trends illustrated by the caseflow data demonstrate an increase in the number of family law activity in the courts since the introduction of the *Family Law Act*, particularly for Provincial Court and its associated services (e.g., Family Justice Services Caseflow Conferencing, Mediation, etc.). Though Court of Queen's Bench has not seen the marked increase in *FLA* activity since the introduction of the *FLA*, the increase in caseflow through its associated dispute resolution services (i.e., CSR, DRO) suggest that parties may be settling some matters outside the court room. The Provincial Court data also suggest that an increasing number of individuals are proceeding under the *FLA* without legal representation. These trends indirectly point to an increasing demand for staff and resources in the services that support self-represented litigants. Information provided by professionals working with the *FLA* confirm these hypotheses, with a majority of professionals (particularly court clerks) stating that their workload had increased; only judges/justices were more likely to state that their workload had stayed the same. Though Alberta's substantial population growth may account for some of these increases, it is likely that greater family law jurisdiction for Alberta's Provincial Court as a result of the *FLA* and improved accessibility of the system for self-represented litigants are also causes.

In the spirit of supporting a more efficient and effective court process, procedures introduced with the *FLA* acknowledged the importance of dispute resolution programs and services, and information and supports for self-represented litigants. Though many of these options existed prior to the implementation of the *FLA*, initiatives such as Intake and Caseflow Management (Family Court Counsellor intake, Caseflow Conference), the Dispute Resolution Officer and Child Support Resolution Programs, Judicial Dispute Resolution, Duty Counsel, and others, assist many applications in reaching resolution prior to proceeding to the court room. As demonstrated by the program outcomes data in Chapter 4.0, the dispute resolution programs and services available in Provincial Court and Court of Queen's Bench are effective means of reaching resolution prior to the application proceeding to the court room (i.e., Docket Court or Chambers) or trial. The professionals surveyed confirm the effectiveness and procedural efficiency created by the availability of these programs and services. According to professionals, the greatest issues regarding these programs were that there are not enough options

available, and that they are often not available in all jurisdictions or both levels of court. Information provided by self-represented litigants also points to the effectiveness of dispute resolution options, indicating that these programs and services help them to reach resolution prior to proceeding to the court room. Sources of information such as Family Law Information Centres and Family Justice Services also proved to be important for self-represented litigants in that they improve understanding of court procedures and the options available to them. One of the few concerns expressed by self-represented litigants was that they often felt pressured to reach an agreement in dispute resolution (e.g., DRO, mediation) before they were ready to do so. Additionally, some self-represented litigants felt there needed to be more information regarding the options available. Thus, the findings from the evaluation clearly point to the importance of alternative dispute resolution programs and court supports in improving procedural effectiveness and efficiency under the *FLA*.

The extent to which efforts to streamline court procedures have been successful is somewhat unclear, with the evaluation producing mixed findings. A majority of professionals reported having experienced complications as a result of overlapping jurisdictions between Provincial Court and Court of Queen's Bench, expressing that confusion often arises among self-represented litigants regarding which court to proceed in, or proceedings on the same case may occur in both courts simultaneously. With regard to the Claim and Response process in particular, findings were also mixed. Aggregate data from Provincial Court and Court of Queen's Bench indicated that the response process is perhaps not used to the fullest extent it was intended, with a substantial number of orders requested in Claims not having Responses filed (despite having final orders granted). Though overall, professionals believed the Claim and Response process under the *FLA* is simpler and more efficient than the system under the previous legislation, many thought there were too many forms, and that the forms were too restrictive, redundant, and complicated, particularly for self-represented litigants who lack knowledge of the law. Further, though professionals expressed that the *FLA* procedures are more client focused, opinions differed as to whether it better served self-represented litigants, with judges/justices being quite positive and court administration staff being more negative. In contrast, self-represented litigants reported having little difficulty completing and filing their forms on their own, or had enough information and support to assist them if they had difficulty. Though a majority of professionals felt the time allotted for filing the Claim and Response forms was sufficient – particularly because adjournments are often granted without difficulty if need be – a majority of self-represented litigants (particularly applicants) felt there was not enough time. However, many also expressed frustration over the number of adjournments, and felt as though the other party could use adjournments to stall the process; some professionals also pointed to this as a problem. To them, this was not in the best interests of children.

With regard to court procedures specifically, self-represented litigants were generally positive about their experience, particularly with regard to the support and information they received from Family Justice Services' staff, Family Court Counsellors, and Duty Counsel. A large majority of self-represented litigants felt prepared for what they experienced in Docket Court, pointing to the likelihood that the supports available to them are enabling a more efficient process; this is particularly positive given the

number of self-represented litigants proceeding on family matters since the implementation of the *FLA*. However, given most of the self-represented litigants interviewed for the evaluation proceeded in Provincial Court, the experiences of those proceeding in Court of Queen's Bench remain relatively unknown.

Though the findings regarding the effectiveness and efficiency of *FLA* procedure are mixed, results from analyses of Provincial Court processing time data suggest that overall, the implementation of the *FLA* has resulted in a more efficient system, as the average time from the opening of a file to final order has steadily decreased.

Substantive Areas of the *Family Law Act*

The evaluation also examined the substantive changes to family law introduced by the *Family Law Act*. The legislative review and interviews with professionals contributed to this body of knowledge. The substantive changes introduced by the *FLA* intended to consolidate and modernize family law in Alberta, adopt a child-centred perspective to ensure the best interests of children in matters of separation, and reduce the financial and emotional costs to children and families to the greatest extent possible. The evaluation examined six main substantive areas of family law to determine whether the *FLA* was an improvement over the previous legislation. These included: best interests; guardianship; parenting orders; contact orders; child support; and spousal/adult interdependent partner (AIP) support.

Results from both the legislative review and the survey of professionals are clearly positive with regard to the consolidation of family law in Alberta. A majority of professionals felt this was clearly needed, with the legislative review pointing to the important difference that simplifying the law has made to Albertans. Overall, professionals were more positive about the substantive changes introduced by the *FLA* than the procedural changes.

With regard to best interests, the legislative review observed that although best interests were considered under the previous legislation, the *FLA* codified the best interests test, and in doing so, made more explicit the factors that must be considered and the contexts they must be considered in. Importantly, the *FLA* stipulated family violence as a factor that must be considered when determining the best interests of the child, making Alberta the first jurisdiction in Canada to do so. Professionals agreed that the *FLA*'s consideration of best interests serves to protect children, but also added that these issues have always been of paramount concern. Professionals recognized the benefit of explicitly listing best interests factors, but also stressed that certain factors need to be considered over others on a case-by-case basis. Overall, best interests considerations in the *FLA* have been a positive change.

Guardianship and parenting orders were also considered an important substantive area in the evaluation, given that the concepts of "parenting time" and "contact" replaced the concepts of "custody" and "access," the intent being to reduce the adversarial, "win-lose" nature of the previous regime. The *FLA* restructured the former regime that defaulted guardianship to the mother, stipulating that the mother and father are considered guardians unless they fall within the noted exceptions. The *FLA* also

enumerates all the powers, responsibilities, and entitlements of guardianship, which constitutes a simplification of the previous legislation. Overall, professionals were positive when asked about the *FLA*'s consideration of and provisions for guardianship, agreeing that it balances the interests of all parties involved, is easy to understand and apply, and assists the court in making guardianship and parenting orders because it is clear on what role a guardian is to take in a child's life. However, when considering the equal powers of guardians, some professionals felt that the term "joint guardianship" would be a simpler term to understand; some also suggested the need for clarification.

With regard to orders between guardians, the *FLA* adopted the concept of "parenting time" to replace "custody and access," resulting in a functional descriptive approach to parenting arrangements. The *FLA* established statutory presumptions for shared guardianship powers. Those guardians who cannot agree on how to exercise their powers, responsibilities, and entitlements of guardianship may apply for a parenting order that allocates parenting time, and guardianship powers and responsibilities. According to the professionals surveyed, though many expressed that the change in language was not necessarily an improvement (nor the problem), the provisions themselves provide for a flexible approach that is easy to understand and apply in practice. Most professionals agreed that this approach minimizes financial and emotional costs to families.

Accompanying the regime shift was the replacement of "access" with the concept of "contact." Under the *FLA*, "contact" applies to *non-guardians* who wish to have time with a child, including (but not limited to) grandparents, non-guardian parents, or persons standing in the place of a parent. Perhaps the biggest impact of this change was to grandparents, who in some cases have to seek leave of the court prior to filing an application for contact unless certain conditions are met: the guardians are the parents of the child and the guardians are living separate and apart or one of the guardians has died; and the grandparents' contact with the child has been interrupted by the separation of the guardians or the death of a guardian. Professionals expressed that self-represented litigants may have difficulty understanding what conditions must be met for an application for contact to proceed.

The final substantive areas explored by the evaluation were child support and spousal support. According to the legislative review, the *FLA* addressed the uncertainty regarding child support explicit in the previous legislation by clearly defining the parameters of child support obligations, including who constitutes a child for the purposes of support, who is obligated to pay, the circumstances under which an order can be made, and guidelines for determining the amount. The *FLA* also eliminated any distinction between the children of married and unmarried parents in relation to support. The obligation to support under the *FLA* is presumptive, in that parents automatically have an obligation to support their children in the event of a separation. Though the review was generally positive about the changes made by the *FLA*, one gap that was identified was that the *FLA* does not address the needs of vulnerable adult children. The opinions of professionals reflected this concern more generally, expressing that provisions for support of adult children need to be more clearly defined. Further, though professionals felt that provisions for child support clearly define the role of parents and

the definition of “child,” determining the payor’s appropriate level of income continues to be in dispute.

With regard to spousal support, the *FLA* simplified the previous legislation by replacing the terms “alimony,” “maintenance,” and “support” with a single concept of “support.” The *FLA* also extended the right to support to adult interdependent partners. According to the legislative review, this not only simplified the law but separated entitlement to support from the establishment of fault, assigning concrete factors for making an order for spousal or adult interdependent partner support. The *FLA* also made the establishment of support presumptive, providing that every spouse or adult interdependent partner is obligated to support the other, provided the need of one spouse or partner for support and the ability of the other spouse or partner to pay the support. Professionals generally agreed that the *FLA*’s provisions for spousal/adult interdependent partner support makes clear who may apply for an order and the conditions that must be met.

Overall, the evaluation suggests that the substantive changes to the *FLA* were fair, effective, and protected the best interests of children and families. Professionals also felt that the change in language reflects current thinking about children and families experiencing family breakdown, though the language is still relatively unfamiliar and open to interpretation at times. Many expressed that the concepts of “custody” and “access” are still considered relevant, which was also apparent in the interviews with self-represented litigants, who often continued to use the old concepts. Professionals also worried that the language may be difficult to understand for self-represented litigants; however, interviews with self-represented litigants suggested that this was not necessarily the case.

Conclusion and Recommendations

CRILF’s evaluation of Alberta’s *Family Law Act* suggests that, overall, the implementation of the legislation has been of great benefit to Albertans. The consolidation of the previous legislation has simplified family law in Alberta, making it more accessible for professionals and self-represented litigants alike. The procedural changes introduced with the legislation have improved the overall efficiency of the family law process, making it easier for self-represented litigants to proceed under the *FLA*, though opinions differ among professionals and self-represented litigants over the simplicity of the Claim and Response process. The introduction of services and supports and new forms of alternative dispute resolution, as well as the continued use of those which existed previous to the introduction of the *FLA*, has been of great benefit to improving the efficiency of the application process and outcomes for cases. Substantively, the *FLA* has made great strides in protecting the best interests of children and families, modernizing family law in Alberta and addressing important issues such as family violence.

Despite the overall improvements made by the implementation of the *Family Law Act*, a number of procedural and substantive recommendations emerged from the evaluation. These recommendations are summarized below:

Procedural Recommendations

- Results of the caseload and outcomes analysis, self-represented litigant interviews, and survey of professionals suggested the need for more services and supports for self-represented litigants and greater availability of alternative dispute resolution programs, particularly in areas other than Calgary and Edmonton. As the number of *FLA* applications, particularly by self-represented litigants, continues to increase, so does the need for related programs and services.
- The caseload analysis and survey of professionals also suggested an increased need for human resources in the courts, particularly given the increasing number of applications and the number of forms that are required to be processed.
- Professionals and self-represented litigants pointed to the need to reduce the number of adjournments, stating that prolonging the process is not in the best interests of children.
- Professionals suggested the need to address issues of overlapping jurisdictions between Provincial Court and Court of Queen's Bench.
- Professionals suggested that the number of mandatory forms be reduced, and that the use of the forms be optional.
- Professionals suggested that the form-driven process be changed so that forms provide more meaningful information to parties.
- Professionals suggested that forms be less restrictive and redundant.
- Self-represented litigants suggested the need for specific guidelines that outline court proceedings and associated processes, and more accessible services and information.
- Self-represented litigants also identified a desire for more choice in the use of alternative dispute resolution programs.

Substantive Recommendations

- The legislative review suggested that the case law is unclear regarding the application of the "fitness" test versus the "best interests" test in the context of the *FLA*. This might be addressed by adding a provision to the *FLA* that clarifies the circumstances under which the fitness test applies in contrast to the best interests test.

- The legislative review observed that the *FLA* states that the court shall take into consideration *only* the best interests of the child in all proceedings under Part 2 (s.18(1)); however, the guardianship and contact provisions under Part 2 direct the court to consider additional factors (s. 23(3), s. 35(4), s. 35(5)) other than the best interests of the child. Clarification of the inconsistency within the *FLA* regarding “sole consideration” of the best interests of the child is necessary.
- The survey of professionals suggested that clarification of guardianship provisions is necessary.
- The legislative review and survey of professionals suggested that clarification is needed regarding support of adult children. Professionals suggested that the needs of adult children and the responsibilities of parties be more clearly defined. The legislative review specifically identified a gap in support provisions for vulnerable adult children with special needs. The review suggested that two options be considered: (1) whether the scope of the child support provision should be broadened to include dependent adult children to a specified or unspecified age; or (2) whether a general support provision, discretionary or not, should be adopted providing for the support of dependent adults.

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1.0 INTRODUCTION

1.1 Background

Family law has been inherently complicated in Alberta. Not only are the issues dealt with sensitive in nature, but the processes to deal with the issues have also been challenging. Historically, there has been a federal-provincial jurisdictional distinction; some issues were dealt with in Court of Queen's Bench, while others were dealt with in Provincial Court. This caused much confusion and frustration among members of the public.¹

In addition to procedural issues, there were also problems with Alberta's family law statutes. Various pieces of legislation addressed family law cases, but there were many inconsistencies and overlap among provisions. By the early 1990s, Alberta Justice realized that family law reform was necessary. The Alberta Law Reform Institute was contracted by Alberta Justice to address these shortcomings in provincial family law. They worked to recommend a sound legislative framework that would "modernize, rationalize, and consolidate Alberta family law."²

The *Family Law Act (FLA)* came into force on October 1, 2005 to address non-divorce matters in Alberta family law. It replaced a number of pieces of legislation addressing family law issues in the past, including:

- the *Domestic Relations Act*;
- the *Parentage and Maintenance Act*;
- the *Maintenance Order Act*;
- family law provisions under the *Provincial Court Act*; and
- private guardianship provisions under the *Child, Youth and Family Enhancement Act (CYFEA)* when the Director is not involved.

The *Act* was intended to improve the family law system in Alberta in a number of ways, including:

- Simplifying the law;
- Improving accessibility for all, particularly self-represented litigants;
- Supporting non-adversarial approaches to resolving family conflict in the best interests of children and families;

¹ Christopher, Michelle, C. (2006). Alberta's New *Family Law Act*. *LawNow*, June/July, p. 32-34.

² Alberta Law Reform Institute (2004). *Family Law Project: The Conclusion*. Final Report No. 93. Edmonton, Alberta: Alberta Law Reform Institute.

- Supporting alternatives to court for resolving issues; and
- Streamlining court procedures so that Provincial Court and Court of Queen’s Bench share the ability to hear most matters under the *Act* and follow the same application forms and procedures.³

Substantively, the *FLA* also updated the language of family law in Alberta, replacing concepts of “custody” and “access” with “guardianship,” “parenting time,” and “contact.” Further, while the *Act* addressed many family law issues, there were a number of specific substantive areas where fundamental change took place. These include:

1. The Best Interests of the Child

The *Family Law Act* takes a child-centered perspective, specifying the courts’ commitment to the best interests of the child when making decisions. The court must consider a number of factors to ensure the greatest possible protection of the child’s physical, psychological, and emotional safety.

2. Parenting Orders

Parenting Orders were implemented (replacing Custody and Access Orders for guardians), which provide greater flexibility by breaking down time and specific responsibilities between parents. This is intended to build a parenting system that reduces the financial and emotional costs to children and families.

3. Guardianship

The *Family Law Act* replaced the former practice of defaulting guardianship to the mother with the practice of defaulting guardianship to both parents *unless* the court provides otherwise. Both guardians now continue to have all the responsibilities and powers of guardianship after a separation until there is an agreement between the parties, or a court order which stipulates otherwise.

4. Contact Orders

Under the *Family Law Act*, Contact Orders define how any person other than a guardian, such as non-guardian parents and grandparents, spend time with children. Grandparent access orders, formerly provided for under the previous legislative framework, no longer exist under the *FLA*. Whereas grandparents could previously apply for an access order regardless of the family circumstances, the *FLA* now stipulates that grandparents wanting contact in families that are intact or where the guardians of the child are not the parents must seek leave of the court, as would any other third party.

³ Alberta Justice. *Alberta’s Family Law Act: An Overview*. Online: <http://www.justice.gov.ab.ca/home/>.

5. Child Support

In 1997, Canada implemented the federal Child Support Guidelines, which improved the way child support was determined, taxed, and maintained, and ensured that cases in similar circumstances would be treated in a similar fashion. Alberta's child support guidelines under the *Family Law Act* are modeled on the federal legislation.

6. Adult Interdependent Relationships

The *Family Law Act* recognizes the changing social conditions of our society. Not only does it ensure that children of unmarried or separated parents are treated no differently than those whose parents are undergoing divorce, it also includes provisions for financial support of adult interdependent partners. Guardianship, support, parenting, and contact orders for children of adult interdependent partners are also addressed.

1.2 Purpose of the Project

Though a number of procedural and substantive changes have been made to family law in Alberta with the introduction of the *Family Law Act*, it is unknown as to whether these changes have had the desired effect. While the *FLA* contained no specific provision for an evaluation, the benefit of identifying whether the legislation was meeting its objectives was widely recognized. Thus, the purpose of this project was to evaluate Alberta's *Family Law Act* to determine whether the procedural changes have led to a more effective, efficient, and accessible family law system in Alberta, and whether the substantive changes to such areas as guardianship, parenting, contact, and support are fair and effective. With funding from the Alberta Law Foundation, the Canadian Research Institute for Law and the Family (CRILF) conducted this evaluation over two years.

This evaluation began approximately three years after the *FLA* came into force. At that time it was recognized that amendments to the *Act* should be considered and it was felt that the findings of the evaluation would contribute to and reform the process of making appropriate amendments. Both Alberta Justice and the Alberta Law Reform Institute were in support of this project and provided representatives for the project Steering Committee.

1.3 Objectives of the Project

The objectives of this study were to:

1. Develop a detailed evaluation framework, including measurement tools and instruments. CRILF worked with the Steering Committee to determine what was feasible in terms of data collection and measurement. The evaluation framework guided the remainder of the project;

2. Evaluate the impact of the procedural changes that have resulted from the *FLA*. A significant change under the *Family Law Act* was the streamlining of court procedures. The project examined the impact of this change to determine whether the *Act* has been successful in its objectives of procedural effectiveness, efficiency, and accessibility;
3. Evaluate the impact of the substantive changes outlined in the *FLA*. Substantively, the *Family Law Act* deals with all aspects of family law in a non-divorce context. The *Act* recognizes changing social conditions and updates key legal concepts. It is important to assess whether the changes have been fair, effective, and efficient; and
4. Inform recommendations to improve the effectiveness of the *FLA* and to fine tune provisions.

1.4 Organization of the Report

This report is organized into seven chapters. Chapter 2.0 outlines the methodology used in the evaluation. Chapter 3.0 provides a summary of a legislative review which examined the changes made to family law in a number of key substantive areas and how the *FLA* compares to legislation in other jurisdictions. Chapter 4.0 examines the impact that the *FLA* has had on caseload through the family law system in Alberta. Chapter 5.0 discusses the findings from a survey conducted to obtain the opinions and experiences of relevant professionals working with the *FLA*, along with their recommendations for change. Chapter 6.0 presents the findings from interviews with self-represented litigants who have had experience with the *FLA*, discussing their opinions and experiences as they proceeded through the Claim and Response process. Finally, Chapter 7.0 summarizes the results of the study, and discusses the implications of these findings.

2.0 METHODOLOGY

2.1 Research Design

As discussed in the previous chapter, the primary purpose of this project was to evaluate the impact of the procedural and substantive changes to family law in Alberta introduced by the *Family Law Act*, and inform recommendations for change. To achieve these ends, the project was divided into two phases: (1) a development phase, occurring from April 2007 to March 2008, producing a detailed evaluation framework, including measurement tools and instruments; and (2) an evaluation phase, occurring from April 2008 to March 2009, which involved the implementation of the evaluation framework. Four main research activities composed the evaluation phase:

1. A legislative review, which examined the changes made to family law in Alberta with the introduction of the *Act* and compared the *FLA* with family law legislation in other jurisdictions. The strengths and weaknesses of the *Act* were highlighted and possible areas for change were identified;
2. An aggregate analysis of cases dealt with under the *FLA* using data from JOIN (Justice Online Information Network), CASES (the Alberta Court of Queen's Bench database), and relevant programs and services;
3. A survey of professionals working with the *FLA* (i.e., judges, lawyers, court staff, Family Justice Services' staff); and
4. Interviews with self-represented litigants (SRLs) who have proceeded under the *FLA*.

2.1.1 Research Questions

Research questions for this evaluation examined the impact of both the procedural and substantive changes introduced by the *FLA*. The following research questions were addressed:

1. How have procedural changes under the *FLA* impacted workload and human resources in Alberta's Provincial Court, Court of Queen's Bench, and Family Justice Services?
2. How has the use of alternative dispute resolution programs and processes impacted cases, processes, and outcomes under the *FLA*?
3. How has the response process impacted procedures and outcomes under the *FLA*?
4. Have procedural changes under the *FLA* made the processes more efficient?

5. Have procedural changes under the *FLA* made processes simpler and more accessible for self-represented litigants (SRLs)?
6. Is the *FLA* effective in serving the best interests of children and families?
7. Have the substantive changes introduced by the *FLA* made family law more fair and effective?
8. Is the language of the *FLA* more appropriate, easier to understand, and more effective?

2.2 Legislative Review

The legislative review produced a very comprehensive and detailed analysis. The review addressed six key substantive areas of the *FLA*: the best interests test, guardianship, parenting orders, contact orders, child support, and spousal/adult interdependent partner support. The former legislation (replaced by the *FLA*) was examined and key changes to these substantive areas introduced by the *FLA* were identified. Further, the *FLA* was compared to relevant legislation in other jurisdictions. A supplementary Case Law Review was also conducted, examining relevant case law to December 31, 2007. Issues were identified throughout the analysis and, where appropriate, recommendations for reform were made.⁴

From the full legislative review, a summary was produced in order to make the material more accessible and user-friendly. The summary of the legislative review is presented in Chapter 3.0.

2.3 Caseflow and Outcomes Analyses

In order to assess the overall impact of the *FLA* on Alberta's family law system, two major research tasks were completed. First, data regarding the activities of both the Court of Queen's Bench and Alberta Provincial Court were collected and analyzed to examine the caseflow (i.e., number of cases processed over time.) Secondly, outcome data (i.e., case resolutions) were collected and analyzed to examine the effectiveness of the alternative dispute resolution programs and services. The findings from these analyses address the following evaluation questions:

- How have the procedural changes under the *FLA* impacted workload and human resources in Alberta's Provincial Court, Court of Queen's Bench, and Family Justice Services?
- How has the use of alternative dispute resolution programs and processes impacted cases, processes, and outcomes under the *FLA*?

⁴ See Pearson, S. (2008). "Alberta's *Family Law Act*: A Legislative Review." Prepared for the Canadian Research Institute for Law and the Family (www.ucalgary.ca/~criif).

- How has the response process impacted procedures and outcomes under the *FLA*?

2.3.1 Data Sources

Quantitative data collection began during the development phase and was completed in the evaluation phase. Data were obtained primarily in cooperation with Alberta Court Services and Alberta Family Justice Services. The data sources included: the Alberta Court of Queen's Bench database (CASES); the Alberta Provincial Court's Justice Online Information Network (JOIN); Alberta Family Justice Services' Caseflow Conferencing, Family Court Counsellor, and Mediation programs, the Alberta Family Law Information Centre (FLIC), the Judicial Dispute Resolution program, and the Dispute Resolution Officer (Calgary) and Child Support Resolution Officer (Edmonton) programs. To examine the impact of the *FLA* on caseflow, CRILF attempted to obtain data for two years pre- and two years after enactment of the *FLA*. However, this was not always possible due to missing and incomplete data.

2.3.2 Data Analysis Strategy

Three main data analyses were used. First, to determine the overall impact of the *FLA* on workload and human resources in Provincial Court, Court of Queen's Bench, and relevant alternative dispute resolution programs and services, a caseflow analysis pre- (where possible) and post-enactment of the *FLA* was conducted. The caseflow analysis examined the number of applications filed by type and level of court, the number of applications/individuals proceeding through dispute resolution processes and programs (e.g., Caseflow Conferencing, Mediation, Dispute Resolution Officer and Child Support Resolution Officer Programs, Family Court Counsellor intake, etc.), and, where possible, the number of self-represented litigants proceeding under the *FLA*.

Second, dispute resolution service and program data were analyzed descriptively to determine how the use of these programs and processes impacted cases, processes, and outcomes under the *FLA*. Specifically, the analysis examined the resolution rate of those cases proceeding in alternative dispute resolution (e.g., Caseflow Conferencing, Mediation, etc.).

Third, the impact of the response process on outcomes under the *FLA* was examined by descriptively analyzing the number of Responses filed in Provincial Court and Court of Queen's Bench, and, where possible, the processing time for *FLA* cases. The results of these quantitative analyses are presented in Chapter 4.0.

2.3.3 Limitations

There were several limitations to the quantitative analysis, primarily due to the nature of the data available. First, the datasets provided to CRILF from the JOIN and CASES databases did not contain the same information; where the CASES data provided information on all aspects of *FLA* procedure (Claims, Statements, Responses, Reply Statements, Respondent Statements), the JOIN data did not provide data on *FLA* Claims, therefore impacting the comparability of the two courts. Additionally, processing

time could be computed from the Provincial Court data, but similar data were not available for the Court of Queen's Bench. Second, the JOIN and CASES data provided did not contain unique identifiers; therefore, the researchers could only examine the response process and family law case outcomes on an aggregate level. Third, data indicators required by the evaluation framework were often available in some data sources but not in others. Similarly, the time spans of available data varied from each data source (some even had gaps with no existing data), which created difficulties in examining and comparing historical trends. Finally, changes in data recording methods and inconsistent data recording practices also created challenges for data analysis.

2.4 Survey of Professionals

The purpose of the survey of professionals was to examine the opinions of professionals who have direct experience with the *Act* and provide information about its effectiveness, efficiency, fairness, and accessibility. The following research questions were addressed through the survey of professionals:

- How has the response process impacted procedures and outcomes under the *FLA*?
- Have procedural changes under the *FLA* made the processes more efficient?
- Is the *FLA* effective in serving the best interests of children and families?
- Have the substantive changes under the *FLA* made it fairer and more effective?
- Is the language of the *FLA* more appropriate, easier to understand, and more effective?

2.4.1 Participants

The CRILF research team, with guidance from the Steering Committee, identified a number of key professional groups that had direct experience with the *FLA*. These groups included Provincial Court judges, Court of Queen's Bench justices, family lawyers, mediators, dispute resolution officers, child support resolution officers, mental health professionals, First Nations Legal Services staff, Family Justice Services' staff (e.g., Family Court Counsellors, Caseflow Coordinators, etc.), conflict resolution (e.g., PAS, FOCIS, etc.) instructors, judicial clerks, and court administrators. Judges and justices were identified with the help of Alberta Justice. The remaining respondents were identified in consultation with Family Justice Services, along with the use of the Alberta Legal Telephone Directory, and online directories for relevant professional, government, and non-governmental organizations.

2.4.2 Data Source

The professionals' survey (see Appendix A) was developed by CRILF researchers in consultation with the Steering Committee. A combination of open- and closed-ended questions was used to question respondents regarding their knowledge of

previous family law legislation in Alberta, the efficiency, ease of use, and effectiveness of the family law system under the *FLA*, key substantive areas of the *FLA*, the language of the *FLA*, and overall experiences and recommendations.

The surveys were sent in three different waves. In the first wave, distributed on September 2, 2008, e-mail surveys were sent to a total of 609 lawyers, mediators, Family Justice Services' staff, social services and mental health professionals, dispute resolution and child support resolution officers, and conflict resolution instructors. A total of 90 were returned as undeliverable, and 4 respondents declined to participate, leaving a final population of 515 respondents. A total of 56 completed surveys were returned resulting in a response rate of 10.9%.

The second wave, distributed in late October 2008, was sent to Provincial Court judges and Court of Queen's Bench justices. For this wave, the research team opted to use hard copy surveys given past experience that suggested paper surveys resulted in a better response rate for this population. Surveys were sent to a contact at Alberta Justice, who coordinated the distribution of surveys to all family court judges and justices in the province. Judges and justices were asked to complete the surveys and return them to CRILF in the self-addressed envelope provided. A total of 142 surveys were distributed, 81 to Court of Queen's Bench justices and 61 to Provincial Court judges. A total of 48 completed surveys were returned, resulting in a response rate of 33.8%.

Finally, a third wave of surveys was sent on October 29, 2008 to judicial clerks and court administrators. A total of 48 completed surveys were returned.

Overall, CRILF received 152 completed professional surveys. Surveys were coded and the quantitative data were entered into SPSS (Statistical Program for the Social Sciences).

2.4.3 Data Analysis Strategy

Quantitative survey data were analyzed descriptively using SPSS with the goal of examining the impact of the *FLA* from the perspective of professionals working with the *Act*. Some analyses were conducted by professional group to determine possible differences in experience and opinion. Where appropriate, qualitative data were used to expand on the quantitative results. Findings from the survey of professionals are reported in Chapter 5.0.

2.4.4 Limitations

A few limitations regarding the survey of professionals are important to note. Following the distribution of the first wave of e-mail surveys, CRILF learned that Alberta Justice was in the midst of a change of e-mail domain names, which likely contributed to the number of undeliverable emails and possibly the low response rate. Though CRILF attempted to obtain correct e-mail addresses, this was not possible in all cases.

Second, to improve the response rate, CRILF obtained the names and contact information for as many relevant professionals working with the *FLA* as possible. It was not possible to conduct sampling proportionally, therefore, responses from each professional group differ quite substantially, affecting comparability.

Finally, given the third wave of surveys, sent to judicial clerks and court administrators, was distributed by Family Justice Services, there was no way to effectively track the response rate. Further, the fact that Family Justice Services distributed the surveys could have meant that individuals were more likely to respond. In the end, a large number of completed surveys were received from judicial clerks and court administrators (n=48).

2.5 Self-represented Litigant Interviews

Telephone interviews with self-represented litigants were conducted to gain insight into the simplicity, accessibility, fairness, and efficiency of the *FLA* for those proceeding without legal counsel. The following research questions were addressed with the self-represented litigant interviews:

- How has the response process impacted procedures and outcomes under the *FLA*?
- Have procedural changes under the *FLA* made processes simpler and more accessible for self-represented litigants?
- Is the language of the *FLA* more appropriate, easier to understand, and more effective?

2.5.1 Participants

Participants chosen for the interviews were individuals who had proceeded under the *FLA* and who had experience at various stages in the family law process. To obtain access to these participants, CRILF researchers supplied Family Justice Services in Calgary, Edmonton, and the Region with study information packages. Family Justice Services then supplied these packages to their staff, mediators, Caseflow Coordinators, Family Law Information Centre staff, and Family Court Registry staff, who were asked to provide self-represented individuals who were proceeding under the *FLA* with an information package (see Appendix B). The information package contained an information letter outlining the purpose of the project, their role and rights as research participants, the steps they should take if they were interested in participating, and a contact information sheet. If a self-represented litigant (SRL) was interested in participating in the study, they were asked to complete the contact information sheet with their name, phone number, and an appropriate time of day to be contacted, place the contact sheet in the envelope provided and return it to the person from whom they received the package; packages were later forwarded to CRILF. SRL recruitment occurred over a four-month period from July 2008 to October 2008.

Once the contact information sheets were received by CRILF, a researcher contacted each interested individual to arrange a time to conduct the interview. The researcher would attempt to contact the potential participant during the time they specified on their submitted contact information sheet in order to set a designated time for an interview or to proceed with the interview at that time. If the potential litigant was unavailable or unreachable during this designated time, a limit of five attempts was set in order to schedule, reschedule, or conduct the interview. In order to ensure confidentiality, if contact was made with someone other than the intended potential participant, the interviewer requested to speak with the desired participant; if they were not available, the interviewer asked for an appropriate time to call back. The interviewer would often state that the call was regarding an interview the individual was interested in participating in, but no other information regarding the study was divulged to anyone other than the intended potential participant.

Table 2.1 outlines the call record. A total of 64 contact information sheets were obtained from Calgary (n=35), Edmonton (n=12), and the Region (n=17). A total of 33 interviews were completed out of 58 eligible participants, resulting in a response rate of 56.9%. The refusal rate was only 8.1% (n=3).

Table 2.1
Call Record for Self-represented Litigant Telephone Interviews

Outcome	Interviews	
	n	%
Total number attempted	64	100.0
Not in service/out of service area	3	4.7
Litigant not at this number	2	3.1
Total eligible numbers	59	92.2
Answering machines	18	28.1
Eligible Litigant not available	4	6.3
Total asked	37	57.8
Litigant/household refusal	3	4.7
Disqualified/have not had family law matter	1	1.6
Completed Interviews	33	51.6
Refusal rate = 3/37	--	8.1
Response rate = 33/58	--	56.9

2.5.2 Data Source

A telephone interview protocol (see Appendix C) was developed by CRILF researchers in consultation with the Steering Committee. A combination of open- and closed-ended questions was used, covering several main topic areas: demographic information; programs and services (e.g., Family Justice Service, Family Law Information Centre; Parenting After Separation; Focus on Communication in Separation; Mediation); access to information relating to the *FLA*; the response process for applicants (e.g., filing Claim and Statement forms); the response process for respondents (e.g., filing Response and Reply Statement forms); court procedures and processes in Provincial Court (e.g., Family Justice Services, Caseflow Conferences,

Docket Court, Trials) and Court of Queen's Bench (e.g., Duty Counsel, Court of Queen's Bench Chambers, Hearings); and overall experiences (e.g., accessibility, fairness, efficiency). Questions asked for the opinions and experiences of SRLs in order to determine whether the *FLA* was fair, effective, accessible, and efficient for SRLs.

One specially trained researcher conducted all of the interviews. To ensure consistency with each participant, the interview procedure was standardized before the researcher began conducting interviews. The interview schedule was successfully pre-tested by the interviewer on one SRL, who was referred to CRILF by Family Justice Services in August 2008. Interviews were conducted by telephone from August 2008 to November 2008. Questions were asked from the interview schedule; however, at times, participants were probed for elaboration.

2.5.3 Data Analysis Strategy

Participants' responses were recorded into an electronic interview schedule, later reviewed and transcribed. Open-ended responses were coded and data were entered into an SPSS database. Analysis of the quantitative data was conducted descriptively, with the goal of examining whether the *FLA* is accessible, fair, efficient and effective for SRLs proceeding through the Alberta family court system. Where appropriate, qualitative data were used to expand on quantitative findings. The results of the self-represented litigant interviews are reported in Chapter 6.0.

2.5.4 Limitations

A few limitations regarding the SRL interviews are worthy of note. With regard to the sample size, 300 information packages were distributed to Family Registries and Family Justice Service teams in Calgary (n=100), Edmonton (n=100), and the Region (n=100). Of those packages, only 64 SRLs returned contact information forms, and of those, CRILF was able to contact 37 potential participants. While the response rate was relatively high, the number of potential interview subjects was lower than expected.

With regard to the characteristics of the sample, a majority of the litigants were solely an applicant (n=27) and/or had proceeded in the Provincial Court system (n=28). Comments made by interviewed applicants suggest that respondents rarely show up for their court date, which could indicate why there were few respondents in the sample of completed interviews. However, there are several other possibilities, such as the respondent retaining a lawyer, not having enough time to respond, or the respondent attempting to take their case to another court. The higher number of SRLs from the Provincial Court system reflects an overall tendency for more *FLA* applications from SRLs to proceed in that level of court.

3.0 LEGISLATIVE REVIEW SUMMARY

The *Family Law Act (FLA)*, which came into force October 1, 2005, replaced the previous legislative framework in Alberta for dealing with non-divorce related family disputes. The legislative framework was complex and consisted of several statutes including the *Domestic Relations Act* (R.S.A. 2000, c.D-14), the *Provincial Court Act* (R.S.A. 2000, c.P-31), the *Parentage and Maintenance Act* (R.S.A. 2000, c.P-1), the *Maintenance Order Act* (R.S.A. 2000, c.M-2), and the *Child, Youth and Family Enhancement Act* (R.S.A. 2000, c.C-12). In addition to multiple pieces of legislation, there was often more than one legislative provision available to achieve the same remedy. In an effort to simplify, clarify, and update the law, the *Family Law Act* was enacted to replace all the provisions in those Acts relating to private custody, access, guardianship, and child maintenance, and spousal support, maintenance, and alimony, to the extent that the matters were within the jurisdiction of the province. The purpose of this legislative review is to examine six areas of the *FLA*: the best interests test, guardianship, parenting orders, contact orders, child support, and spousal/adult interdependent partner (AIP) support. The review analyzes the substantive differences between the pre- and post-*FLA* era and compares the *FLA* treatment of the six areas to the legislative treatment of those areas in other jurisdictions. Issues are identified throughout the analysis and, where appropriate, recommendations for reform are made.

3.1 Best Interests

The standard of “best interests” that is commonly used for determining applications involving children in family law disputes was examined. The application of the best interests test under the *FLA* is not dramatically different than it was under the former legislative framework, although the *FLA* is more explicit in its treatment of the best interests test by specifying the scope of application and listing the factors that must be considered.

3.1.1 Best Interests Test Versus Fitness Test

One issue that arises in relation to the best interests test under the *FLA* is the relationship between the best interests test and the fitness test. The “fitness test” is a higher threshold test that is sometimes applied by the courts when an application for custody and/or guardianship involves the unseating of an existing guardian and/or custodian. Case law has previously clarified the precise application of the fitness standard (see *D.(W.) v. P.(G.)* [1984] A.J. No. 825 (Alta. C.A.)), but the application of this test in the context of the *FLA* is confounded by other corollary issues. For instance, *D.(W.) v. P.(G.)* appears to suggest that the fitness test should be applied to any application for guardianship by a legal stranger attempting to wrest care of a child from an existing guardian. However, there is uncertainty as to who would be a “legal stranger” for the purpose of guardianship applications under the *FLA*. Would the fitness test apply to all applications for guardianship by a legal stranger, or just the applications that would result in the termination of the existing guardian? As a result of this uncertainty, this review suggests that the *FLA* adopt a provision that clarifies the circumstances under which the fitness test is applicable.

3.1.2 Best Interests – Sole Consideration or Paramount Consideration?

Some jurisdictions characterize the best interests as the “sole” consideration, meaning the *only* factor to be considered, and others characterize it as the “paramount” consideration, meaning the *primary* factor to be considered. Functionally speaking the outcome is the same. For instance, the *FLA* provides that best interests are the sole consideration and goes on to list the specific factors that the court must consider in assessing best interests, while other jurisdictions (*Family Relations Act*, R.S.B.C. 1996, Chapter 128, s. 24(10)) stipulate best interests as the paramount consideration, and list the additional factors the court must consider.

In spite of s. 18(1) of the *FLA*, which provides that the best interests are the “only” consideration, there are a number of specific provisions in the *FLA* which direct the court to consider the best interest of the child as one of several factors. For instance, the provision of the *FLA* dealing with guardianship applications provides that the court shall consider three factors in hearing an application for guardianship: (1) the suitability of the proposed guardian; (2) the fitness of the proposed guardian; and (3) the best interests of the child (*FLA*, s. 23(3)). Additionally, when considering whether to grant leave to apply for a contact order, the court is required to consider the significance of the relationship between the child and the applicant and the necessity of making the order to facilitate contact (*FLA*, s. 35(4)). Then, before making a contact order, the court must satisfy itself of three things: (1) that the contact is in the child’s best interest; (2) that the child’s health will be jeopardized if contact is denied; and (3) that the guardian’s denial of contact with the child is unreasonable (*FLA*, s. 35(5)).

Thus, while s. 18 of the *FLA* states that the best interests are the sole consideration, other provisions of the *FLA* suggest otherwise, giving rise to some uncertainty and confusion. To that end, this review suggests clarifying the *FLA* as to the role of the best interests test.

3.1.3 Comparison of Best Interests Across Canada

The meaning and application of the best interests test across jurisdictions was examined. With a few notable exceptions, the best interests test, its application, scope and definition are largely similar throughout Canada.

There is one notable substantive difference between the best interests test under the *FLA* and the best interests test in other jurisdictions, namely the explicit inclusion of family violence as a factor to be considered. Section 18 of the *FLA* specifies that family violence shall be considered, including its impact on: the safety of the child and other family and household members; the child’s general well-being; the ability of the person engaged in the family violence to care for and meet the needs of the child; and the appropriateness of making an order that would require the guardians to cooperate on issues affecting the child (s. 18(2)(vi)). Section 18(3) goes on to define family violence as behaviour by a family or household member causing or attempting to cause physical harm to the child or another family member or household member, including forced confinement or sexual abuse, or causing the child or another family or household

member to reasonably fear for his/her safety or that of another person. This section also excludes from the definition of family violence the use of force against a child as a means of correction, provided the force does not exceed what is reasonable under the circumstances, or acts of self protection or protection of another person.

While other jurisdictions specify limited consideration of past conduct (see for instance the *Divorce Act*, R.S. 1985, c.3 (2nd Supp.), *Family Relations Act*, R.S.B.C. 1996, Chapter 128, and *Children's Law Reform Act*, R.S.O. 1990, c.C.12), none list family violence as a factor that *must* be considered as part of the best interests analysis. That being said, Ontario does authorize consideration of family violence but only in the context of past conduct and only if relevant to the ability of the person to parent (Ontario *Children's Law Reform Act*, s. 24(3)(a)).

Another factor worthy of comparison is the presumption of maximum contact. The *Divorce Act* is unique in its express statement that maximum contact with both parents is in the best interests of the child. In comparison, most other statutes simply acknowledge that relationships with both parents/guardians are an important consideration in determining the best interests of the child. For instance, the best interests definition in s. 18 of the *FLA* directs the court to consider the benefit to the child of developing and maintaining meaningful relationships with each guardian or proposed guardian (s. 18(2)(b)(ix)), but does not go so far as to establish a presumption regarding contact. That being said, the courts have interpreted a *de facto* presumption of contact as part of the best interests analysis under the *FLA* for the purpose of contact order applications by individuals standing in the place of a parent (see *H.(D.W.) v. R.(D.J.)* 2007 ABCA 57).

3.2 Guardianship

3.2.1 The Meaning of Guardianship in Alberta

Under the *FLA* the concept of “guardianship” was retained while “custody” (and its counterpart “access”) was eliminated from the lexicon of legal statuses. Alberta’s guardianship regime is unique because the concept of “guardianship” was – and is – substantively distinct from the concept of “custody.” This stands in contrast to most other jurisdictions where the concept of “custody” is used, rather than of the concept of “guardianship.”

In spite of the elimination of the concept of “custody” from the legislative framework in Alberta, the nature of guardianship pre-*FLA* and post-*FLA* has not changed markedly. The *FLA* is unique, however, in that it explicitly defines and lists the powers, responsibilities and entitlements of guardianship, whereas the previous legislative framework was largely silent about the nature of guardianship. The consolidation and enumeration of the powers and responsibilities of guardians in one piece of legislation constitutes a simplification over the former legislative framework.

Previously, understanding the meaning of guardianship required interpreting the case law and multiple statutes. The *FLA* breaks down the authority of guardians into three primary categories: powers, responsibilities and entitlements (s. 21). Under each

category, the specific activities are itemized and listed. The enumeration of discretionary **powers** in the *FLA* effectively defines the scope of authority for guardians, whereas the itemization of the **responsibilities** establishes the minimum expectations for individuals who exercise guardianship authority. Put another way, responsibilities can be characterized as mandatory functions, and the powers of guardians can be characterized as discretionary functions. In turn, the **entitlements** of each guardian are balanced against the entitlements of other guardians.

3.2.2 Guardianship in Other Jurisdictions

The concept of “guardianship” is not employed in all jurisdictions and, where it is employed, it assumes different meanings. Many other jurisdictions use the term “guardianship” in relation to one’s authority over a child’s property, and use the term “custody” in relation to guardianship of the person. For instance, under the Ontario *Children’s Law Reform Act* (R.S.O. 1990, c.C.12) “guardianship” pertains exclusively to the care and management of the property of the child (s. 47(2)), while the term “custody” is used more broadly and refers to guardianship of the person (s. 20(2)). Although the concept of “guardianship” in the B.C. *Family Law Act* (R.S.B.C. 1996, Chapter 128) pertains to both the person and property of the child (s. 25(1)), guardianship of the person dovetails with custody upon the separation of the parents. Thus, the parent who has sole custody of a child will, by default, also have sole guardianship of the child’s person (s. 27(2)(b)).

Generally speaking, there are no other jurisdictions in Canada where the concept of “guardianship” encompasses the same authority, with the same default regime as Alberta. In other words, no other jurisdictions envision the same authority of guardianship as the *FLA* in Alberta where guardianship constitutes the foundation of all parental authority, with guardianship status defaulting to both mothers and fathers in most circumstances and the authority remaining intact even if parents separate.

3.2.3 Statutory Guardianship under the *FLA*

For the purpose of this review, the term “statutory guardian” is used to describe persons who are guardians by default as a function of either meeting legislated relationship requirements, or by falling within accepted categories. The treatment of fathers is an area of significant variation in terms of the recognition of statutory guardians.

Under the former legislative framework in Alberta, a father was a joint guardian by default only if he was married to the mother at the time the child was born, or if he was married to the mother and the marriage was terminated not more than 300 days before the child was born. In situations where the mother and father of the child were not married, the father would be a joint guardian if he cohabited with the mother for at least one year prior to the birth or if he married the mother after the birth of the child and acknowledged that he was the father. Similar requirements existed for a presumption of paternity.

In contrast, the default regime under the *FLA* is reversed and joint guardianship for fathers is presumed. Instead of having to meet specific requirements to qualify as a guardian in the first place, both parents are presumed to be joint guardians unless they fall within the exceptions to the rule. As such, sole guardianship arises only if:

- a) the mother and father did not have a specified relationship as in s. 20(2);
- b) the child begins to usually reside with one parent, and the child has not usually resided with the other parent for at least a year (the usual residence exception) (s. 20(3)); and
- c) there is no agreement or court order to the contrary (s. 20(5)).

The gender bias that was present under the former legislative framework is absent from the *FLA* as there is no longer a presumption of sole guardianship in favour of the mother. Instead, the new default regime applies *unless* the court provides otherwise. As such, the *FLA* establishes an escape hatch to the default regime by providing the court with ultimate discretion to vary the guardianship arrangement of a child where it is required in the best interests of the child. Further, while guardianship agreements may be entered at any time (even after sole guardianship has vested with one person), the court retains its overarching authority to vary the guardianship arrangement.

3.2.4 Court Appointed Guardians under the *FLA*

If a parent is not a guardian by default under the *FLA*, he/she may apply to the court for guardianship. The *FLA* clearly provides that any non-guardian parent, any third party who has had care and control of a child for 6 months, or the child himself, may apply for guardianship (ss. 23(1) & (2)). Although the *FLA* is silent on whether persons standing in the place of a parent may apply for guardianship as parents, the courts have interpreted the legislation as permissive in this regard and have granted those persons status to apply for guardianship as parents rather than legal strangers (see *M.(P.) v. D.(S.L.)* 2007 ABQB 99 and *M.(J.R.) v. M.(T.D.)* 2006 ABPC 285). The court also has discretion under the *FLA* to waive the preconditions for guardianship (s. 23(5)) and may, on its own motion, appoint a guardian to act jointly with another guardian to ensure the best interests of a child (s. 23(6)). In contrast, the *Domestic Relations Act* only permitted guardianship applications by persons who had been declared parents, and merely gave authority for the court to appoint guardians to act jointly with the mother or father or with the guardian appointed by a deceased father or mother.

Applications for private guardianship can be made under the *Child, Family and Youth Enhancement Act*. Currently, these applications are limited to situations where an adult has had one month of continuous care of a child who is in the custody of a Director or is the subject of a temporary guardianship order (TGO) or permanent guardianship order (PGO) or agreement (s. 52(1)). Additionally, before granting an order for private guardianship, the applicant must have had continuous care of the child for 3 months prior to the hearing (s. 56(1)(c)).

Notably, while the court has authority under the *FLA* to waive the 6 month care and control requirement, the court does not have authority under the *Enhancement Act* to waive the continuous care requirements. Ultimately then, the requirements for guardianship under the *FLA* are less restrictive than under the *Enhancement Act* because of the court's discretion to waive the requirements for guardianship under the *FLA*. Although this distinction is not problematic in and of itself, there is no provision in the *FLA* which prohibits a guardianship application from being brought in relation to a child who is the subject of child protection interventions. Thus, an individual may bring an application for guardianship under the *FLA* that would not otherwise be permissible under the *Enhancement Act*. This situation has been at issue in several cases (see *D.(L.)*, *Re*, 2005 ABPC 358; *Re W.(O.T.)*, 2007 ABPC 49; *Re M.(F.)*, 2007 ABPC 44; *Alberta (Director, Child, Youth & Family Services Act) v. K.(C.)*, 2005 ABPC 311) and the courts have had to decide whether an application for guardianship of a child in the Director's care can be brought under the *FLA*.

Until recently, there was no definitive resolution of this issue as judges had resolved the issue differently in each of the above cases. However, in *T.W. v. Alberta (Child, Youth and Family Enhancement Act, Director)*, 2009 ABCA 25, the Court of Appeal considered this exact issue. It asked the question of whether the *Enhancement Act* creates a complete code with respect to children who are the subject of a temporary guardianship order, thereby precluding applications for guardianship under the *FLA* for such children. The court concluded that the *Enhancement Act* does not form a complete code with respect to guardianship and that applications can therefore be brought under the *FLA*. Although this reasoning was initially limited to children in the Director's care subject to temporary guardianship orders, the Court of Queen's Bench has determined that applications for guardianship may also be brought under the *FLA* in relation to children who are the subject of permanent guardianship orders (see *N.N. v. Alberta (Director of Child Welfare)* 2009 ABQB 224).

In addition to the Court of Appeal's decision in *T.W. v. Alberta*, the government has also taken steps to harmonize the discrepancies between the *FLA* and the *Enhancement Act* by enacting the *Child, Youth, and Family Enhancement Amendment Act*, 2008, c-31 in December 2009. Although it has not yet come into force, this legislation will alter the *Enhancement Act* in two significant ways upon its proclamation: first, it will amend section 52 by removing the requirement that an applicant must have had one month of continuous care before making an application for private guardianship (s. 19); and second, it will amend section 56(1)(c) by giving the court authority to waive the 3 month continuous care requirement where it would be in the best interests of the child (s.22).

These amendments to the *Enhancement Act* (once proclaimed), along with the Court of Appeal decision in *T.W. and Alberta*, will remedy the uncertainty in the *FLA* in relation to private guardianship applications and will eliminate the need for any reform to the *FLA* itself.

3.2.5 Testamentary Guardians under the FLA

For the purpose of this review, the term “testamentary guardian” is used to describe persons who assume guardianship status pursuant to a will or deed following the death of a guardian(s). The *FLA* provides that a guardian who is a parent may appoint a testamentary guardian by will or deed, but stipulates that the testamentary guardian will only have the powers, responsibilities and entitlements of guardianship that the guardian had at the time of the guardian’s death (s. 22(5)). As a result of this provision, the *FLA* avoids the problem that existed under the *Domestic Relations Act* where a guardian was able to confer more authority in death than he had in life. Consistent with the *Domestic Relations Act*, the *FLA* does not permit a parent or guardian to appoint a person as guardian in the event of the parent’s mental incapacity. That being said, the *Personal Directives Amendment Act* (2007, S.A. 2007, c. 37, awaiting proclamation) has partially addressed this issue by providing that a personal directive may include directions about the care and education of minor children in the care of the maker. Although it does not provide for the official appointment of guardians upon incapacity of the maker, it does effectively provide a mechanism for guardians to express their wishes through a “living will” until another guardian is appointed (s. 5).

3.2.6 Termination of Guardianship under the FLA

Under the former legislative framework, there was no provision that empowered the court to terminate the guardianship authority of a statutory guardian. The *FLA* addresses this gap by establishing a mechanism to terminate guardianship – regardless of the source of guardianship – provided that one of the following conditions are met: the court is satisfied that the guardian to be terminated consents to the termination; or for reasons that appear to be sufficient, the court considers it necessary to do so (s. 25(1)). These conditions safeguard against ill-considered termination of guardianship, unwanted interference in families by third parties, and the risk that a guardian will be unseated against their will or against the wishes of the child (if older than 12).

3.2.7 Comparison of Other Statutory Guardianship Regimes

The British Columbia *Family Relations Act* ([RSBC 1996] Chapter 128) has a substantially different default guardianship regime than the Alberta *FLA*. There, even if both parents are joint guardians by default (i.e., by virtue of the mother and father living together or being married), sole guardianship defaults to the parent who has usual care and control of the child upon separation (s. 27(2)(b)). The B.C. legislation also reflects a gender bias in that sole guardianship defaults to the mother in cases where the parents were neither married nor lived together (s. 27(3)). Under the Ontario *Children’s Law Reform Act* (R.S.O. 1990, c.C.12) only the parent with whom the child resides is entitled to custody rights. While a presumptive right to custody arises where certain relationship requirements between the parents are met, the presumptive right is suspended if the parents separate and one parent assumes sole custody with the consent or acquiescence of the other, or pursuant to a court order (s. 20(4)).

The statutory regime under the Saskatchewan *Children's Law Act, 1997* (1997, S.S., c.C-8.2) is most similar to the guardianship regime under the Alberta *FLA*. It provides that both parents are joint legal custodians *unless* certain conditions are met (s. 3(1)). This is similar to the default guardianship regime in Alberta where both parents are guardians *unless* certain conditions are met. Thus, while B.C. and Ontario establish a presumption of sole guardianship/custody upon separation, the opposite is true in Alberta and Saskatchewan, where joint guardianship/custodial status is presumed unless certain conditions are met.

3.2.8 Comparison of Guardianship Appointments in Other Jurisdictions

Similar to Alberta, the Saskatchewan *Children's Law Act* distinguishes between parent and non-parent applicants by providing that "other persons" must have a "sufficient interest" before the court will make an order for custody or access (s. 6(1)). By way of comparison, under the *Divorce Act*, any person who is not a spouse must seek leave of the court in order to apply for custody or access (s. 16(3)), although there is no legislative guidance on when leave is to be granted.

In contrast, neither B.C. nor Ontario legislate restrictions on who can apply for guardianship or custody, and there are no pre-conditions that must be met, such as continuous care of the child for a specified period of time, before an application or appointment can be made. However, the case law in those jurisdictions makes clear that parents and third parties are not on an equal footing in contested custody proceedings and attempts to unseat an existing guardian or custodial parent are governed by the fitness test as opposed to the best interests test (see, for instance, *JBE v. FSL* [2004] BCJ No 2438 (SC)).

Although guardianship appointments can theoretically occur in one of two ways – (1) by court appointment or (2) by personal appointment – the Alberta *FLA* does not give guardians the authority to personally appoint a guardian. Instead, any person seeking guardianship (even with the approval of the parent) must have their application approved by the court. The Yukon *Children's Act* (R.S.Y. 2002, c.31) is unique, however, in that it provides for non-court approved custodial appointments. In other words, it provides that custodians of children (and guardians of property) may, of their own initiative, appoint one or more custodian or guardian during their life or for a specified time outside the court process (s. 32(1)).

3.3 Parenting Orders and Contact Orders

The review also examined parenting orders and contact orders. It analyzed the functions of parenting orders and contact orders relative to each other, and also compared their functions relative to custody and access orders in other jurisdictions.

The concepts of "custody" and "access" do not exist in the *FLA* and have been replaced by the concepts of "parenting time" and "contact." Now, when guardians are living separate and apart and they cannot cooperate with each other in the course of exercising their powers of guardianship, they can apply to the court for a parenting order that allocates parenting time, and guardianship powers and responsibilities between

them. Parenting orders have replaced custody and access orders between guardians, resulting in a functional descriptive approach to parenting arrangements. In contrast, contact orders provide a separate mechanism for *non-guardians* who have an interest in having contact with a child or children. The *FLA* therefore explicitly distinguishes between the role of guardians and non-guardians in the life of a child by way of the new regime of parenting orders and contact orders.

3.3.1 Statutory Presumptions

Unlike the former legislative framework, the *FLA* establishes statutory presumptions for guardianship. The court may deviate from these presumptions if necessary, but in the absence of an intentional departure, the presumption applies. By establishing statutory presumptions, the *FLA* effectively signals a regime of equality regarding the role of parents post-separation.

Presumption #1: Equal status of guardians (s. 21(2))

- Where a child has more than one guardian, each guardian may exercise the powers, responsibilities and entitlements of a guardian, *unless the court provides otherwise*.

Presumption #2: Equal decision making authority of guardians (s. 21(4))

- Each guardian is entitled to be informed of, to be consulted about, and to participate in all significant decisions affecting the child and should have sufficient contact with the child to carry out powers and responsibilities, *except where otherwise limited by a parenting order*.

Presumption #3: Equal responsibilities of guardians (s. 21(5))

- Each guardian has the same responsibilities under the *FLA* to: (1) nurture the child's physical, psychological and emotional development and to guide the child towards independent adulthood; and (2) ensure the child has the necessities of life, *except where otherwise limited by law, including by a parenting order*.

Presumption #4: Equal powers of guardians (s. 21(6))

- Each guardian may exercise all powers specified in the *FLA*, *except where otherwise limited by law, including by a parenting order*.

Presumption #5: Entitlement to inquire (s. 32(4))

- If a power or responsibility is allocated to one guardian, the other guardian(s) remains entitled to make inquiries and be given information about any significant matter that arises in connection with the exercise of that power, *unless the court orders otherwise*.

The statutory presumptions establish a default arrangement that applies unless the parties agree or the court provides otherwise. Where the *FLA* starts with a presumption of shared guardianship, the custody/access regime tends to start with an all or nothing approach to parenting on separation. While there was nothing precluding the courts from limiting or differentially assigning the various guardianship powers and responsibilities in custody and access orders under the former legislative framework, the court did not have the benefit of a specified list of powers and responsibilities like the one in the *FLA*. Further, a presumption in favour of sole custody in highly conflicted cases had also been judicially established. The specificity of the guardianship provisions in the *FLA*, the existence of statutory presumptions which favour the equal status of guardians, and the subsequent judicial interpretation of these provisions suggest that a shared parenting arrangement is more likely to prevail under the *FLA* than it was under the former custody and access regime.

3.3.2 Parenting Orders in Contrast with Custody and Access Orders

Parenting orders differ from custody and access orders in several ways:

- First, parenting orders and agreements do not characterize the care and control of a child in terms of “custody.” Instead, they allocate “parenting time” between guardians, which includes the power to make day to day decisions affecting the child. Regardless of how much “parenting time” is allocated to one guardian, the other may still retain all or some of the rights associated with guardianship.
- Second, unlike custody orders, parenting orders are only available to guardians. This acknowledges the differential roles of guardians versus non-guardians in a child’s life. Non-guardian persons who want significant rights and involvement in a child’s life must seek that by way of a contact order or must apply and be appointed as a guardian before seeking a parenting order.
- Third, there is no differentiation in the status of guardians under a parenting order and, therefore, no clear winner or loser. Although one guardian may assume more of the powers, responsibilities and entitlements of guardianship, depending on the level of court intervention or the agreement of the parties, both remain guardians.

3.3.3 Who Can Apply for a Parenting Order?

Under the *FLA* an application for a parenting order may be made by one or more of the guardians, regardless if the guardian is a parent (s. 32). Conversely, not all parents can apply for a parenting order – a parent who is not a guardian must instead apply for a contact order. Generally speaking, parenting orders are reserved for those persons who have guardianship authority over a child, whereas contact orders are reserved for persons who are not guardians, but who want to spend time with a child.

3.3.4 Review of Decisions Taken under a Parenting Order

The *FLA* makes provision for the review of a significant decision regarding a guardian. Significant decision means a decision that (a) involves serious risk to the health or safety of a child, or (b) is likely to have serious long-term consequences for the child (s. 30). This provision is unique for several reasons. First, it is new: while application could previously be made to vary an order for custody and access, there was no review provision at all in the former legislative framework. Second, the review process is applicable regardless of whether the family is intact or living separate and apart and regardless of whether a parenting order is in place. Third, the court has the authority to review those decisions on its own motion.

3.3.5 Contact Orders Compared with Access Orders

The concept of “access” does not exist under the *FLA* nor does the status of “access parent.” Instead, all time between a child and guardian is now characterized as “parenting time,” while designated time between children and other interested parties (grandparents and non-guardian parents, for instance) is characterized as “contact.”

“Contact” is just that – the right to spend time with a child. It may exist in the form of visits, or in the form of oral or written communication or any other communication, but it does not encompass any of the rights, responsibilities or entitlements of guardianship.

By way of comparison, all other Canadian jurisdictions generically provide for “access” between children and non-custodial parents, grandparents, and other interested third parties. Parents and third parties alike may exercise access, although their respective rights of access are not necessarily uniform. In most jurisdictions, mothers and fathers will have a presumptive right of access, while other parties must apply for and be granted access based on the best interests of the child.

3.3.6 Who Can Apply for a Contact Order?

The *FLA* is explicit that the court cannot make a contact order between a child and a guardian (s. 35(1)). Thus, under the *FLA*, any person other than a guardian may apply for a contact order. Some persons can apply directly for a contact order, including parents, persons who stand in the place of a parent, and grandparents in some situations, while others must first seek leave of the court before bringing an application for a contact order (s. 35(2) & (3)). Most non-parent applicants are thus subject to a two stage application process whereby the court first considers their application for leave to apply, and then, if the leave application is successful, considers the substantive application for a contact order. The legislative distinction between direct applicants (parents, persons standing in the place of a parent, and grandparents in some situations) and all other applicants is significant as it reflects the unique status of certain persons in a child’s life and acknowledges that those persons should stand on higher ground vis-à-vis their right to have contact with the child.

Grandparent access orders, formerly provided for under the former legislative framework, no longer exist under the *FLA*. Now, if a grandparent wants to have contact with a grandchild, he/she seeks contact pursuant to a contact order. Grandparents have a direct right to apply for contact only if: (a) the guardians are living separate and apart or one of the guardians has died; and (b) the grandparents' contact with the child has been interrupted by the separation of the guardians or the death of the guardians (s. 35(3)). In all other cases, grandparents must first seek leave of the court. The *FLA* provisions regarding grandparent contact reflect a shift in policy from the old legislative framework in that there is now more deference so that guardians may make decisions for their children as they see fit. Whereas grandparents could previously apply for an access order regardless of the family circumstances, the *FLA* now stipulates that grandparents wanting contact in families that are intact or where the guardians of the child are not the parents must seek leave of the court, as would any other third party.

3.3.7 Determination of Applications for Contact

Applications for contact orders may involve a two-stage process, with each stage establishing different considerations. In determining whether to grant leave in the first place, the court must consider two things: (1) the significance of the relationship between the child and the applicant; and (2) the necessity of making an order to facilitate contact (s. 35(4)). Once leave has been granted, or in the event that it is not required, the court must be satisfied of three factors before making a contact order:

- (1) contact between the child and the applicant is in the best interests of the child;
- (2) the child's health may be jeopardized if contact between the child and the applicant is denied; and
- (3) the guardians' denial of contact between the child and the applicant is unreasonable (s. 35(5)).

The legal nature of the relationship between the applicant and the child is a significant factor in determining whether contact is in the best interests because of the presumption that a child's best interests are served by maintaining maximum contact with each of his or her parents. That being said, while the best interests criterion is an important consideration in contact order applications, it is not the *only* consideration. The court must also be satisfied that the child's health will be jeopardized if contact is denied and that the denial of contact is unreasonable. These factors have been applied and interpreted by the Alberta Court of Appeal in *H.(D.W.) v. R.(D.J.)*, 2007 ABCA 57.

3.4 **Child Support Obligations**

In the analysis of child support obligations, the review considered the nature of the obligation, the definition of "child" for the purpose of support, the conditions that must be met before a child support order can be made, and the exceptions to the child support obligation. It also compared the regime under the Alberta *FLA* with the Ontario provincial regime and the federal child support regime under the *Divorce Act* (R.S., 1985, c. 3 (2nd Supp)).

3.4.1 Nature of the Child Support Obligation

The obligation of parents to support their children existed long before the *FLA*. Indeed, the *FLA* merely codified the existing obligation owed by parents to support their children. That being said, the child support obligations under the previous legislative framework were not explicit and varied depending on the legislation. While many of the inequality problems under the former legislative framework had been remedied by judicial decisions (see *Massingham-Pearce v. Konkolus* (1995) 29 Alta. L.R. (3d) 283) and *T.(P.) v. B.(R.)* 2001 ABQB 739), some uncertainty still existed regarding the definition of a child, obligations of persons standing in the place of a parent, and support obligations for adult children. The *FLA* addressed the outstanding uncertainty by clearly defining the parameters of child support obligations, including who constitutes a child, who is and is not obligated to pay, the circumstances under which a child support order can be made, and the applicable guidelines for determining the amount.

3.4.2 Who is a Child for the Purposes of Child Support?

For the purpose of child support the *FLA* defines “child” as a person who (1) is under the age of 18 years, or (2) is at least 18 years but not older than 22 years of age, and is unable to withdraw from his/her parent’s charge because of being a full-time student (s. 46(b)). Based on this definition, the only adult children who are eligible for support are those aged 18-22 years who are full-time students. This stands in contrast to the previous legislative framework where the support obligation for adult children was interpreted broadly. For instance, all adult children pursuing higher education, regardless of the marital status of their parents, were eligible for child support on the same basis as adult children under the *Divorce Act*. Support was also available on a discretionary basis for adult children who were unable to obtain the necessities of life for some “other causes.” Now under the *FLA*, child support is no longer available, even on a discretionary basis, to adult children other than those who are full-time students, 18-22 years of age.

3.4.3 Who has a Child Support Obligation?

The *FLA* is explicit that all parents, regardless of whether they are married or unmarried, separated or living together, have an obligation to support their child(ren) (s. 49(1)). For the purpose of child support, parents include the father or mother of a child, as well as persons standing in the place of a parent. The *FLA* lists two criteria that must be met in order for a person to be found standing in the place of a parent: first, it must be someone who is the spouse of the mother or father of the child, or is (or was) in a relationship of interdependence of some permanence with the mother or father of the child; and second, it must be a person who has demonstrated a settled intention to treat the child as the person’s own child (s. 48(1)).

The *FLA* goes on to list a number of factors the court will consider in determining whether a person has demonstrated a settled intention to treat the child as the person’s own child. Notably, the *intention* of the people involved is not listed as one of those factors. Thus, while intention may be relevant to a contextual analysis, it is not, on its

own, determinative of whether a person stands in the place of a parent. Instead, the analysis must examine the actual relationship between the child and the person who asserts that he/she is standing in the place of a parent (*Jane Doe v. Alberta* (2006), 390 A.R. 227 (ABQB), affirmed in 404 A.R. 153 (Alta. C.A.)).

3.4.4 Exceptions to the General Obligation to Support

In keeping with a presumptive approach to guardianship under the *FLA*, the rules related to child support obligations are also presumptive. This means that the obligation for a parent to provide support is automatically triggered provided that the child meets the definition of child. Because child support obligations under the *FLA* are presumptive, the *FLA* carves out a number of necessary exceptions to the general rule that every parent has an obligation to provide support for his or her child.

Pre-conditions for making a child support order not met:

- Although the *FLA* establishes a general rule that every parent has an obligation to support his/her child (s. 49(1)), the right to receive support pursuant to a court order is tempered by the existence of certain pre-conditions, namely that the parents are living separate and apart (actually or practically) or that the child is not in the care and control of the parents (s. 50(2)). These conditions prevent a parent or child who is living in an intact family from making application for support.

Children under 18 who are married or living an independent lifestyle:

- Another exception to the general obligation to support relates to children living an independent lifestyle. Specifically, the *FLA* stipulates that the obligation of a parent to support his/her child does not extend to children under 18 who are married or adult interdependent partners, or to a child who has voluntarily withdrawn from his/her parent's charge and is living an independent lifestyle (s. 49(2)). Thus, if a child under 18 marries, cohabits in an AIP, or simply chooses to live independently from his/her parents, there is no obligation of support. That being said, the *Adult Interdependent Relationship Act* (S.A. 2002 c.A-4.5) defines adult interdependent partnerships as a "relationship of interdependence" where the parties have cohabited for 3 years or more or where they have had a child together (s. 3(1)). Thus, children cohabiting in non-permanent conjugal relationship will not generally be excluded automatically on the basis of AIP status, although this would be a relevant factor for the purpose of determining whether a child is living independently from his/her parents.

Adult students must make a reasonable contribution:

- A third exception to the general rule is that a child between 18 and 22 years of age who is entitled to support has an obligation to make a reasonable contribution to his/her education (s. 49(4)). Just as children

under 18 years of age do not have an unconditional entitlement to child support if they are living an independent lifestyle, neither do adult children age 18 to 22 just because they are full-time students. In order to meet the definition of a child, an adult student must be “unable to withdraw from parents’ charge.” Because neither the *FLA* nor the *Alberta Child Support Guidelines* (O.C. 382/2005, A.R. 147/205) define “reasonable contribution” or “unable to withdraw from parents’ charge,” two corollary issues arise: first, what constitutes a “reasonable contribution”; and second, does “unable to withdraw from parents’ charge” imply that adult students must reside with their parents in order to be eligible for support. Put another way, if a full-time student between 18 and 22 years of age is living independently, is he/she presumed to have withdrawn from his/her parents’ charge?

Hierarchy of support obligations:

- The last exception to the general support obligation is the provision of the *FLA* which stipulates that the obligation of a mother or father to provide child support outweighs the obligation of a person standing in the place of a parent (s. 51(5)). While persons standing in the place of a parent have an obligation to support, their obligation is qualified by any concurrent parental obligations. In these cases the amount and duration of support is not based on the *Alberta Child Support Guidelines*, but rather on explicit factors in the *FLA*, and is therefore discretionary.

3.4.5 Circumstances for Making an Order for Child Support

While the child support obligation of parents under the *FLA* is universal, the right to receive support is prescribed. The *FLA* provides that an order for child support can only be made where: (1) the parents are separated; (2) the parents are not separated but, in the opinion of the court, they are experiencing such discord that they cannot reasonably be expected to live together, or one parent who is capable has, without sufficient cause, refused or neglected to provide the other parent or the child with necessities of life including food, clothing and shelter; or (3) the child is not in the care and control of the parents (s. 50(2)).

The first two provisions ensure that child support obligations will be primarily limited to situations involving single parent families or families whose circumstances are tantamount to a single parent family, while the third provision is more open ended and applies to children who are not in the care and control of their parents but who are living in the care and control of another person. Arguably, this provision is intended to apply to situations where parents have expressly or impliedly consented to relinquish their care and control of the child and have the child reside with another caregiver. For instance, where grandparents or another relative are caring for a child on behalf of the parents, the entitlement to receive child support from the parents would arise.

3.4.6 Comparative Analysis of Support for Adult Children

Under the *Divorce Act*, as with the Alberta *FLA*, child support after the age of majority is not an absolute right. The adult child must demonstrate an inability to withdraw from the parents' charge based on one of three reasons: illness, disability, or "other cause" (*Divorce Act*, s. 2(1)). The reference to "other cause" has been interpreted to include continuing education (*Jarzebenski v. Jarzebinski* [2004] PK 4595). The definition of who may be a dependent adult child under the *Divorce Act* is wider than under the *FLA* in several ways:

- First, while the *FLA* restricts support to full-time adult students between 18 and 22 years of age, there is no age or level of education cut-off for adult children under the *Divorce Act*, though courts will rarely order support past the age of 24.
- Second, beyond its application to adult students, the *Divorce Act* also provides for support of adult children for reasons of illness or disability. This includes adult children who are temporarily physically or emotionally ill and unable to work or go to school, as well as adult children who are permanently disabled. However, if an adult child is able to obtain social assistance, the support obligation is usually terminated. A child who lives independently but who is unable to support himself/herself entirely, or at all, because of illness or disability may also qualify for support. This stands in contrast to the more limited wording under the Alberta *FLA*, where a child must be "unable to withdraw from parents' charge" in order to qualify for support.

Under the Ontario *Family Law Act* (R.S.O. 1990, c.F.3) the obligation of a parent to support a child also extends to adult children who are enrolled in full-time education. This provision is similar to Alberta because it restricts support of adult children to full-time students. In contrast to Alberta, it does not limit the definition of adult students to those who are "unable to withdraw from the parents charge," nor does it specifically require that adult students make a reasonable contribution to their education, nor is there a ceiling on the age of adult students for the purpose of the support obligation. Ontario is also distinct from Alberta in that it qualifies the obligation of parents by stipulating that they are only required to support an adult student to the extent that they are capable of doing so (s. 31(1)). That being said, the courts in Ontario have generally expected adult children to contribute to their own support.

The difference between the Alberta *FLA* and the *Divorce Act* as to the provision for support of adult children raises the issue of whether the repeal of the former statutory framework in Alberta has created a gap in the provincial support regime which may result in inherent unfairness to vulnerable adult children. While provincial social assistance programs such as Income Support or Assured Income for the Severely Handicapped (AISH) are available for some adult children who are unable to work, it is unclear whether social assistance, combined with the spousal/AIP support obligations under the *FLA* will sufficiently address the needs of vulnerable adult children. As such, this review recommends consideration of whether the Alberta *FLA* should adopt a

general support provision, discretionary or not, for support of dependent adult children who are not otherwise eligible for support.

3.4.7 Comparative Analysis of the Exceptions to the Child Support Obligation

As with the *FLA*, the Ontario *Family Law Act* removes the obligation to support a minor child who is married or who has “withdrawn from parental control” (s. 56). The test in Ontario is substantially the same as Alberta, except it applies only to children who are 16 years or older, whereas the Alberta *FLA* does not stipulate a minimum age for the purpose of the exception. Thus, an Ontario parent is still obligated to support a 15 year-old child who has withdrawn from parental control, whereas a parent under the Alberta *FLA* is exempted from the obligation to this child provided it is established that the child has voluntarily withdrawn and is living an independent lifestyle. Further, only married children are automatically exempted from support under the Ontario *Family Law Act*, whereas the Alberta *FLA* automatically exempts both married children and children who are adult interdependent partners. In Ontario, the fact of a child living in a common law relationship would instead be a significant factor in determining whether the “withdrawn from parental control” exception has been established.

Under the *Divorce Act*, spouses are exempt from their obligation to support a child who is under the age of majority if the child has withdrawn from their charge (s. 2(1)). Similar to the *FLA*, it does not stipulate a minimum age and therefore, even a young child may be exempted from support if the test is met. Unlike the *FLA*, the *Divorce Act* does not specifically exempt parents from the obligation to support a married child or a child living in a common law relationship. This clearly stands in contrast to the *FLA*, where parents of both married children and children living in adult interdependent partnerships are exempt from the obligation to support without having to establish whether the child has voluntarily withdrawn and is living an independent lifestyle. That being said, a relationship in Alberta requires 3 years of “interdependence” before it will be a *de facto* AIP (see *Adult Interdependent Relationship Act* at s. 3(1)(a)). Even so, the net of exceptions to the support obligation for adult children under the *FLA* is cast broader than the net of exceptions under the *Divorce Act*.

3.5 Spousal/Adult Interdependent Partner Support Obligations

Finally, the legislative review dealt with support obligations for spouses and adult interdependent partners. It considered the nature of the obligation, who owes the obligation, conditions for support, determination of the amount, and interim orders for support. There are marginal differences among the federal and provincial legislative schemes for spousal support and, for this reason, minimal comparative analysis of other spousal support regimes was undertaken.

3.5.1 Nature of the Obligation

With the enactment of the *FLA* came a clearer approach to spousal support. The *FLA* legitimizes the existence of the support obligation in several ways: first, it clarifies and harmonizes the terms of support with the *Divorce Act*; second, it replaces the variable terminology of “alimony,” “maintenance” and “support” with the single term of

“support” thereby creating a more uniform approach to support orders; third, the *FLA* removed all residue of the fault doctrine and disentangled the entitlement to support from the establishment of fault (in fact, the *FLA* specifically legislates against the court’s consideration of any misconduct in making an order for support); and fourth, in contrast to the former legislative framework, the *FLA* mitigates (to the greatest extent possible) the inconsistent and sometimes arbitrary treatment of spousal support by the courts by assigning concrete objectives and factors for the court to consider.

3.5.2 Who has an Obligation to Support?

In keeping with the guardianship and child support provisions under the *FLA*, the provisions dealing with spousal support are presumptive in that they establish a general rule in relation to the obligation of support. The *FLA* provides generally that every spouse or adult interdependent partner (AIP) has an obligation to provide support for the other spouse or AIP (s. 56); fault of a spouse or AIP need not be established to give rise to the obligation or to authorize the court to make an order. As with the other presumptive rules under the *FLA*, the obligation is qualified by the requirement of certain conditions.

Because the support obligation in the *FLA* applies to both spouses and adult interdependent partnerships alike, the obligation to support technically extends beyond marriage-like relationships to some non-conjugal relationships of interdependence which qualify as AIPs. That being said, the *Adult Interdependent Relationship Act* (S.A. 2002, c.A-4.5 [AIRA]) specifically exempts persons related to each other by blood or adoption from AIP status unless they have specifically entered an agreement that characterizes their relationship as such (s. 3(2)). Thus, while the *FLA* imposes a general support obligation on non-spouse or non-destitute persons by virtue of the obligation to support AIPs, it does not apply to adult children who live with their parents, or siblings who cohabit with each other unless the parties specifically characterize their relationship as such. To that end, the application of the support provision in the *FLA* should not be characterized as a general support provision for destitute persons or persons in need.

3.5.3 Conditions for Spousal/AIP Support Orders

The *FLA* lays out specific conditions that must be met before the court may make an order for support. These conditions apply to both spouses and adult interdependent partners and they function to distinguish the global obligation of support from the more limited obligation to pay. An order for support may be made only if: (1) a declaration of irreconcilability has been obtained; (2) the spouses/AIPs are living separate and apart; or (3) although the spouses/AIPs are not living separate and apart, they are experiencing such discord that they cannot reasonably be expected to live together, or one spouse/AIP has, without sufficient cause, refused or neglected to provide the other with the necessities of life (s. 57(2)).

The removal of support eligibility based on marriage and relationship status has substantially simplified and clarified the law of spousal support.

3.5.4 Determination of Amount

Similar to the former legislative framework, determination of the amount of support under the *FLA* is based on the discretion of the judge in consideration of specific factors. However, in contrast to the more discretionary assessment of support under the old framework, judges now have the benefit of the recently developed *Spousal Support Advisory Guidelines* (Department of Justice, Canada: Spousal Support Advisory Guidelines – A Draft Proposal, January 2005). Because these guidelines have not been enacted in the form of a Regulation to the *FLA*, they are not legally binding. Instead, they are simply a practical tool for determining appropriate levels of spousal support. The *Guidelines* have already been relied upon in several cases for the purpose of determining the quantum of a spousal support order under the *FLA* (see, for instance, *Elezam v. Ireland*, 2006 ABPC 230, *McCulloch v. Bawtinheimer*, 2006 ABQB 232, *J.(S.C.) v. S.(T.S.)*, 206 777, *Wall v. Wall*, 2006 ABPC 303).

3.5.5 Interim Orders for Support

The *FLA* establishes a general power of the court to make interim orders. If the application is for a support order, the *FLA* provides that it must be in accord with the factors and objectives the court must consider in making the support order to the extent that this is practicable given the need for interim support (s. 84(2)). Interim orders for support require special attention because the issue of status may be at the heart of the application and the court is required to determine whether and how much interim support should be awarded without having determined whether an entitlement exists in the first place.

Under the *FLA*, there is no issue of status for married people to bring an application (including interim) for support. Although the merits of a Claim may be weak, this does not affect the status of the parties to apply in the first place. The situation is less clear with respect to applications for support by unmarried persons. If an interim application for support is made by a person claiming to have been an AIP, and the respondent denies that the relationship was an AIP, or denies the relationship altogether, the question arises as to whether an interim order for support is justified.

Because the *FLA* does not give direction as to the threshold that must be met by the applicant, and because there has been no post-*FLA* judicial consideration of this issue, the pre-*FLA* case law authority undoubtedly still applies to these situations. The case of *Spracklin v. Kichton* established that a court had to be reasonably satisfied that the relationship in question, *prima facie* met the minimum time requirement needed to establish the existence of a common law relationship under the *Domestic Relations Act* before making an interim order for support ([2000] AJ 1329 at paras 60-64). Presumably then, the court would first need to be reasonably satisfied that the order is in accord with the factors and objectives of the *FLA* to the extent that it is practicable, before making an order for support.

3.6 Conclusion

The *FLA* consolidated and updated the family law regime in Alberta and addressed a number of uncertainties and gaps in the legislative framework. While the *FLA* reflects many changes, some of the major changes can be summarized as follows.

First, the *FLA* modernized the guardianship regime. In doing so, it reversed the regime defaulting guardianship to the mother by providing that both the mother and father will be guardians unless they fall within the noted exceptions. This change eliminated the former gender bias of the guardianship provisions whereby the mother was sole guardian unless the father satisfied one of the relationship requirements. Additionally, the *FLA* enumerates the powers, responsibilities, and entitlements of guardians, enabling courts to parcel out the various components, as required, if the parents or guardians cannot agree on how to share them.

Second, the *FLA* codified the best interests test and, in doing so, made it clear which factors must be considered when determining the best interests of the child and the contexts in which those factors are applicable. It also specifies the degree to which past conduct may be considered as a factor and clarifies that only conduct related to family violence may be considered when determining the best interests of the child. The legislation provides, however, that domestic violence may be relevant to the child's best interests.

A third notable change reflected in the *FLA* is the elimination of the custody and access regime and its replacement with a shared parenting model. By replacing the concepts of "custody" and "access" with the non-equivalent, non-traditional concepts of "parenting" and "contact" orders, the *FLA* adopted a more functional approach to parenting arrangements. In contrast to the concepts of "custody" and "access," which represent an all or none approach to post-separation parenting, parenting orders presume meaningful involvement of all guardians unless otherwise provided by agreement or order. The adoption of a shared parenting model is arguably the most progressive and noteworthy change reflected in the *FLA*, Alberta being the first jurisdiction in Canada to abandon the concepts of "custody" and "access" and the only jurisdiction to employ the term "parenting time." That being said, there are a handful of other jurisdictions, namely in the United States and the United Kingdom, that have adopted shared parenting models that could be meaningfully compared.

The adoption of contact orders as an alternative to access orders is also a very unique aspect of the *FLA* as it functions to distinguish third-parties and non-guardian parents from guardians vis-à-vis their role with children. Whereas the concept of "access" previously applied to any party, guardian or not, who did not have care and control of a child, parenting orders are now used exclusively by guardians, while contact orders are used exclusively by non-guardians. This change had significant implications for grandparents in some situations, who no longer have a presumptive right to apply for access, but instead now have a qualified right to apply for contact.

A fourth significant change in the *FLA* is the establishment of comprehensive child support provisions. Although child support orders under the *Divorce Act* are still determined by the *Federal Child Support Guidelines*, these provisions eliminate any distinction between the treatment of children of married and unmarried parents. They also establish clear parameters for child support obligations, including: (1) the threshold for the exemption of children under 18, which includes children who are married or in an AIP, or who have voluntarily withdrawn from their parents charge and are living an independent lifestyle; (2) a cap on the obligation for adult children being full-time students between 18-22 years of age; (3) a presumption that adult children will make a reasonable contribution to their education; and (4) a definition of persons standing in the place of a parent and the corresponding obligation of those persons.

Fifth, the *FLA* provides for equal support obligations of both spouses and adult interdependent partners and eliminates all references to traditional fault-based doctrines. Now, the support obligation in the provincial context mirrors the spousal support obligations under the *Divorce Act*.

Since coming into effect, the *FLA* has been judicially considered on a number of occasions and, for the most part, its application and interpretation by the courts has been uniform. Perhaps the consistency with which the *FLA* has been applied can be attributed to the simplicity and cohesiveness of its drafting. Whatever the reason, there appear to be few unanswered questions or loose ends in the framework to date. That being said, a handful of specific issues did surface in the analysis that may warrant legislative attention.

First, in the course of reviewing the best interests test, it became evident that the case law is unclear with respect to the application of the “fitness” test as compared to the “best interest” test in the context of the *FLA*. The fitness test is a higher threshold test that must be met when a legal stranger is attempting to unseat a current guardian. While this issue was judicially considered in the former context of guardianship, custody, and access, the place of the fitness test is not obvious in the new regime of guardianship and parenting orders.

A second notable issue arises in the context of support obligations. With the enactment of the *FLA* came the repeal of the general support provisions for adults who were destitute or unable to work for “other causes” (other than being a full-time student). It is unclear whether the repeal of these provisions has created a gap in the social safety net for vulnerable adult children, or whether the general support provision for spouses and adult interdependent partners sufficiently compensates for the gap arising in the context of child support. If a gap does in fact exist, it may be necessary to consider whether the scope of the child support provision should be broadened to include this group or whether a general support provision, discretionary or not, should be adopted providing for the support of dependent adults.

The review ultimately concludes that, in spite of the few outstanding issues, the *FLA* clearly provides a comprehensive, equitable, and progressive approach to family law issues which may well serve as a model for the development and amendment of family law legislation in other jurisdictions across Canada and internationally.

4.0 CASEFLOW AND OUTCOMES UNDER THE *FLA*

This chapter of the report focuses on analyses of data regarding the processing of cases by Court of Queen's Bench and Alberta Provincial Court, and as well, provides an analysis of data from alternative dispute resolution programs and services. More specifically, a caseflow analysis of court data documents the number of cases dealt with by the courts and the time frame for the completion of these cases. Further, an analysis of data from alternative dispute resolution services and programs focuses on outcomes, e.g., rate of resolution of cases. These analyses reflect on the relative success of the *FLA*.

4.1 *FLA* Impact on Workload and Human Resources

To assess the impact of the implementation of the *FLA* on workload and human resources, CRILF researchers examined new applications to Provincial Court and Court of Queen's Bench, as well as caseflow through alternative dispute resolution processes and court services and the number of self-represented litigants applying in the family law system. Due to the data available, time periods and units of analysis differ between the various courts and processes.

4.1.1 Provincial Court and Court of Queen's Bench Caseflow

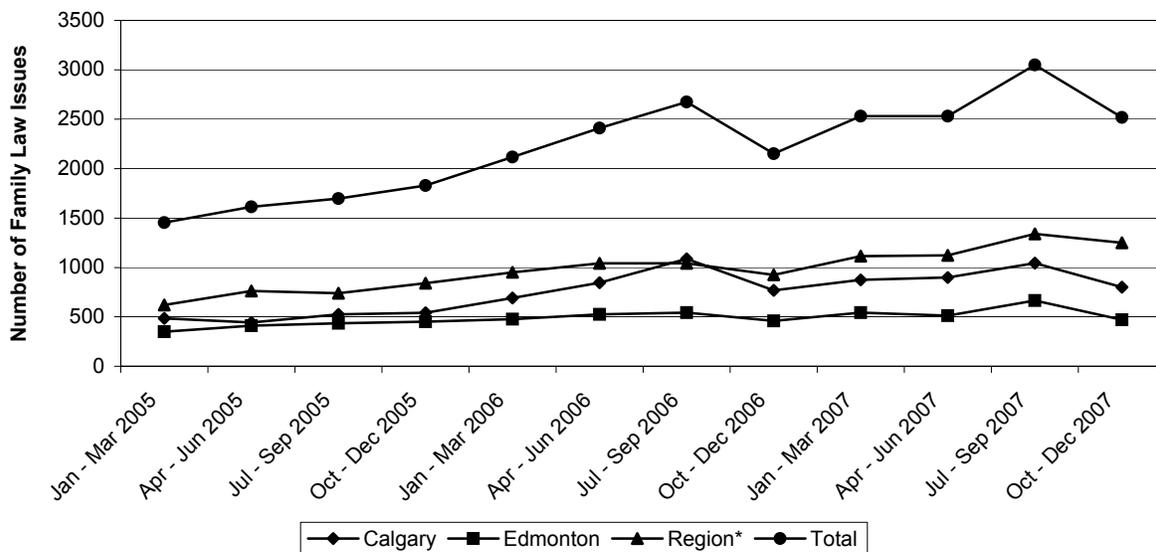
The *FLA* was enacted on October 1, 2005 with the hopes of increasing the effectiveness and efficiency of the family law system in Alberta and decreasing the number of cases heard in Provincial Court and Court of Queen's Bench. Though data on the number of cases reaching resolution prior to being heard in court were not available, overall caseflow provides a picture of the number of *FLA* files being processed in each level of court. For Provincial Court, Justice Online Information Network (JOIN) data were analyzed by family law issue, which refers to applications for specific orders (i.e., child support, custody/access, guardianship, etc.) under the pre-*FLA* legislation and each type of relief sought in a Claim (e.g., guardianship, parenting, contact, etc.) under the *FLA*. Family law issue was used as the unit of analysis for a number of reasons. First, it allowed for comparability pre- and post-implementation of the *FLA* when possible. Second, the JOIN data provided to CRILF did not contain information on individual files or *FLA* Claims. Available Court of Queen's Bench data (CASES) provided aggregate information on the *FLA* forms filed; therefore, comparisons between the two courts could not be accurately drawn.

Figure 4.1 shows the number of new family law issues before Alberta's Provincial Court from January 1, 2005 to December 31, 2007, by region.⁵ The number of family law issues before the Alberta Provincial Court has increased steadily across the province during this time period, representing a 73% increase between January 2005

⁵ Family law orders requested prior to October 2005 were filed under the *Provincial Court Act* and the *Domestic Relations Act*.

and December 2007, and nearly a 40% increase since the enactment of the *FLA*.⁶ The Region witnessed the greatest increase from January 2005 to December 2007, at 102%, and a roughly 50% increase since the *FLA* came into force. While the number of family law issues before Edmonton's Provincial Court saw a relatively small increase pre- and post-enactment of the *FLA*, Calgary's Provincial Court saw a 65% increase in new family law issues since January 2005. There could be a number of explanations for these increases, including the tremendous increase in Alberta's population in recent years (10.7% between 2001 and 2006), the fact that changes to process and procedure introduced by the *FLA* made it easier for self-represented litigants to apply, and importantly, the increased jurisdiction of Alberta's Provincial Court since the enactment of the *FLA*. However, given the increasing availability of, and support for, alternative dispute resolution programs since the enactment of the *FLA*, it is possible that a substantial number of family law issues before the Provincial Court are resolved prior to reaching formal courtroom proceedings.

Figure 4.1
Family Law Caseflow, Alberta Provincial Court
January 2005 - December 2007



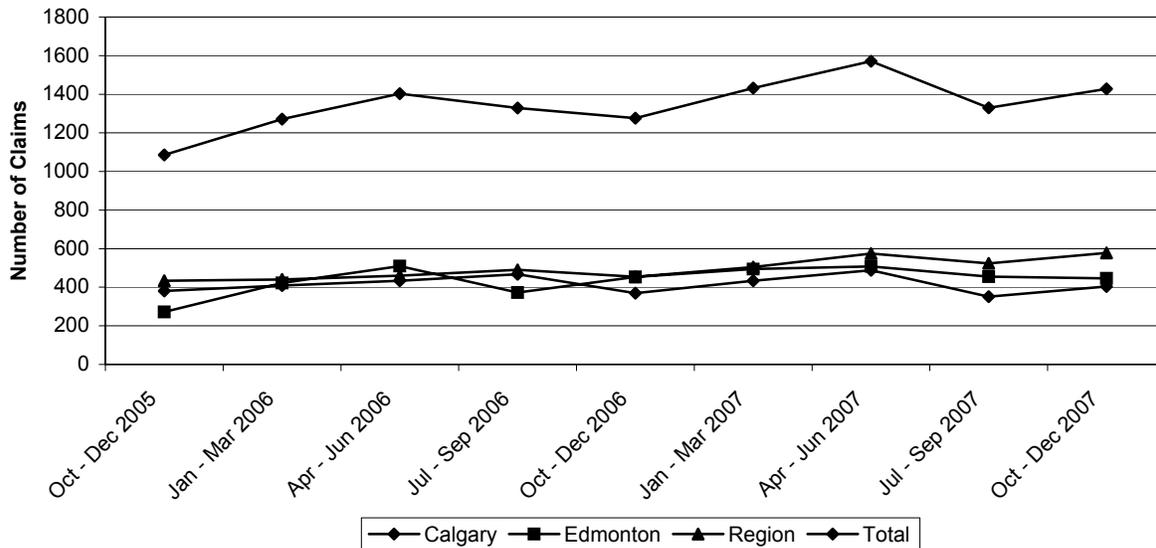
Source of data: Justice Online Information Network (JOIN).
 *Region includes all family law courts in Alberta other than Calgary and Edmonton.

Although pre-*FLA* data are not available for Alberta Court of Queen's Bench, the number of *FLA* Claims filed in Court of Queen's Bench has remained relatively stable over time, as illustrated in Figure 4.2. The overall number of *FLA* Claims filed in the province saw an increase in the years following the enactment of the *FLA*, peaking at a 45% increase in June 2007; however, between October 2005 and December 2007, *FLA* Claims had increased by only 31%. Edmonton Court of Queen's Bench saw the greatest increase in *FLA* Claims since the enactment of the *FLA* (64%), followed by the

⁶ Court and program statistics often see a noticeable drop in December of each year. This is due to service closures and court not being in session over Christmas holidays.

Region (33%). *FLA* Claims filed in Calgary Court of Queen’s Bench have remained relatively consistent.

Figure 4.2
Family Law Act Caseflow, Alberta Court of Queen's Bench
October 2005 - December 2007

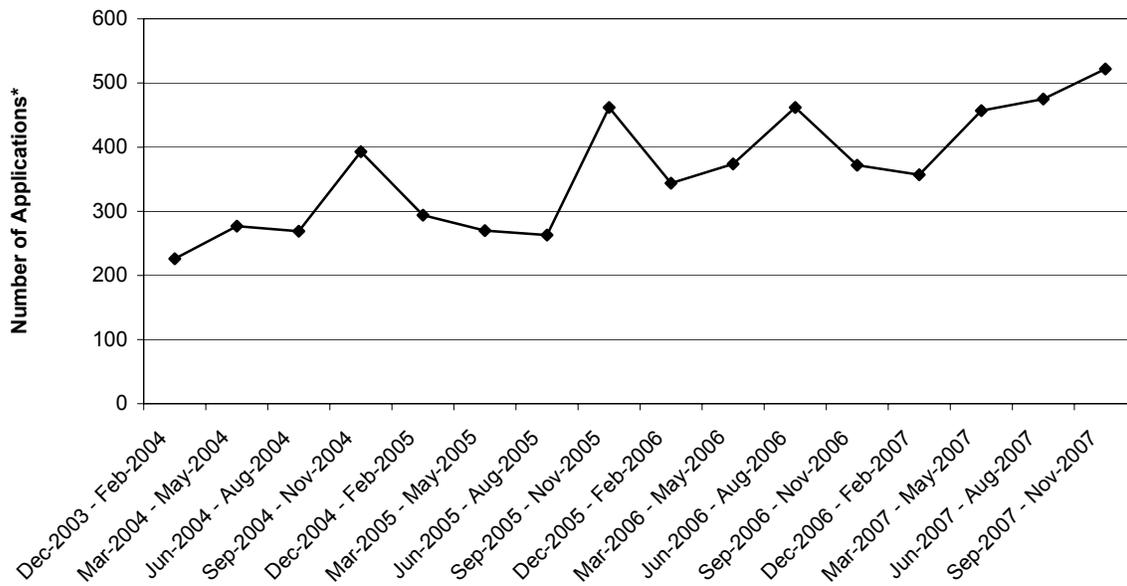


Source of data: CASES.

4.1.2 Programs and Services Caseflow

The introduction of the *FLA* stressed the use of available programs and services to provide information and resolve issues so that ultimately, fewer cases were dealt with in the court room. The Caseflow Conference Program, introduced by Family Justice Services in Edmonton Provincial Court in 2001 and Calgary Provincial Court in 2006, was put in place as a method of dispute resolution to increase the efficiency of the court process. The “Intake and Caseflow Management Regulation,” permanently implemented in July 2005, made it mandatory for self-represented litigants to have a Caseflow Conference scheduled on filing an application. Figure 4.3 illustrates the number of applications to the Edmonton Caseflow Conference Program from December 2003 – November 2007. Though the Caseflow Conference Program was well used even prior to the *FLA*, the introduction of the Regulation in July 2005 and the enactment of the *FLA* in October 2005 saw a noticeable increase in applications, followed by a more modest increase in the following years. By November 2007, the number of applications proceeding to Caseflow Conferences since December 2003 had increased by 131%.

Figure 4.3
Applications to Caseflow Conference Program
Edmonton Provincial Court, December 2003 - November 2007

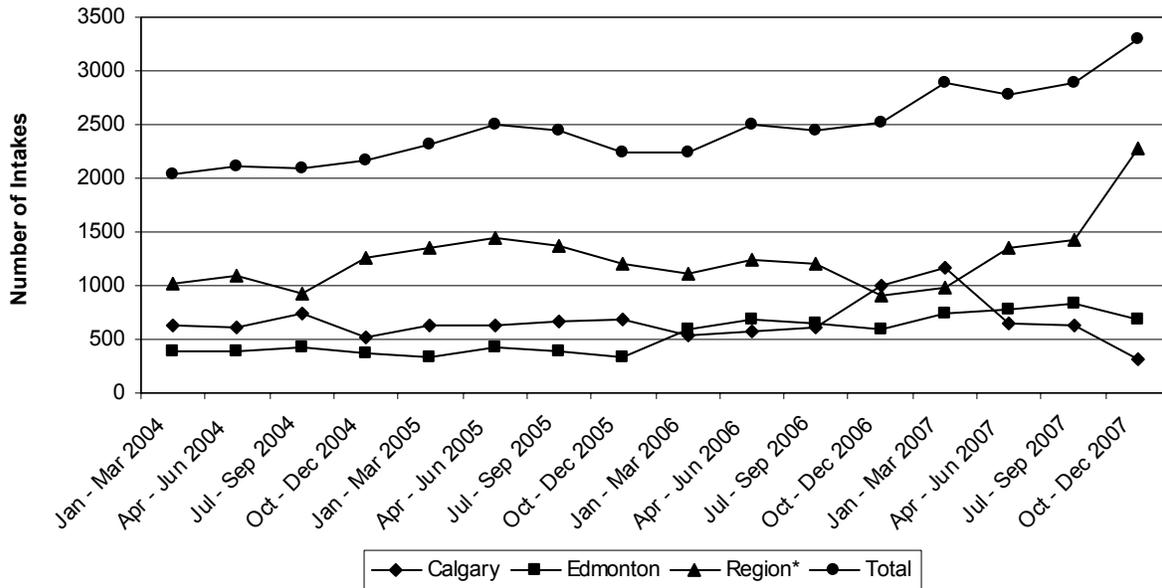


Source of data: Edmonton Family Justice Services.
 *Number of applications includes all applications that *could* be concluded in Caseflow.

The Family Justice Services Family Court Counsellor program has also witnessed a noticeable increase in caseload. Family Court Counsellors perform a number of functions, including orientation and intake when a self-represented litigant is proceeding in Provincial Court, mediation, and in-court support. Family Court Counsellor intake and brief mediation are also potential points at which issues may be resolved and consent may be reached. Figure 4.4 shows the number of intakes performed by Family Court Counsellors from January 2004 to December 2007, by region.⁷ A notable rise in intakes across the province occurred with the enactment of the *FLA*, followed by a steady increase to December 2007 – representing a 62% increase from January 2004. The Region, in particular, witnessed a substantial rise in intakes during this period, at 124%. This is likely due to the increasing number of family court locations across the Region where Family Court Counsellors have been introduced since the enactment of the *FLA*. Edmonton witnessed an 80% increase in intakes during this time, whereas Calgary, though peaking at an 85% increase in January to March 2007, had decreased below pre-*FLA* levels by December 2007. Despite this, overall provincial trends speak to the importance of Family Court Counsellors as both a dispute resolution mechanism and a support for self-represented litigants.

⁷ The “Intake and Caseflow Management Regulation” of July 2005 made intake sessions mandatory for self-represented litigants proceeding in Provincial Court. Thus, this regulation is applicable only to Calgary and Edmonton.

Figure 4.4
FJS Family Court Counsellor Intake, January 2004 - December 2007

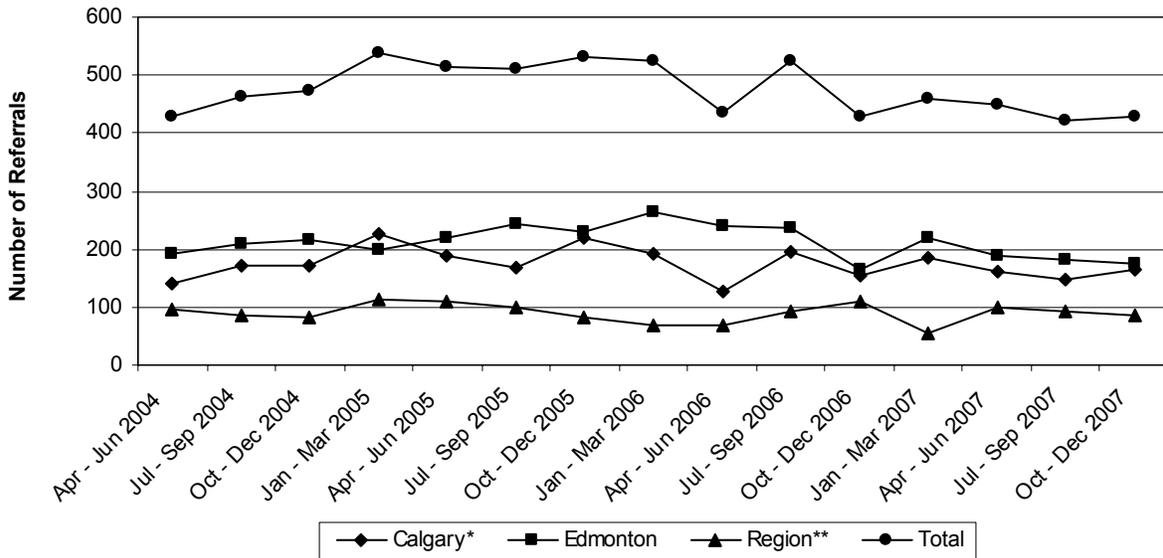


Source of data: Family Justice Services.

*Due to administrative staff changes, intake statistics for the Region were not kept from November 2006 to March 2006. Therefore, data were interpolated for this period by averaging the intakes from October 2005 and April 2006.

One aspect of Family Justice Services that has seen a decrease in caseload is the Mediation program (see Figure 4.5). Though Mediation saw an increase in referrals with the enactment of the *FLA*, and despite some fluctuation over the years, Mediation numbers throughout all regions in Alberta have, on average, remained relatively consistent with those which existed prior to the *FLA*. This may be due to the availability of the Caseflow Conference Program in Calgary and Edmonton, and possible underutilization of Family Justice Services Mediation in the Region. Further, Family Justice Services Mediation is offered at no cost only to those with children under 18 and in instances where at least one party earns less than \$40,000 per year. Parties who do not fit these criteria must hire a private mediator.

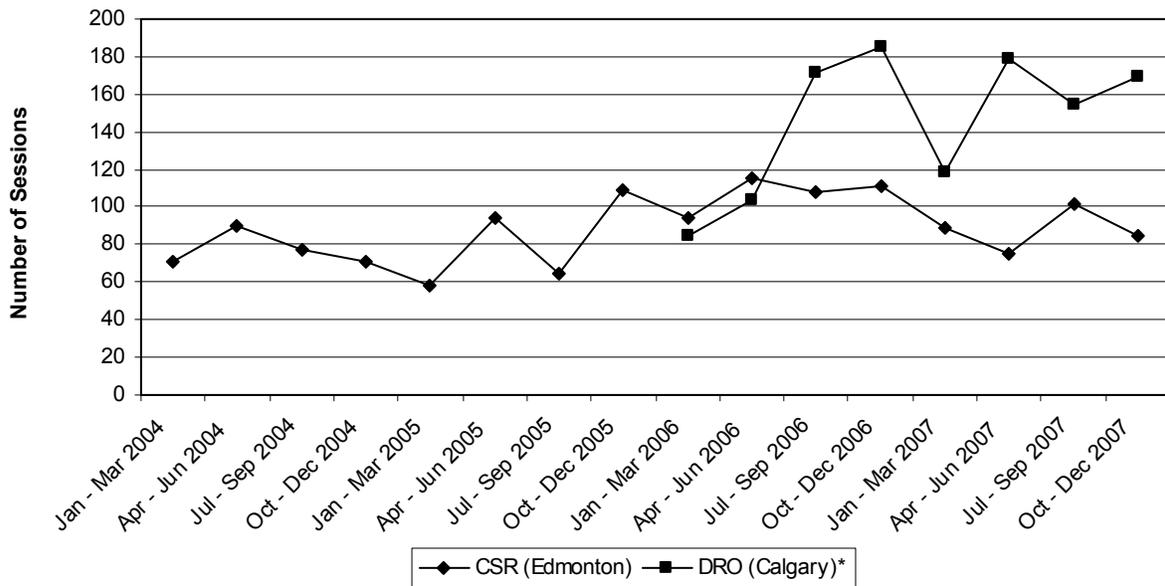
Figure 4.5
Referrals to FJS Mediation, April 2004 - December 2007



Source of data: Family Justice Services.
 *Calgary data were not available for April 2006; data were interpolated by averaging referrals from March and May 2006.
 **Due to administrative staff changes, mediation referral statistics for the Region were not kept from November 2005 to March 2006. Data were interpolated for this period by averaging intakes from October 2005 and April 2006.

The Child Support Resolution (CSR) and Dispute Resolution Officer (DRO) Programs in Edmonton and Calgary, respectively, are two examples of dispute resolution programs for Court of Queen’s Bench. For those self-represented litigants proceeding with a case involving child support in Edmonton, attendance at a Child Support Resolution meeting is mandatory for both parties of the proceedings. In Calgary, a meeting with a Dispute Resolution Officer is mandatory for all parties (represented and self-represented) proceeding with child support applications or variation applications, regardless of whether they are represented. DRO meetings may also discuss other issues, if relevant (e.g., parenting time). Figure 4.6 details the number of sessions attended for the CSR Program from January 2004 to December 2007 and the DRO Program from January 2006 to December 2007. The CSR Program did, in fact, see an immediate increase in the number of sessions attended following the enactment of the *FLA*, reaching a 62% increase in April to June 2006, more or less maintaining this level until the end of 2007. Though complete statistics were not available for the DRO Program prior to January 2006, it is clear that it is a well-attended dispute resolution option, likely because both represented and unrepresented parties must attend. The DRO Program has seen a dramatic increase in sessions attended since early 2006, and maintained a level of attendance through 2007 nearly 100% higher. Thus, the demand created for these programs following the implementation of the *FLA* is evident.

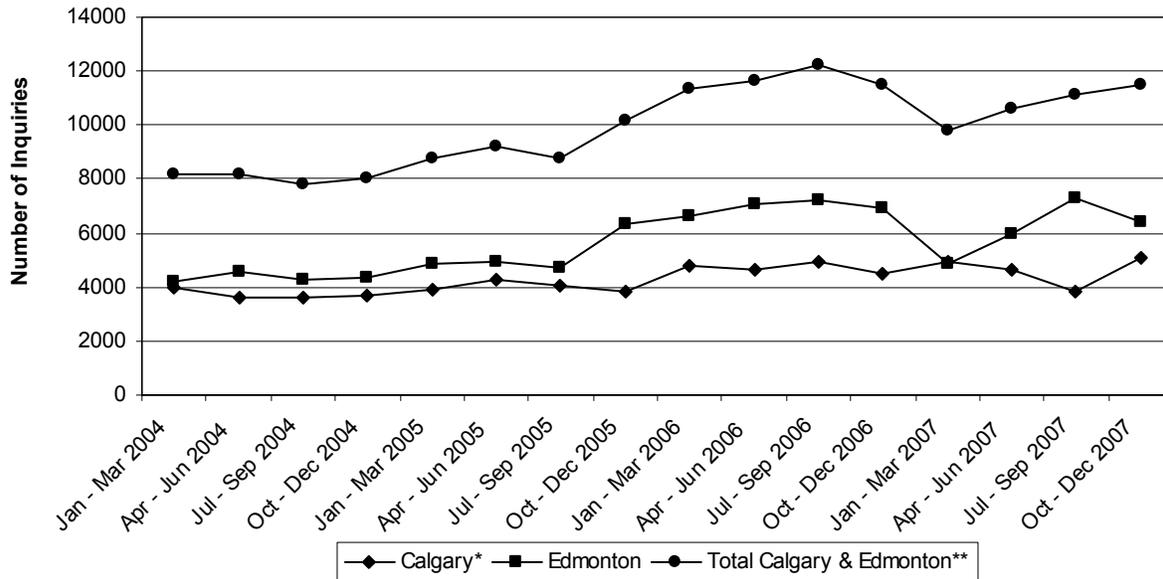
Figure 4.6
DRO/CSR Program Sessions Attended, January 2004 - December 2007



Source of data: Edmonton CSR Program and Calgary DRO Program.
 *Complete data for Calgary's DRO Program were not available until January 2006.

Family Law Information Centres (FLIC), intended to support those individuals (particularly self-represented litigants) making applications for both separation and divorce issues in Alberta Court of Queen's Bench, have also witnessed an increasing demand since the enactment of the *FLA*. Figure 4.7 details the total number of inquiries to Calgary and Edmonton FLIC offices from January 2004 to December 2007. Though the number of inquiries includes those made regarding divorce matters, there is a noticeable increase in the number of inquiries following the implementation of the *Family Law Act* in October 2005. This is likely due to the fact that the procedural changes introduced by the *FLA* were intended to streamline court procedures in Provincial Court and Court of Queen's Bench, making it somewhat easier for self-represented litigants to apply in both levels of court, where appropriate. Again, though inquiries have fluctuated over time (which could also be explained by incomplete record-keeping in Calgary), by November 2007, the number of inquiries to FLIC overall had increased by 40% since January 2004 with Edmonton showing a 52% increase and Calgary a 28% increase. Though *Family Law Act* Claims have remained relatively stable over time, it appears that individuals proceeding in Court of Queen's Bench Family Court are increasingly drawing upon this resource.

Figure 4.7
FLIC Inquiries, January 2004 - December 2007



Source of data: Family Justice Services.

*Calgary data may be unreliable due to incomplete record keeping.

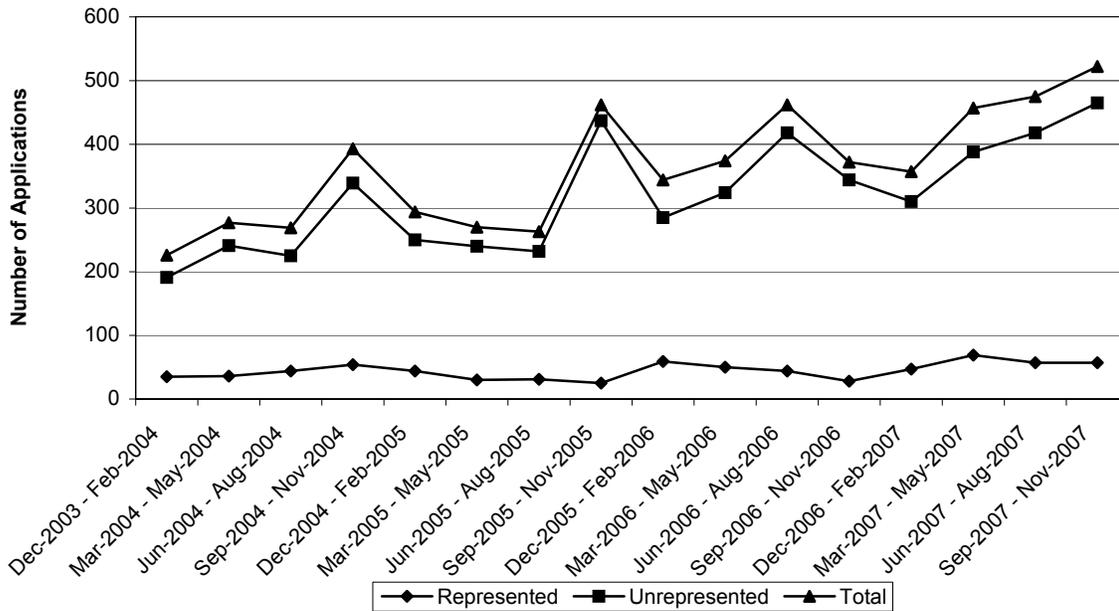
**Though FLIC offices are located throughout the region, they were not added until 2006 - 07. Data were not sufficient to be reported.

4.1.3 Self-Represented Litigants

Very little data were available regarding the number of self-represented litigants proceeding in Provincial Court and Court of Queen’s Bench. However, partial conclusions may be drawn from the Family Court Counsellor intake caseload (refer to Figure 4.4). Before self-represented litigants proceed in Provincial Court in Calgary or Edmonton, they are required to participate in an intake session with a Family Court Counsellor to determine the issues that must be resolved; therefore, the intake statistics may also be a reflection of the flow of self-represented litigants since the implementation of the *FLA*. As shown previously in Figure 4.4, intakes have seen a steady increase since the implementation of the *FLA* to a rate nearly double that which existed in September 2005. Indirectly, this speaks to the fact that an increasing number of individuals are proceeding under the *FLA* without legal representation.

One area that data on self-represented litigants were available was the Caseflow Conference Program in Edmonton Provincial Court. Figure 4.8 compares the number of applications where a solicitor was involved to those where there was no representation. As shown, a large majority of applications did not involve a solicitor. Further, though applications where a lawyer was involved remained relatively consistent pre- and post-implementation of the *FLA*, the number of applications with no solicitor present (i.e., individuals were self-represented) increased dramatically with the increase in applications to Caseflow Conferencing, and continued to increase over time, reaching a 31% overall increase by November 2007. Though it is mandatory for self-represented litigants applying in Provincial Court to have a Caseflow Conference scheduled, and only optional for those with representation, the number of self-represented litigants entering the court process continues to increase.

Figure 4.8
Representation in Edmonton Caseflow Conference
Provincial Court, December 2003 - November 2007



Source of data: Family Justice Services.

4.2 Programs and Services Outcomes

A second area examined in this chapter is the impact of dispute resolution programs and services on cases and outcomes – that is, the extent to which programs and services available outside the court room may be reducing the number of *FLA* cases proceeding to docket court, chambers, or even trial. The resolution rates of a number of these programs and services were examined, including the Caseflow Conference Program, Judicial Dispute Resolution, DRO, CSR, and Family Justice Services Mediation.

4.2.1 Caseflow Conference Outcomes

Outcomes for the Edmonton and Calgary Caseflow Conference Programs since the *FLA* was enacted were examined. Data for the Edmonton program were available from October 2005 to December 2007. Though the Caseflow Conference Program was introduced in Calgary in April 2006, reliable statistics were not available until November 2006; therefore, outcomes for Calgary are only analyzed from November 2006 to December 2007.

Caseflow Conference is unique among the programs and processes examined in that it is one way in which an agreement can be reached *within the court process* without being facilitated by a judge in a court room. Caseflow Coordinators use mediation techniques to explore areas of agreement, and when possible, agreements made can be drafted into Consent Orders and forwarded to a judge for approval. Caseflow Coordinators may also inform clients of alternative dispute resolution options (i.e., mediation, DRO, BCI) and resources (e.g., Parenting After Separation Seminar,

Focus on Communication in Separation), and may provide information on the next step in the court process should clients choose to proceed to a court room.

As shown in Table 4.1, just over half (56.1%) of Caseflow Conferences in Edmonton Provincial Court from October 2005 to December 2007 were concluded⁸ – by final consent order, withdrawal or abandonment, adjournment to docket, *sine die* (adjourned with no future date set), or other reasons. The remaining 43.9% were adjourned⁹ to a future Caseflow Conference date, due to referral to mediation, involvement of legal aid or a solicitor, client request, referral to service or a Family Court Counsellor, or other reasons. The most common outcome was adjournment to docket court (23.7%), with the next most common being adjournment for a referral to mediation (14.2%). Referral to mediation was followed closely by consent orders, with 13.1% of Caseflow Conferences resulting in final consent. Other common outcomes included conclusion by withdrawn or abandoned applications (9.4%), conclusion by *sine die* (7.7%), client request for adjournment (6.4%), and other reasons for adjournment (i.e., review, documents required, etc.). In only 7.6% of cases, an adjournment occurred because parties pursued legal aid or consulted a solicitor, and in only 2.2% of cases, applications proceeded to trial or Judicial Dispute Resolution (see Concluded at Caseflow Conference “Other”). Thus, while the most common conclusion is adjournment to docket court, a majority of cases were concluded in Caseflow Conference, whether by consent, withdrawal, or *sine die*, with the remaining being adjourned to involve mediation, service, legal representation, or a Family Court Counsellor. The Caseflow Conference therefore appears to be a relatively effective means of preventing cases from proceeding to the court room.

In Calgary, roughly half (50.6%) of the Caseflow Conferences were concluded and half (49.4%) were adjourned to a future Caseflow Conference. Consent orders were reached in 12.2% of Caseflow Conferences, but like Edmonton, adjournment to docket court was the most common conclusion, with 23.8% having this result; 13.5% of Caseflow Conferences concluded due to withdrawn or abandoned applications. In 16.3% of cases, the client requested an adjournment to a future Caseflow Conference, and in 13.7% of cases, the Caseflow Conference was adjourned so that the client(s) may get in contact with a Family Court Counsellor. Nearly 10% of Caseflow Conferences were adjourned due to a referral to mediation. Additional outcomes included adjournment so that a lawyer could be consulted (2%), service could be accessed (2%), or other reasons (6%).

⁸ Concluded Caseflow Conferences refer to those where cases would not return to Caseflow in the future, whether because they reached consent, were withdrawn, had to go before a judge in docket court, etc.

⁹ Adjourned to Caseflow Conference refers to those cases that were adjourned to a future Conference date so that parties could pursue mediation, legal aid, service, etc.

**Table 4.1
Caseflow Conference Outcomes**

Caseflow Outcomes	Edmonton (Oct. 2005 - Dec. 2007)		Calgary (Nov. 2006 - Dec. 2007)	
	n	%	n	%
Caseflow Conference Concluded	2,141	56.1	1,628	50.6
Adjourned to Caseflow Conference	1,672	43.9	1,592	49.4
Total Caseflow Conferences	3,813	100.0	3,220	100
Caseflow Conference Concluded:				
Consent Order	500	13.1	393	12.2
Withdrawn/Abandoned	358	9.4	435	13.5
Adjourned to Docket	904	23.7	767	23.8
Adjourned <i>Sine Die</i>	294	7.7	0	0.0
Other ¹	85	2.2	33	1.0
Adjourned to Caseflow Conference:				
Mediation	543	14.2	305	9.5
Legal Aid/Consult Solicitor	290	7.6	63	2.0
Family Court Counsellor to Contact	172	4.5	440	13.7
Service	90	2.4	66	2.0
Client Request	245	6.4	525	16.3
Other ²	332	8.7	193	6.0
Total	3,813	100.0	3,220	100.0

Source of data: Family Justice Services.

¹"Other" conclusions at Caseflow Conference include adjournment to Judicial Dispute Resolution or adjournment to trial.

²"Other" reasons for adjournment to Caseflow Conference include review, documents required, Brief Conflict Intervention, etc.

4.2.2 Family Justice Services Mediation Outcomes

Resolutions in the Family Justice Services Mediation Program were also examined (see Table 4.2), with findings suggesting a relatively high rate of resolution. Edmonton's Mediation Program saw the highest success rate, with just over three-quarters (76.9%) of the mediations conducted between October 2005 and December 2007 reaching a full agreement; an additional 13.5% reached partial agreements. Only 9.6% of mediations in Edmonton resulted in no resolution. Similarly, the Family Justice Services Mediation Program in the Region saw nearly three-quarters (74.6%) of its cases reaching full agreement, and an additional 12.5% reaching partial agreement. Slightly more mediations in the Region saw no resolution reached (13%). Calgary witnessed a lower rate of full agreements reached in mediation, at just over half (53.9%); however, an additional 36% of mediations reached partial agreements. Overall, of the 2,558 Family Justice Services mediations conducted in Alberta from October 2005 to December 2007, 89.5% reached either full or partial agreement; these cases may otherwise have had to be resolved in court.

**Table 4.2
Family Justice Services Mediation Outcomes
October 2005 - December 2007**

Type of Agreement	Calgary		Edmonton		Region		Alberta	
	n	%	n	%	n	%	n	%
Full Agreement	331	53.9	1,051	76.9	431	74.6	1,813	70.9
Partial Agreement	221	36.0	184	13.5	72	12.5	477	18.6
No Agreement	62	10.1	131	9.6	75	13.0	268	10.5
Total Mediations	614	100.0	1,366	100.0	578	100.0	2,558	100.0

Source of data: Family Justice Services.

4.2.3 Judicial Dispute Resolution Outcomes

Also available in Provincial Court as an alternative form of dispute resolution is the Judicial Dispute Resolution (JDR) Program.¹⁰ JDR is an informal, voluntary process where the goal is to reach a settlement on all issues, or to resolve as many issues as possible, with the assistance of a judge. Table 4.3 presents JDR outcomes one year post-enactment of the *FLA* for Edmonton and for 2007 for Calgary. Though these statistics represent all JDR sessions (including those for non-*FLA* cases), its effectiveness may be inferred. Of the 638 cases referred to JDR in Edmonton, just under half (47%) reached resolution by court order with an additional one-third (33.2%) being withdrawn or dismissed. Only 10.5% proceeded to trial after JDR. In Calgary, 74.7% of JDRs were resolved, by court order or withdrawal/dismissal. Only 14.7% were adjourned (likely for trial), with an additional 10.6% of JDR sessions being cancelled. Overall, JDR demonstrates an effective dispute resolution method for Provincial Court.

Table 4.3
Judicial Dispute Resolution (JDR) Outcomes¹

Outcome	n	%
Edmonton, Oct. 05 - Sept. 06 ²		
Resolutions by Court Order	300	47.0
Resolutions by Withdrawal/Dismissal	212	33.2
Proceeded to Trial after Judicial Dispute Resolution	67	10.5
Other (<i>Sine Die</i> , Pending)	59	9.2
Total Applications to Judicial Dispute Resolution	638	100.0
Calgary, Jan. 2007 - Dec. 2007 ³		
Resolved	330	74.7
Adjourned	65	14.7
Cancelled	47	10.6
Total Judicial Dispute Resolutions	442	100.0

Source of data: Alberta Justice.

¹Judicial Dispute Resolution statistics were recorded differently for Calgary and Edmonton.

²Judicial Dispute Resolution statistics were not available for Edmonton beyond September 2006.

³Judicial Dispute Resolution statistics for Calgary were not available prior to January 2007.

4.2.4 Child Support Resolution (CSR) and Dispute Resolution Officer (DRO) Program Outcomes

The resolution rates for the DRO and CSR Programs, available in Court of Queen's Bench, were examined (See Table 4.4). From October 2005 to December 2007 the Edmonton CSR Program witnessed just over half (52.7%) of its sessions reaching a full settlement, and an additional 12.5% reaching partial settlement. Just over one-third (34.8%) of the sessions reached no settlement. For Calgary's DRO Program, the rate of full settlements was slightly lower than Edmonton's, at 38.6%. However, more partial settlements were recorded for DRO than CSR, with just over one-third (35.3%) having this outcome. Calgary's DRO Program also saw fewer

¹⁰ Though JDR is also available in Court of Queen's Bench, sufficient data were not available to conduct an outcomes analysis.

sessions reaching no settlement than was recorded for the CSR Program (26.1%). Thus, the DRO and CSR Programs have also been relatively successful in preventing family law matters from having to proceed to trial in Court of Queen's Bench.

Table 4.4
Child Support Resolution (CSR) and
Dispute Resolution Officer (DRO) Program Outcomes¹

Type of Settlement	Child Support Resolution Program (Edmonton), Oct. 2005 - Dec. 2007		Dispute Resolution Officer Program (Calgary), ² Jan. 2006 - Dec. 2007	
	n	%	n	%
Full Settlement	468	52.7	450	38.6
Partial Settlement	111	12.5	411	35.3
No Settlement	309	34.8	304	26.1
Total Sessions Attended	888	100.0	1,165	100.0

Source of data: Dispute Resolution Officer Program and Child Support Resolution Program.

¹Statistics are based on paper forms manually completed by the DROs and CSRs for each session, and then staff manually enter the data into an Access database.

²Statistics were not available for the DRO Program until January 2006.

4.3 FLA Response Process

In an effort to streamline court procedures and create a fairer, efficient, and effective family law system, the *FLA* introduced a new response process for family law matters. An applicant initiating proceedings on a family matter completes a Claim form, selecting each type of relief being sought (e.g., parenting, child support, contact), and Statement forms providing sworn evidence to support each request for relief. The applicant serves the respondent with the Claim and Statements, as well as blank Response and Reply Statement forms. The respondent completes the Response form indicating the parts of the Claim he/she supports or does not support, and any additional relief sought; however, if the respondent is in support of the applicant's Claim, he/she is not necessarily required to complete and file the Response and Reply Statement. If the respondent disputes any of the applicant's Claim, he/she must complete a corresponding Reply Statement. If the respondent has additional matters that he/she would like to resolve, the respondent files additional respondent Statements, which must be addressed by the applicant prior to the resolution of the matter. The respondent must be served at least 10 days prior to the assigned court date, or 30 days prior if financial information is required. The respondent must serve the applicant with the Response, Reply Statements, and additional Statements no less than 5 days prior to the court date. The applicant files Responses to those Statements he/she wishes to respond to, and must serve the respondents with his/her Reply at least 24 hours prior to the court date. This process (forms, etc.) exists in both Provincial Court and Court of Queen's Bench.

Though the data available do not allow for an examination of the response process by file, CRILF analyzed the data that were available to determine as effectively as possible the extent to which the response process is being used and, where possible, the efficiency of the *FLA* process compared to that which existed previous to the implementation of the *FLA*.

4.3.1 Provincial Court

Available Provincial Court JOIN data on *FLA* activity only allowed for an analysis by the orders requested/applied for in the Claim or Response¹¹ (i.e., guardianship, contact, parenting, etc.), not individual Claims or *FLA* documents filed. As shown in Table 4.5, a majority of the Provincial Court activity between October 2005 and December 2007 was applicant requests for new orders, composing 82.9% of *FLA* activity recorded in JOIN. An additional 12.4% of *FLA* activity was applicants requesting variations to existing orders. Only 3.8% of *FLA* activity in JOIN was requests for orders by respondents in addition to those requested by the applicant in the Claim, with less than 1% being requests for variations to existing orders by respondents.

Table 4.5
Provincial Court Family Law Act Activity
October 2005 - December 2007

Type of File	n	%
Order Requested - Claim	21,762	82.9
Order Requested - Response	993	3.8
Variation to Order Requested - Claim	3,265	12.4
Variation to Order Requested - Response	232	0.9
Total Activity	26,252	100.0

Source of data: Justice Online Information Network (JOIN).

¹Requested orders refer to the orders the individual wishes the Court to grant in their Claim or Response.

Though Provincial Court data on the full response process were not available, CRILF could determine from the *FLA* activity recorded in JOIN whether a Response was filed to the order requested in a Claim or an additional order requested in a Response. As shown in Table 4.6, a Response was filed for only 25.6% of orders requested in the applicant's Claim, and for only 23% of (additional) orders requested by respondents. With regard to requests to vary an existing order, 30.6% of applicant requests and 36.6% of respondent requests had a Response filed.

Table 4.6
Family Law Act Response Filed, by Activity Type
Provincial Court, October 2005 - December 2007

Type of Activity	Response Filed				Total	
	Yes		No		n	%
	n	%	n	%		
Order Requested - Claim	5,581	25.6	16,181	74.4	21,762	100.0
Order Requested - Response	228	23.0	765	77.0	993	100.0
Variation to Order Requested - Claim	1,000	30.6	2,265	69.4	3,265	100.0
Variation to Order Requested - Response	85	36.6	147	63.4	232	100.0

Source of data: Justice Online Information Network (JOIN).

¹¹ Orders requested in the Response include the relief the Respondent requests *in addition* to those listed in the Claim.

The JOIN data also allowed CRILF to examine the outcomes of *FLA* activity in Provincial Court, summarized in Table 4.7. For nearly two-thirds (63.3%) of orders requested by an applicant in a Claim, a final order was issued, with just over one-quarter (28.7%) being withdrawn, dismissed, or denied. Only 7.7% remained active. In comparison, when a respondent requested an additional order, just over half (52.2%) resulted in a final order, and just over one-third (35.1%) were withdrawn, dismissed or denied; roughly 12% remained active. With regard to requests to vary an existing order, nearly two-thirds (62.8%) of applicants' requests resulted in a final order, compared to just over half (52.6%) of respondents' requests. Just over one-quarter (25.8%) of applicants' requests to vary an existing order were withdrawn, dismissed or denied, compared to nearly one-third (32.3%) of respondents' requests. Transfers to Court of Queen's Bench were not common.

Table 4.7
Family Law Act Outcomes, by Activity Type
Provincial Court, October 2005 - December 2007

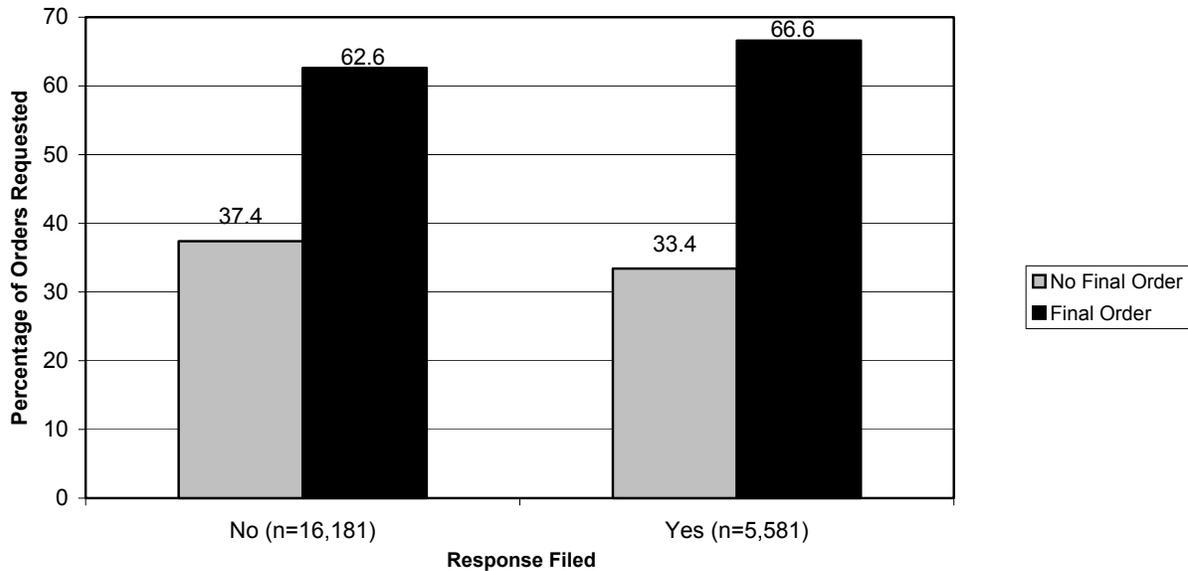
Outcome	Claim - Order Requested		Response - Order Requested		Claim - Variation to Order Requested		Response - Variation to Order Requested	
	n	%	n	%	n	%	n	%
Transfer to Court of Queen's Bench	76	0.3	9	0.9	16	0.4	4	1.7
Withdrawn/Dismissed/Motion Denied	6,246	28.7	349	35.1	841	25.8	75	32.3
Final Order (Provincial Court)	13,766	63.3	518	52.2	2,049	62.8	122	52.6
Active	1,674	7.7	117	11.8	359	11.0	31	13.4
Total	21,762	100.0	993	100.0	3,265	100.0	232	100.0

Source of data: Justice Online Information Network (JOIN).

In order to assess the impact of the full response process, CRILF examined the likelihood of a final order being granted by whether a Response was filed to a request by an applicant (see Figure 4.9), given the applicant's initial request would begin the response process. For requests where a Response was not filed, 62.6% eventually received a final order, where 37.4% did not. When a Response was filed, requests for relief were only slightly more likely to have reached a final order, at 66.6%. Thus, the likelihood of an applicant's request resulting in a final order is only slightly higher if a Response is filed.

Table 4.8 outlines processing time during various stages of the *FLA* response process, from when the applicant opens the file, to when the Response is filed, to final order. The data demonstrated that a Response to a new applicant request is filed an average of 24.6 days after the file is opened; however, this can be as low as the same day or as high as over one year (396 days). On average, 56 days elapsed between the Response being filed and the final order; this can be as low as the same day or as high as 505 days. Overall, an average of nearly 60 days pass between the applicant filing the initial request and a final order being made; however, this can reach up to 588 days.

Figure 4.9
Final Orders Granted to Orders Requested in Claims, by Response Filed
Provincial Court, October 2005 - December 2007



Source of data: Justice Online Information Network (JOIN).

Table 4.8
Processing Time¹ for Orders Requested in FLA Claims
Provincial Court, October 2005 - December 2007

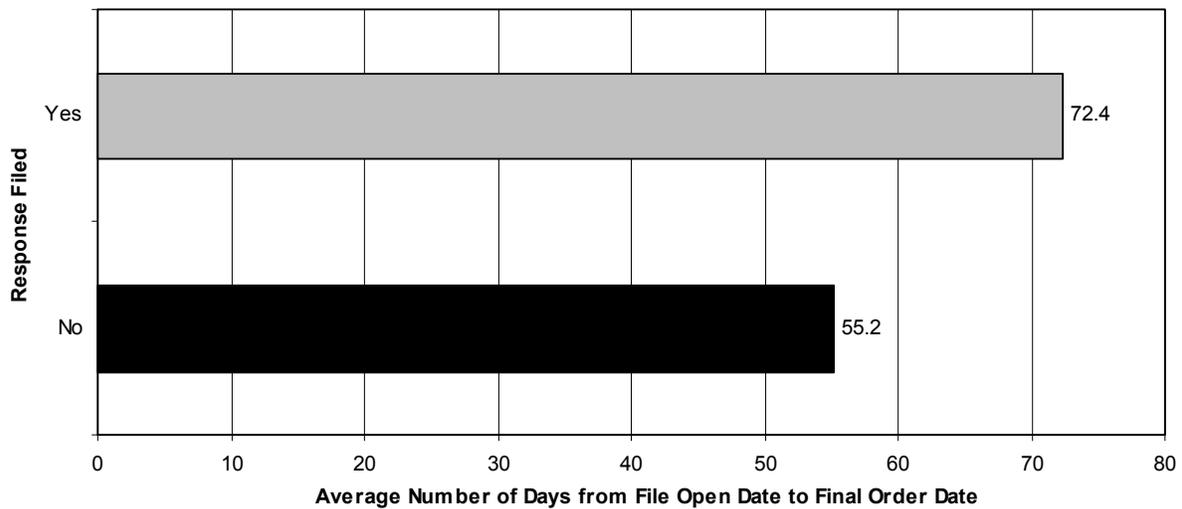
Processing Time	n	Minimum	Maximum	Mean
Average number of days from file open date to response filed date	4,708	0	396	24.58
Average number of days from response filed date to final order date	3,686	0	505	55.99
Average number of days from file open date to final order date	13,770	0	588	59.84

Source of data: Justice Online Information Network (JOIN).

¹Due to inconsistencies in the data provided, processing time could not be calculated for all files with responses and final orders.

Figure 4.10 compares the average number of days from the opening of the file to the final order, by whether a Response was filed. On average, when a Response is filed, applicants saw an average of 72.4 days pass before a final order is made, roughly 17 days longer than when a Response is not filed. Thus, processing time is slightly longer when the response process is followed.

Figure 4.10
Processing Time for Orders Requested in *FLA* Claims, by Presence of Response
Provincial Court, October 2005 - December 2007



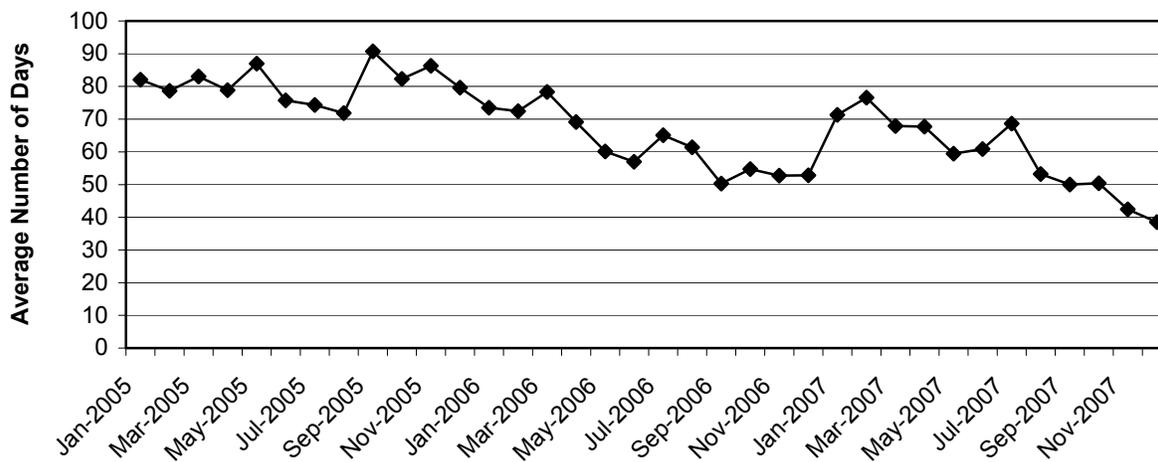
Source of data: Justice Online Information Network (JOIN).

The overall impact of the *FLA* on processing time for family law issues before the Provincial Court is illustrated in Figure 4.11. As shown, the average number of days between the applicant opening a file and a final order being made began to decrease after the *FLA* was enacted in October 2005, and has continued to decrease over time from roughly 90 days in September 2005 to approximately 40 days in December 2007. Thus, it is apparent that efforts to improve the efficiency of the family law system in Alberta Provincial Court have succeeded with regard to processing time, even though the response process is not being used to its fullest extent and may result in the processing time being slightly longer.

4.3.2 Court of Queen’s Bench

Unfortunately, very little data on the response process and processing time were available for Court of Queen’s Bench; further, data were only provided in aggregate form and outcomes of individual files could not be assessed. Table 4.9 shows the number of *FLA* response process documents (Claim, Statement, Response, Reply, etc.) filed in Court of Queen’s Bench from October 2005 to December 2007. A total of 12,126 Claims were filed in Court of Queen’s Bench, composing 51.1% of all *FLA* documents filed. Just over one-quarter (28%) of the documents filed in Court of Queen’s Bench were Applicant Statements and 5.7% were Applicant Statements to vary an existing order. Only 5.5% of *FLA* documents filed were Responses; thus, for approximately every 9 *FLA* Claims, a Response was filed. Only 5.8% of *FLA* documents filed in Court of Queen’s Bench were Respondent Replies, with only 1.5% being additional Respondent Statements. Respondent Statements for variations to existing orders and Replies regarding variations to existing orders comprised just over 2% of *FLA* documents filed. Thus, similar to Provincial Court, the response process does not seem to be used to its fullest extent in Court of Queen’s Bench.

Figure 4.11
Average Processing Time for Family Court Files
Provincial Court, January 2005 - December 2007



Source of data: Justice Online Information Network (JOIN).

Table 4.9
FLA Response Process Documents Filed
Court of Queen's Bench, October 2005 - December 2007

Type of Action	n	%
Claim	12,126	51.1
Applicant Statement	6,660	28.0
Response	1,309	5.5
Respondent Reply	1,387	5.8
Respondent Statement	362	1.5
Applicant Statement - Vary Existing Order	1,356	5.7
Respondent Statement - Vary Existing Order	135	0.6
Respondent Reply - Vary Existing Order	417	1.8
Total	23,752	100.0

Source of data: CASES.

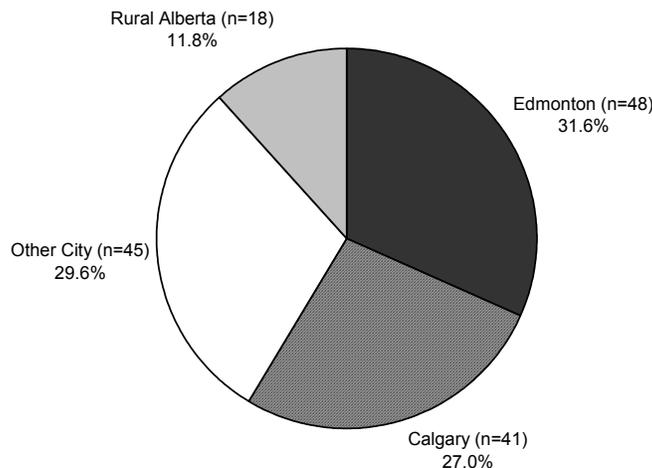
5.0 SURVEY OF PROFESSIONALS

This chapter presents a summary of the results obtained from the Survey of Professionals (see Appendix A). Descriptive analyses were conducted, which revealed trends in respondents' knowledge and opinions regarding the *Family Law Act (FLA)*. Open-ended questions provided an opportunity to identify themes and expand upon several of the statistical conclusions. Respondents were asked questions regarding their: background; knowledge of the previous legislation in comparison to the *FLA*; opinions and perceptions of processes and procedures under the *FLA*; perceptions of various substantive areas of the *FLA*; perspective on the language of the *FLA*; and comments regarding their overall experiences.

5.1 Demographic Information

A total of 152 professionals completed the survey. As Figure 5.1 shows, approximately equal proportions of the survey respondents indicated that they conducted most of their work in Edmonton (31.6%), Calgary (27%), or other cities (29.6%), while the additional 11.8% of respondents worked primarily in rural Alberta.

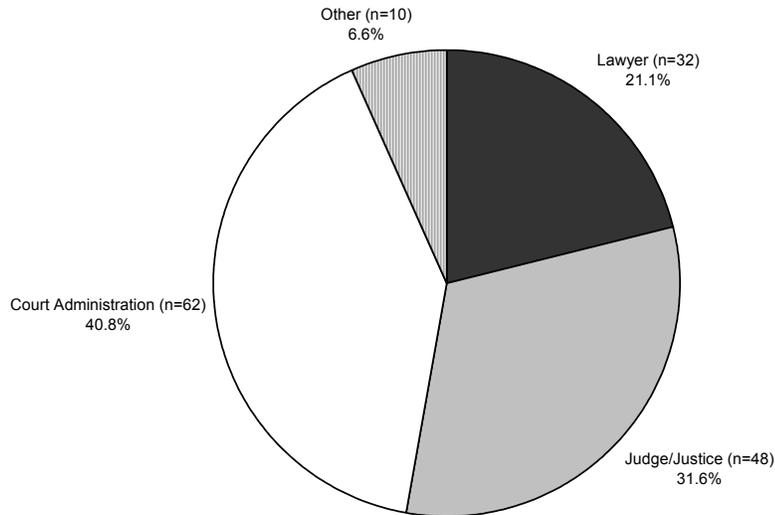
Figure 5.1
Respondents' Primary Location of Work



Source of data: Survey of Professionals.
Total N=152.

The majority of survey respondents (40.8%) worked in areas related to court administration (e.g., Family Court Counsellors, Caseload Coordinators, judicial clerks/court clerks, and Family Justice Services' staff). Almost one-third of respondents were judges or justices (31.6%), and 21.1% were lawyers. The remaining respondents (6.6%) were psychologists/psychiatrists/social workers and others, including mediators and consultants (see Figure 5.2).

Figure 5.2
Respondents' Profession



Source of data: Survey of Professionals.
Total N=152.

Equal proportions of survey respondents reported that they work in Provincial Court (34.4%; n=52), Court of Queen's Bench (32.5%; n=49), or both courts (33.1%; n=50). Over two-thirds of the respondents (68%; n=102) reported working in the area of family law for more than five years. A further 11.3% (n=17) had 3-5 years experience, 17.3% (n=26) had 1-3 years experience, and only five respondents (3.3%) reported working in the area of family law for less than one year.

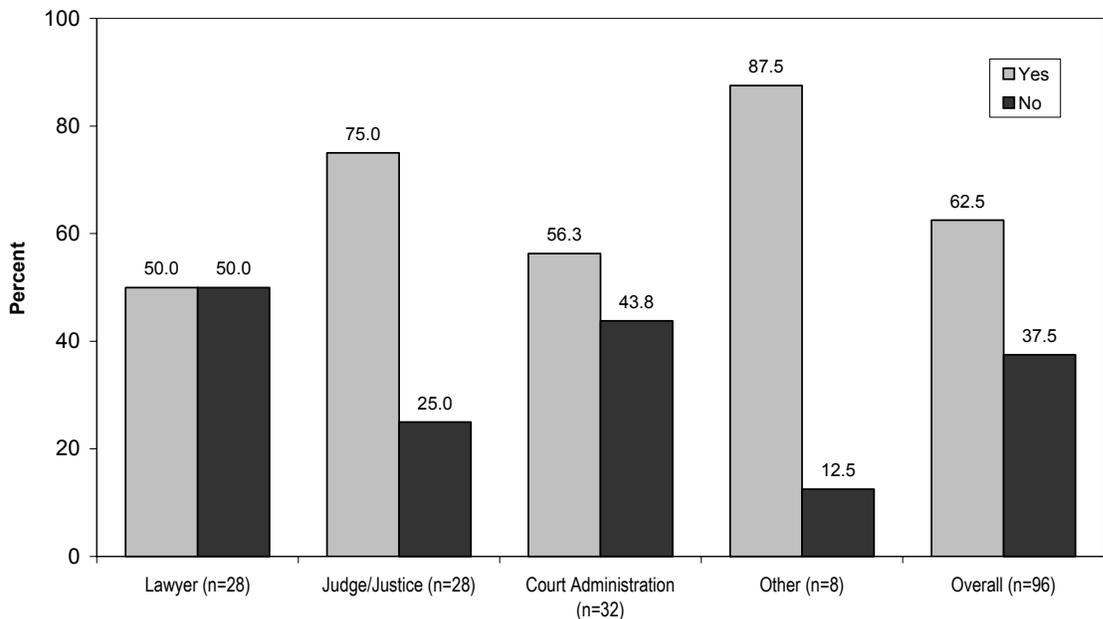
When asked if they were familiar with Alberta's *Family Law Act* and/or its associated processes and procedures, almost all respondents (98%; n=149) reported that they were. The three respondents who were not familiar with the *FLA* were asked to end their surveys at that point.

5.2 Knowledge of Previous Legislation

In order to assess the effect of the *FLA* compared to the previous family law legislation in Alberta, respondents were asked if they had professional experience with provincial family law legislation in Alberta prior to the implementation of the *FLA*. The vast majority of respondents said they did have experience with the previous legislation

(78.9%; n=116). These respondents were then posed a series of questions asking them to compare the current legislation to the previous legislation. The first question asked respondents if, in their experience, the efforts to improve processes and procedures under the *FLA* have been successful. Overall, almost two-thirds of the professionals said yes (62.5%; n=60), and 37.5% (n=36) said no. There were interesting differences, however, when the data were analyzed by profession. As shown in Figure 5.3, lawyers and court administration personnel were less positive than were judges/justices and other professions. Only 50% of the lawyers (n=14) thought the efforts were successful, compared to 56.3% of court administration staff (n=18), 75% of judges/justices (n=21), and 87.5% of other professions (n=7).

Figure 5.3
Respondents' Opinions on Whether Efforts to Improve Processes and Procedures under the *FLA* have been Successful, by Profession



Source of data: Survey of Professionals.
 Total N=152.

Survey respondents were also asked to explain why they thought the efforts to improve the processes and procedures under the *FLA* were successful or not. A total of 76 respondents made 125 comments. The most common comment (n=33) was that there are too many forms, or that the forms are too restrictive, redundant, inappropriate, or complicated. As two respondents put it:

[There are] too many forms. A simple motion and affidavit as previously used in QB was significantly much more efficient. The attempt to make everything into forms to streamline the process for the general public has not been successful. There is also the fact that QB and Provincial Court have different procedures that never were and are still not congruent. Provincial Court has tried so hard to make itself user friendly that it results

in little or no structure and application of the Rules of Court are non-existent. The result is that I try to stay out of Provincial Court. I feel my clients are better served in Queen's Bench because of more predictable processes and more uniform application of the Rules of Court....

The consolidation of legislation under the one Act has been positive. The forms – less so. They are often unduly restrictive, redundant, and inappropriate when counsel uses them, and lay people find them confusing, and are legitimately worried about filling them out incorrectly.

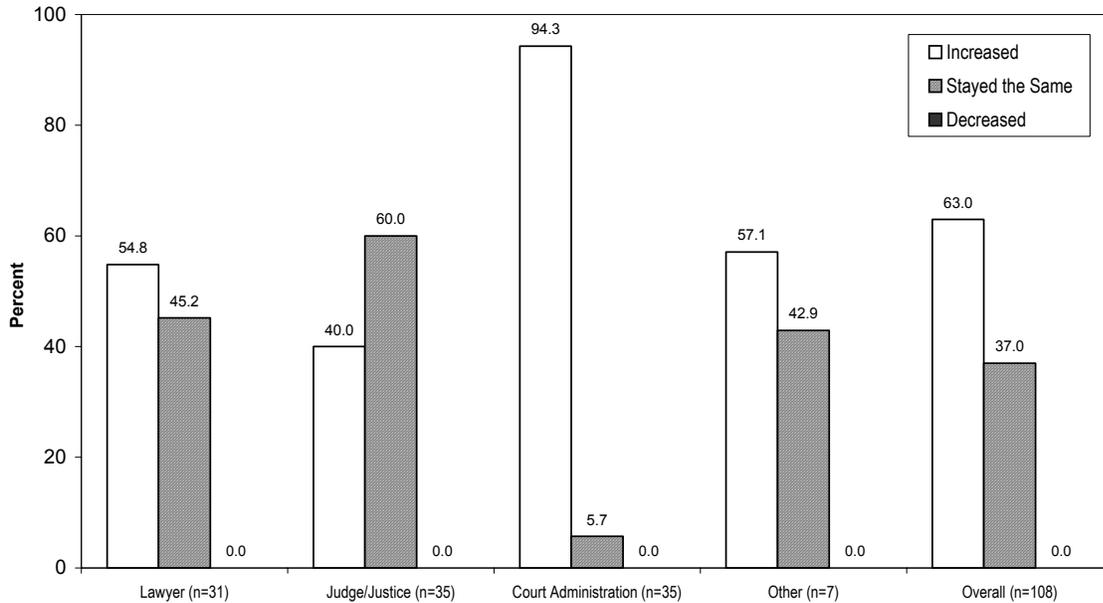
On the other hand, the next most common comment (n=15) was that the processes and procedures are more user-friendly for self-represented litigants and more client-focussed. For example, one respondent said:

The forms have been simplified, which makes it easier for laypeople to make applications. The procedures are standardized in both courts, making the system appear fair, and making both courts equally accessible to the parties. I especially approve of the fact that the filing fee was removed.

The professionals were then asked how the implementation of the *FLA* has affected their workload. Most telling, perhaps, is that none of the respondents said that their workload has decreased. Overall, almost two-thirds of the respondents (63%; n=68) said that their workload has increased, and over one-third (37%; n=40) said that their workload has stayed the same since the implementation of the *FLA*.

Figure 5.4 presents the responses to this question by profession, and there are some interesting findings. The vast majority of court administration staff (94.3%; n=33) reported that their workload has increased since implementation of the *FLA*. Both lawyers and other professionals were more likely to report that their workload had increased than had stayed the same. Only the judges/justices were more likely to report that their workload had stayed the same rather than increased; 60% (n=21) said their workload has stayed the same since implementation of the *FLA*. When broken down by level of court, however, the Provincial Court judges were more likely to report that their workload had increased (60%; n=9), while the Court of Queen's Bench justices were more likely to report that their workload had stayed the same (57.6%; n=19).

Figure 5.4
Respondents' Opinions on How Implementation of the FLA
has Affected their Workload, by Profession



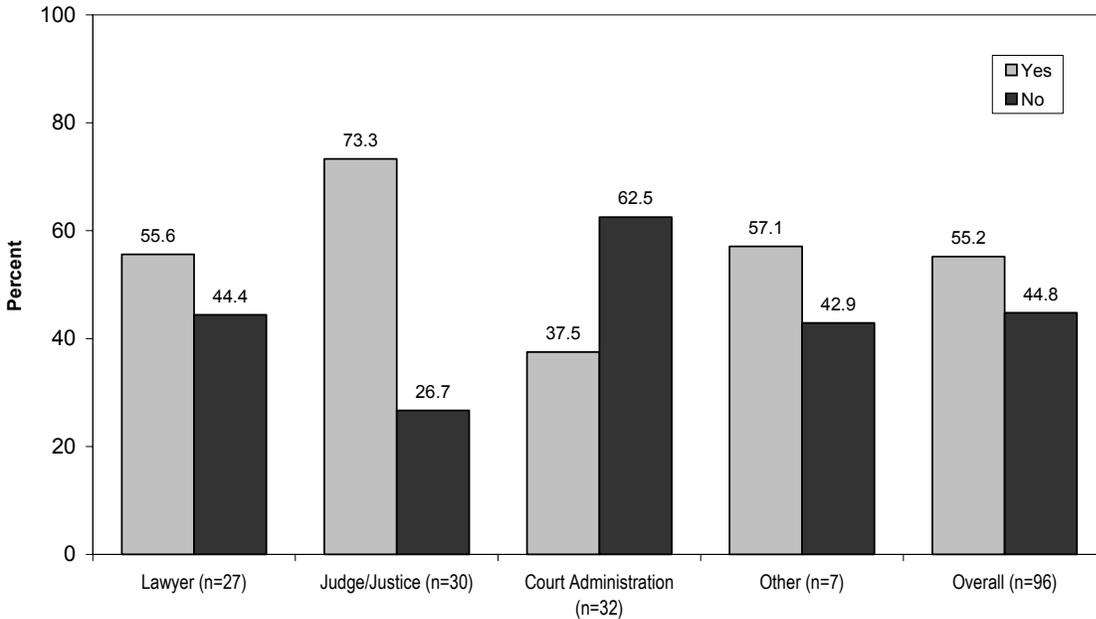
Source of data: Survey of Professionals.
 Total N=152.

The professionals were asked if the *procedural* changes introduced with the *FLA* better serve self-represented litigants than those that existed previous to the introduction of the new legislation. The responses were mixed; 55.2% (n= 53) said yes, and 44.8% (n=43) said no. These data were further analyzed to examine differences by profession, and the results are presented in Figure 5.5. All professions except court administration staff had a greater proportion of positive responses than negative responses. Almost three-quarters of the judges/justices (73.3%; n=22) thought the procedural changes introduced with the *FLA* better served self-represented litigants compared to 57.1% (n=4) of other professions and 55.6% (n=15) of lawyers. Almost two-thirds (62.5%; n=20) of the court administration staff, however, did not agree that the procedural changes better served self-represented litigants.

When asked to explain their answers to this question, 78 respondents made 96 comments. The most common comment (n=31) was that there was too much paper, and the forms are too confusing. As one respondent said:

A large number of people who come to our counter have never had contact with the courts before, therefore they do not have any idea of how to fill out the overwhelming amount of forms or understand the terminology. Neither this legislation nor the paperwork is user friendly for the self-represented litigants. Even a lot of learned counsel have a hard time understanding the paperwork.

Figure 5.5
Respondents' Opinions on Whether the Procedural Changes Introduced with the FLA Better Serve Self-represented Litigants, by Profession



Source of data: Survey of Professionals.
 Total N=152.

Another respondent said:

The part that I do like is that the respondent now has the ability to file a Response and get their side out there, where in the past they didn't really have that opportunity. But I'm also finding that some people are not understanding that they are supposed to be filing a Response and then it delays the process to get the Response in. And what is not helping is that the forms are confusing for the average person with no legal experience/court knowledge.

The second most common comment made by the professionals (n=22) was that the procedural changes are more user-friendly for self-represented litigants, and there is now a more efficient case flow process that allows more comfort and input from clients. One respondent said, *"Certainly, the previous system of documents was a significant bar to self-represented litigants commencing an application, and the forms have made it easier for them to seek relief."*

Some respondents offered suggestions for improving the procedures. Two examples follow:

The current process invites an adversarial process rather than a presumption of cooperation. Issues such as joint guardianship and parenting could be presumed [in the forms] unless otherwise specified in

the Claim. The court could assist the individuals with the issues not agreed to.

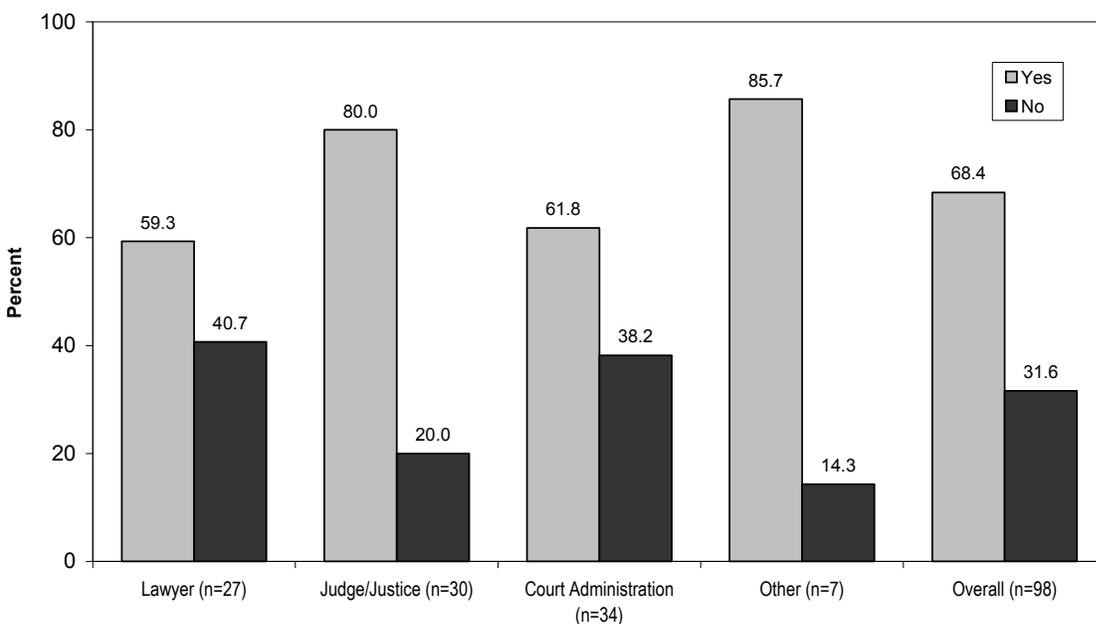
Procedures should be the same in Court of Queen's Bench and in Provincial Court but they are not. Only the forms are. The public is confused and they will be even more confused when they go to the new Family Law Centre as they will still need to go to the Queen's Bench side to access courtrooms and be heard by a Justice. Documents are not all the same; court orders are prepared differently. Technology is different. Queen's Bench accepts different documents than Provincial Court does. Some courses are mandatory for one court and not the other, etc. If we could not have one big Family Centre (one stop shopping), things should have been left alone.

The professionals were then asked if the *substantive* changes introduced by the *FLA* better served self-represented litigants than previous family law legislation in Alberta. Overall, respondents were more positive about the substantive changes to the *FLA* than they were the procedural changes. Over two-thirds (68.4%; n=67) of the professionals agreed that the substantive changes better served self-represented litigants, and just under one-third (31.6%; n=31) disagreed.

When broken down by professions (see Figure 5.6), over four-fifths of other professions (85.7%; n=6) and the judges/justices (80%; n=24) thought that the substantive changes to the *FLA* better served self-represented litigants. The majority of court administration staff and lawyers also agreed that the substantive changes better served self-represented litigants, but the proportions of positive responses were smaller than the other professions and the judges/justices (i.e., 61.8% (n=21) of court administration staff and 59.3% (n=16) of lawyers).

Survey respondents were asked to explain their answers, and 57 respondents made 67 comments. The most common comment (n=12) was that consolidating the legislation was greatly needed. As one respondent put it, "*The previous morass of unconnected and diffuse legislation must have been a nightmare for unrepresented litigants.*" The next most common comment (n=8) was that self-represented litigants still do not understand the law. As one respondent put it, "*The underlying problem of a lack of understanding of substantive law cannot be overcome with procedural changes.*"

Figure 5.6
Respondents' Opinions on Whether the Substantive Changes Introduced with the *FLA* Better Serve Self-represented Litigants, by Profession



Source of data: Survey of Professionals.
 Total N=152.

5.3 Processes and Procedures under the *FLA*

One goal of the *FLA* was to create a simple and efficient system where family law matters are settled quickly, effectively, and in non-adversarial ways. The survey included a section of questions intended to elicit respondents' opinions and perceptions of various processes and procedures under the *FLA*, and the results are presented in Table 5.1.

Respondents were first asked if they were aware of situations where confusion or delay arose because of the overlapping jurisdictions of Provincial Court and the Court of Queen's Bench. As is indicated in Table 5.1, over two-thirds (69%) of the professionals were aware of problems because of the overlapping jurisdictions. When asked to explain their answers, 80 respondents made 96 comments. The most common comment (n=23) was that self-represented litigants did not understand the differences in the jurisdictions and ended up applying in the wrong court, or did not know which court had jurisdiction. The next most common comment (n=21) was also related to this issue – situations where proceedings were commenced in Provincial Court by one party, followed by commencement of divorce proceedings in Court of Queen's Bench, or where there were proceedings for a parenting order under the *FLA* in Provincial Court when an order had already been granted in Court of Queen's Bench under the *Divorce Act*. Examples of comments by professionals regarding these issues are presented below:

Table 5.1

Respondents' Opinions of Processes and Procedures under the FLA

Process/Procedure	Yes		No		Total	
	n	%	n	%	n	%
Has confusion or delay arisen due to the overlapping jurisdictions of Provincial Court and Court of Queen's Bench?	98	69.0	44	31.0	142	100.0
Is the FLA claim form easy to use?	78	59.5	53	40.5	131	100.0
Is the FLA response form easy to use?	86	64.7	47	35.3	133	100.0
Does the use of standardized statements provide for an efficient claim and response process for self-represented litigants?	88	66.2	45	33.8	133	100.0
Does the use of standardized statements provide for an efficient claim and response process for represented litigants?	87	65.9	45	34.1	132	100.0
Is enough time allotted for response process?	99	81.8	22	18.2	121	100.0

Source of data: Survey of Professionals.
Total N = 152.

There are times when it is unclear whether there is an extant action in one court or the other which prevents one from moving forward in the other. There are times when, in my opinion, an action in QB would be much more expeditious but I am precluded due to the fact that an action has been commenced in Provincial Court. There are times when a lawyer will refuse to act because he or she does not act in Provincial Court, which also leads to delay.

Matters that would be better suited to Queen's Bench procedures (i.e., more thorough discovery process and practice notes/directives) are often stuck in Provincial Court because a self-represented litigant was not sure where to go – in Provincial Court, there are fewer family court dates and applications need to be made in order to use some procedures that are standard in Queen's Bench.

Difficulties still occur where parties try to apply to vary orders – not clear where they must go. Additionally, problems still exist at the nexus of guardianship/child protection/adoption issues.

Survey respondents were asked if the FLA Claim form was easy to use, and the results were mixed (see Table 5.1). Three-fifths (59.5%) of the professionals said yes, and two-fifths (40.5%) said no. When asked why or why not, 85 respondents made 109 comments. The most common comment (n=25) was that the Claim form was too rigid, contrived, difficult, or complicated. One respondent said:

Often the public using the Court system to settle disputes have limited communication and lifestyle skills and often need people to hear their issues before it's clear as to what they are seeking. They need help to complete forms and have difficulty following through on gathering financial support information. Many are fearful with little or no support and have

difficulty serving documentation. There are so many accompanying documents that it confuses them as to what has to be served and why. Counter staff in rural court locations do not have the time to spend 45 minutes counseling family law clients....

The next most common comment, however, was that the Claim form includes instructions and check boxes, and is easy to complete (n=19). One respondent said, “*I think the questions are more straightforward, easier to understand, [and there are] less forms. Affidavits are much longer.*” Another said, “*Fill in your personal information, check a few boxes – what could be easier?*”

Another common response (n=13) was that self-represented litigants do not understand the law and get confused by the tick boxes, or they use the tick boxes as a shopping list. For example, two respondents made the following comments:

I received training, so the forms were a little easier for me to figure out, but when you get someone off the street trying to fill them out they use it as a check list. I want guardianship, parenting, time with the child enforcement, contact, when they were only needing to check the parenting box. It is not clear enough what they need to be doing. And then the question about whether they have considered mediation is not clear -- is it to mean that they have considered it and do want to or considered it and don't want to? And finally, they have a space for two applicants to sign where as in the past they did not.

The Claim invites people to tick boxes in each area listed rather than just the matter at issue. Guardianship is checked even though the parties are already guardians. There could be a presumption of basics, such as joint guardianship, issues of custody and child support (as per guidelines unless addressed) by way of a preamble in their commencing document. This would force the individual to think about why they want to deviate from the presumptions. The onus would be on them to establish why they ought to be able to deviate. The Family Law Act process/forms encourage an adversarial approach. The process should be there to help the parents deal with those areas that they cannot agree on rather than fostering an adversarial process.

Survey respondents were then asked if the *FLA* Response form was easy to use. As shown in Table 5.1, almost two-thirds of the professionals (64.7%) said yes. A total of 74 respondents made 78 comments. Similar to the comments regarding the Claim form, the two most common comments made by professionals were contradictory. The most common comment (n=13) was that the Response form is easy to use, straightforward, and easy to understand. The next most common comment (n=12) was that the Response form is too rigid, restrictive, and overwhelming. Respondents also made comments about the process for the Response form, as explained by two respondents:

The only confusion lies with the way the form is laid out when a person disagrees with a Claim. Many clerks and litigants mistakenly check the boxes on the Response for “further orders,” when, in reality, the litigant is simply responding to those same orders requested by the applicant.

This is another area where the self-represented litigants and counsel have had difficulty understanding the forms and process. Counsel often file a new Claim rather than use the Response for this purpose.

The next question in this section of the survey asked respondents if the use of standardized statements provides for an efficient Claim and Response process for *self-represented* litigants. Two-thirds (66.2%) of the professionals said yes, and one-third (33.8%) said no (see Table 5.1). When asked to explain their answers, 86 respondents made 92 comments. The most common comment (n=10) was that the process is not always efficient because there is a lot of redundancy, and when making two or more applications, a lot of information needs to be repeated. Another common comment (n=8) was that it is efficient in that it encourages people to be more concise and it is good to have the structure to direct what people are asking for since it helps them to stay on issues that the court is legislated to handle. Comments were made (n=8) that the process is quick, but provides little information. Related comments (n=8) were that standardized statements are okay, but they sometimes result in self-represented litigants relying entirely on the form, and not adding in their own information. As one respondent put it:

...many self-represented litigants do not include their full evidence in their Statements and, in Provincial Court, this results in the possibility of not all issues being on the table and disclosed prior to setting trial dates, which makes it very difficult for counsel to prepare for trial.

Another respondent commented on the multitude of forms:

Every situation is different; every child is different. While standardized Statements can sometimes be beneficial, there are simply too many. The client comes to the counter, the clerk tries to ask questions to determine what type of Claim and Statements are required, but often the clerk does not get the entire situation and then gives them the wrong Statements.

The professionals were then asked if the use of standardized statements provides for an efficient Claim and Response process for *represented* litigants. The results (see Table 5.1) were almost identical to the responses obtained when the professionals were asked this question of self-represented litigants, i.e., two-thirds (65.9%) said yes, and one-third (34.1%) said no. A total of 78 respondents made 82 comments explaining their answers. The comment made most frequently (n=13) was that the standardized statements are too rigid, difficult, and do not provide enough information. Nine comments were made that lawyers seem to fill out the forms incorrectly as well. Another common comment (n=9) was that they always have to attach a sheet that gives room for proper explanation; it has turned one document (previously) into several documents, and therefore affidavit evidence is preferred.

Related to this comment is the comment (n=9) that many lawyers do not use the forms, but rather insist on filing lengthy affidavits or notices, or they just attach affidavits to the standardized statements. As one respondent put it:

The lawyers complain to me a lot about having to repeat information in the Statements. And lawyers pride themselves on being able to craft a clear and compelling affidavit – it's like writing a novel sometimes. The Statements have taken that away from them and they don't like it.

Another respondent commented:

The longer we use them the easier it gets but there are situations where we need help from the clerks and it seems as though not all of the clerks are aware of the rules involved with filing the documents, i.e., things are being rejected for wrong reasons and when we confirm with someone with more experience, we simply re-submit the same documents to that person in their original form – this also adds to our expenses (courier/runner fees). This happens quite frequently. [We need] more training for clerks and consistency when filing documents.

The next question in the survey asked the professionals if enough time was allotted for the response process. The vast majority (81.8%) of the respondents said yes (see Table 5.1). In explaining their answers, 49 respondents made 51 comments. The most common comment (n=11) was that the timelines are flexible, and adjournments are usually granted. One respondent said:

In practice, the first appearance almost always results in an adjournment. Self-represented litigants rarely have a Response completed, while counsel are usually retained without enough time to respond. Increasing the time allotted would not likely alter this situation, however, as procrastination is a nearly universal human quality.

The next most common comment (n=7) was that family matters are usually very time sensitive, and the process is actually very slow. Examples of these responses are presented below:

It is not enough time as they are not able to book an appointment with our office to ask the questions that they have and receive assistance with their Response. Generally we have met this need by telling them to walk-in. This can involve a long wait for the respondent as it is first come, first served. However, I don't know if it would be better to extend the time and make it longer for people to get to court. Many people feel like they are waiting too long to get to court as it is and then decide that they want to ask the judge for shortened service or an ex-parté order.

If you are served 10 days prior to court, and have to file the Response five business days before court, you usually have only a couple of days to do the Response documents. And self-represented litigants inevitably wait

until the last possible minute to serve those Claims. Having said that, the clerks don't make a fuss when Response documents come in late and I haven't heard of the court raising concerns about it either. So, I wouldn't suggest changing the timelines.

The next question in the survey asked the professionals if various programs and services were effective in improving the efficiency of the family law system under the FLA. The results are presented in Table 5.2.

Table 5.2
Respondents' Opinions of the Effectiveness of Programs and Services in Improving the Efficiency of the Family Law System under the FLA

Program/Service	Yes		No		Unfamiliar/ No Opinion		Total	
	n	%	n	%	n	%	n	%
Parenting After Separation Seminar	119	82.6	9	6.3	16	11.1	144	100.0
Focus on Communication in Separation	79	56.8	7	5.0	53	38.1	139	100.0
Family Justice Services/ Family Law Information Centre	118	83.1	8	5.6	16	11.3	142	100.0
Caseflow Conferencing	61	44.2	5	3.6	72	52.2	138	100.0
Family Court Counsellors	105	72.9	11	7.6	28	19.4	144	100.0
Judicial Dispute Resolution	121	84.0	7	4.9	16	11.1	144	100.0
Brief Conflict Intervention	59	42.8	6	4.3	73	52.9	138	100.0
Duty Counsel	102	73.4	17	12.2	20	14.4	139	100.0
Civil Practice Note 1: Case Management	75	54.7	12	8.8	50	36.5	137	100.0
Family Law Practice Note 7: Use of Independent Parenting Experts	64	46.7	12	8.8	61	44.5	137	100.0
Family Law Practice Note 9: Dispute Resolution Officers or Child Support Resolution Officers	70	52.6	6	4.5	57	42.9	133	100.0

Source of data: Survey of Professionals.

Total N = 152.

Overall, respondents were very positive about the programs and services. When negative comments were made about a program or service, it was usually because it was not available in their jurisdiction. Many respondents were also not familiar or had no opinions about many of the programs or services. This was usually due to a program/service being offered in Court of Queen's Bench, but the respondent only worked in Provincial Court. The first program queried was the Parenting After Separation (PAS) Seminar. The vast majority of respondents (82.6%) agreed that the program was effective in improving the efficiency of the family law system under the FLA. A total of 42 respondents made 47 comments, the most common (n=20) being that PAS is an excellent program, and the information provided better informs decision making. Likewise, respondents were positive about Focus on Communication in Separation (FOCIS); 56.8% thought the program was effective in improving the efficiency of the family law system, only 5% disagreed, and 38.1% were unfamiliar with the program or had no opinion. Twenty-five respondents made 28 comments, the most common (n=13) being that FOCIS provides the "how-to" that is more skill-based, and focuses on the future.

The professionals were then asked their opinion of Family Justice Services and the Family Law Information Centre. Most respondents (83.1%) thought these services were effective in improving the efficiency of the family law system under the *FLA*, and only 5.6% disagreed (see Table 5.2). A total of 42 respondents made 45 comments when asked to explain their response. The most frequently made comment (n=17) was that the service is excellent, and provides good information. Ten comments were made that the service is especially effective for self-represented litigants to have assistance through the court process and with filling out applications. One respondent made the following suggestion:

Need to give out more information about what the court needs from clients regarding the paperwork needed: documents to support the amount of their income (on both sides) and their expenses (on both sides), so that they are prepared to answer questions from the court, and so that the court can give a timely decision regarding Support Orders. There should be someone/agency available to help the court determine the amount of support each person should be paying in Provincial Court.

When asked about Casflow Conferencing, 44.2% of the professionals thought the service was effective in improving the efficiency of the family law system, only 3.6% disagreed, and over half (52.2%) were either unfamiliar with the service or had no opinion (see Table 5.2). Of the 22 comments made by 22 respondents, the most common (n=6) was that the service was not available in their region. The next most common comment (n=4) was that the service was efficient and client friendly.

Survey respondents were very positive about the services provided by Family Court Counsellors. As shown in Table 5.2, almost three-quarters (72.9%) thought the services improved the efficiency of the family law system, only 7.6% disagreed, and one-fifth (19.4%) were either unfamiliar with the service or had no opinion. Forty respondents made 44 comments, the most common (n=19) being that the service is excellent, and Family Court Counsellors provide access to accurate information and support.

The professionals were also very positive about Judicial Dispute Resolution (JDR). The vast majority (84%) thought the service was effective in improving the efficiency of the family law system under the *FLA*, only 4.9% disagreed, and 11.1% were unfamiliar with the service or had no opinion (see Table 5.2). When asked to explain their responses, 38 professionals made 39 comments. The most common comment (n=14) was that it helps for people to sit down with the judge, and that it is nice to have the judge's experience to help mediate the situation. The next most common comment (n=7) was that JDR is more effective than the adversarial process of litigation. As one respondent explained:

The Judicial Dispute Resolution process is just another wonderful "tool in our tool belt" in terms of providing the clients with opportunities to try to resolve their disputes regarding their children's issues. It works awesome

when the parties are great distances apart...kind of a “one or two shot deal.” We have a superb working relationship with the judiciary here....

As shown in Table 5.2, 42.8% of the professionals thought that Brief Conflict Intervention was an effective program for improving the efficiency of the family law system, only 4.3% disagreed, and 52.9% were unfamiliar with the program or had no opinion. A total of 19 respondents made 20 comments, the most common (n=10) being that for those harder to mediate situations, Brief Conflict Intervention really digs deeper, and has been very successful.

Survey respondents were very positive about the services provided by Duty Counsel. Almost three-quarters (73.4%) agreed that the services improved the efficiency of the family law system under the *FLA*, 12.2% disagreed, and 14.4% were unfamiliar with the service or had no opinion (see Table 5.2). When asked to explain their answers, 50 respondents made 50 comments. The most frequently made comment (n=21) was that Duty Counsel is an excellent resource for parents to be able to ask simple legal questions and that the quick advice really helps. The next most common comment (n=9) was that the service is not available in their region or in Court of Queen’s Bench.

The professionals were asked if they thought Civil Practice Note 1: “Case Management” was effective in improving the efficiency of the family law system under the *FLA*. As shown in Table 5.2, 54.7% of respondents said yes, 8.8% said no, and over one-third (36.5%) were unfamiliar with the service or had no opinion. A total of 22 respondents made 22 comments, the most common being that the service is not available in their region, or not available in Provincial Court (n=7). The next most common comment (n=6) was that Civil Practice Note 1 is helpful for families who are highly conflicted and utilize a great deal of court time to see one justice so that the story does not have to be presented to the court each time an appearance is made. Another common comment (n=5) was that the service is effective, but it is difficult to find a judge who will accept case management, or that there are not enough staff and it is rarely ordered.

The next service asked about in the survey was Family Law Practice Note 7: “Use of Independent Parenting Experts.” Almost one-half of the professionals (46.7%) agreed that this service improved the efficiency of the family law system, 8.8% disagreed, and 44.5% were unfamiliar with the service or had no opinion (see Table 5.2). When asked to explain their answers, 26 respondents made 27 comments. The most common comment (n=6) was that the service is not available in their region or in Provincial Court, or that there is no local availability of qualified experts in their jurisdiction. The next most common comment (n=5) was that any system that uses experts to help with parenting plans takes matters out of the court and thus improves efficiency.

The professionals were then asked their opinions about Family Law Practice Note 9: “Dispute Resolution Officers or Child Support Resolution Officers.” As shown in Table 5.2, 52.6% of respondents agreed that this service is effective in improving the efficiency of the family law system under the *FLA*, only 4.5% disagreed, and 42.9%

were unfamiliar with the service or had no opinion. Twenty professionals made 21 comments. The most frequently made comment (n=8) was that Family Law Practice Note 9 is an excellent resource for parents who are trying to figure out child support – it reserves the court’s time for issues that are more complex and require a justice’s decision. As one respondent put it:

It does create efficiencies for self-represented litigants, because they rarely talk to each other before filing an application and the Dispute Resolution Officer/Child Support Resolution Officer process gets them talking, often resulting in consent orders. Lawyers ought to be talking to each other and working towards resolution themselves. They sometimes use the Dispute Resolution Officer as a “neutral expert” to get their stubborn client to back down on an issue. A Judicial Dispute Resolution or pre-trial conference has the same effect, but at a higher cost to the client.

The next most common comment (n=4) was that these services need to be available in Provincial Court.

The last question in this section of the survey asked respondents if the number of dispute resolution programs and/or services available in their community was sufficient to support the goals of the *FLA*. Over three-fifths of the professionals (61.9%; n=83) said no, and 38.1% (n=51) said yes. Respondents who answered no were asked what types of programs and/or services were needed, and 77 respondents made 98 comments. The most frequently made comment (n=22) was that more resources are needed in the outlying communities. The next most common comment (n=6) was that “*we need more of the above programs/services.*” Examples of comments made by respondents regarding these issues are presented below:

There should be a minimum standard of service to all Albertans. This is challenging in remote communities. In the northern region we are considering direct phone lines to Law Information Centre offices from base courts. Duty Counsel being available at Family Court would be a huge benefit to the individuals, the court and the clerks.

We only have the courses offered by the John Howard Society. Our Law Information Centre office and Family Court Counselor are overloaded with family law matters. If the goal of this Act was to create enough work to maintain these positions then we have succeeded. But if the goal of the Act was to help self-represented litigants understand family law and provide better and quicker access to family matters, we failed.

The next most common comment (n=6) was that more direct hands-on assistance (e.g., Family Court Counsellors) is needed for self-represented litigants in Court of Queen’s Bench. Other respondents had specific requests:

There would be a tremendous benefit to having Duty Counsel available to assist individuals to understand the language and legislative requirements

and process. They would be able to advise individuals of the best court for their specific need.

[We need] a local Law Information Centre office...and Family Law Information Centre, a local and full-time Family Court Counsellor..., Duty Counsel for family court, local Dispute Resolution and Child Support Resolution Officers, a more current Parenting After Separation Seminar, and a dedicated space in our court house with computer, printer and internet access for self-represented litigants.

[We] need hookups with immediate addiction intervention services – should convert J.J. Bowlen Building into a full service family resource centre.... This would be amazingly cost-effective.

We desperately need well trained psychologists/social workers in family conflict to intervene early and work with the court. Children are still being sucked into the black hole of family conflict and we know the consequences of that to society and the justice system in the future.

We need a mandatory program for people to advise them how to resolve matters in the least expensive way and why they need to do this.

5.4 Substantive Areas of the *Family Law Act*

A number of substantive changes were made to provincial family law in Alberta with the implementation of the *FLA*. The survey asked respondents about their opinions regarding these changes in the following areas: best interests of the child; guardianship; parenting orders; contact orders; child support; and support of spouse or adult interdependent partner. This section presents the findings related to these questions.

5.4.1 Best Interests of the Child

Section 18(2) of the *FLA* presents a number of factors that the court shall consider in determining what is in the best interests of the child. Respondents were asked a number of questions regarding their opinions of the best interest factors contained in the *FLA*, and their responses are presented in Table 5.3. When asked if they thought that consideration of the best interest factors contained in the *FLA* protects the best interests of the child, almost all respondents (94.1%) said that they did. When asked why they thought this was the case, 45 respondents provided 46 comments. The most frequently given comment (n=24) was that the best interests criteria provided in the *FLA* was a very comprehensive and well thought out list. One respondent commented: “Yes, and having them articulated in the legislation was a progressive and modern approach to legislating in this area – miles ahead of the federal *Divorce Act*.” On a less positive note, one respondent stated that “a working single mother would lose to paternal or maternal grandparents every time. Recognition that a natural father and mother are presumed to be the best people to raise children is needed.”

Table 5.3
Respondents' Opinions of Whether Substantive Changes
to the FLA Protect the Best Interests of the Child

Questions	Yes		No		Total	
	n	%	n	%	n	%
Does consideration of the best interest factors in the FLA protect the best interests of children?	128	94.1	8	5.9	136	100.0
Should emphasis be placed on some best interest factors over others?	77	56.6	59	43.4	136	100.0
Is outlining best interest factors for consideration in the legislation more beneficial than a broadly defined consideration of best interests?	99	75.0	33	25.0	132	100.0
Does the FLA afford children better protection than does other legislation to ensure the child's physical, psychological and emotional safety?	50	43.5	65	56.5	115	100.0

Source of data: Survey of Professionals.
Total N = 152.

Respondents' opinions were less positive when they were asked whether emphasis should be placed on some best interests factors over others. Just over one-half (56.6%) of respondents stated that some factors should be emphasized over others. When asked why or why not, 85 respondents provided 95 comments. The most common comment (n=36) was that some factors should not be emphasized because judicial discretion in weighting of factors is appropriate and that each situation is unique and cannot be reduced into a base formula. The second most commonly provided comment (n=17) was that some factors should be emphasized because physical and emotional safety is sometimes overshadowed by less pressing concerns. The third most common comment (n=16) was that emphasis should be placed on some best interests factors depending on the unique circumstances of each party. Specific comments provided by respondents included:

Each scenario needs to be looked at on a case-by-case basis. I don't believe there is a black and white way to look at parenting and what is best for the child. That is why we don't have just one parenting arrangement that everyone follows. That is why things need to go to trial sometimes, and even better to go to mediation because then the parents can talk about what is important for their children and what should be the emphasis.

I believe that they should all be considered, however, I do believe that immediate risk of emotional damage or physical/psychological effects from situations must be looked at first and foremost then factors such as school, cultural, spiritual, etc. Sort of like Maslow's hierarchy...the immediate needs first...safety, food, clothing, emotional harmony, then the "self actualizing" values.

To decide a weighting in advance does not allow the court and parties to focus on the specific needs of the child in question. For child support we abandoned the individual justice model in preference to the uniform justice

model. This would be a grave mistake in issues involving custody or parenting of children.

When respondents were asked if outlining specific best interests factors for consideration in the legislation is more beneficial than a broadly defined consideration of best interests, three-quarters (75%) of respondents indicated that it is more beneficial. When asked why or why not, 80 respondents provided 84 comments. The most common comment (n=45) was that it is beneficial to outline specific factors because it gives structure and a set of considerations and that it would be too general and subjective without a specific list of factors to consider. The second most frequently provided comment (n=10) was that the court's discretion should not be fettered, but there is likely some benefit in setting out the sort of factors that "best interests" encompasses. Specific comments provided by the respondents included:

I believe that specific best interests listed along with the ability to enter other "best interests" as the applicants and respondents see fit would be a good idea. That way the relevant items that should be covered and addressed will be and anything else that the applicant and respondents find important to them alone could also be covered.

I feel that it should be left to the judges to weigh the evidence that is presented to them and that they should have the freedom to do just that. By specifying which factors are of more benefit, you take that away from the judges and perhaps risk certain situations where they would be bound to abide by the legislation where it might not necessarily be in the child's best interest.

Respondents were asked if the *FLA* affords children better protection than other legislation to ensure the child's physical, psychological and emotional safety. Fewer than one-half of professionals (43.5%) thought that this was the case. When asked to elaborate on their answer, 63 respondents provided 64 comments. The most common comment (n=35) was that the child's physical, psychological and emotional safety has always been the paramount concern of the court, regardless of how legislation was worded.

Finally, respondents were asked if there are any additional factors that should be considered in determining what is in the best interests of children. A total of 34 comments to this question were provided by 32 respondents. The most frequent comment (n=6) was that a "friendly parent" criterion should be included followed by the comment that the list is not exhaustive and the judge should be given wide discretion to consider any factor deemed relevant (n=5).

5.4.2 Guardianship

The goal of the *FLA* with regard to guardianship was to balance the interests of everyone involved in the guardianship of children. Professionals were asked to indicate the extent to which they agreed with a number of statements regarding this goal, and their responses are presented in Table 5.4. Over three-quarters (80%) of respondents

agreed or strongly agreed that the *FLA* does a good job of balancing the interests of mothers, fathers and children, particularly when the parents do not live together in a family unit. Similarly, 76.2% of respondents agreed or strongly agreed that the subsection providing that both parents are guardians of a child when mothers and fathers live together in one of a number of types of relationships is easy to understand and apply. The *FLA* provides that when mothers and fathers do not live together in one of the specified relationships, guardianship is determined by the usual residence of the child. Almost two-thirds of respondents (65.2%) agreed or strongly agreed that this section of the *FLA* is easy to understand and apply.

Table 5.4
Respondents' Opinions on the Extent to Which the *FLA* Meets its Goal of
Balancing the Interests of Everyone Involved in the Guardianship of Children

Statements	Strongly Agree		Agree		Disagree		Strongly Disagree		Total	
	n	%	n	%	n	%	n	%	n	%
The <i>FLA</i> (s. 20) does a good job of balancing the interests of mothers, fathers, and children, particularly when the parents do not live together in a family unit.	14	10.8	90	69.2	18	13.8	8	6.2	130	100.0
The <i>FLA</i> (s. 20 (2)) provides that when mothers and fathers live together in one of a number of types of relationships, both parents are the guardians of the child. This subsection is easy to understand and apply.	11	8.1	92	68.1	26	19.3	6	4.4	135	100.0
The <i>FLA</i> (s. 20 (3)) provides that when mothers and fathers do not live together in one of the specified relationships, guardianship is determined by usual residence with the child. This section is easy to understand and apply.	8	6.1	78	59.1	33	25.0	13	9.8	132	100.0

Source of data: Survey of Professionals.
Total N = 152.

When respondents were asked if s. 21 of the *FLA* provides a clear enough statement that, unless there is a court order to the contrary, guardians have equal powers, almost two-thirds (64.2%; n=86) indicated that it does. Respondents who stated that the *FLA* does not provide a clear enough statement were asked if a statement establishing guardians as “joint guardians” would be easier to understand. A substantial majority (87%; n=40) stated that this would be easier to understand. When asked to explain their answer, 21 comments were received from 21 respondents. The most common responses were that people still think in terms of custody and access, sole and joint, and that the legislation should reflect this (n=5) and that further clarification would be useful (n=5). One respondent commented:

The word “may” in [s.] 21 (1)(a) [might] be interpreted by some, especially lay people to be permissive. It might be better to say in that paragraph

“shall be entitled to.” This would make it clear that both guardians have the same rights unless the court directs to the contrary. I believe that while joint guardianship may be helpful, it might also be confusing to lay people.

Respondents were asked whether the list of powers of guardianship in s. 21(6) of the *FLA* assists the court in making flexible and appropriate guardianship orders under the guardianship provisions, and parenting orders under s. 32. A substantial majority (90.2%; n=111) stated that the list does assist the court. When asked to elaborate on their answer, 23 respondents made 24 comments. The most common comment (n=5) was that it is now a lot more clear what role a guardian is supposed to take in the child(ren)’s life and it can get even more specific with the parenting order what roles the parents should play in the child(ren)’s life.

5.4.3 Parenting Orders

The survey asked respondents several questions regarding their opinions of parenting orders under the *FLA* and their responses are presented in Table 5.5. A substantial majority of respondents (86.4%) agreed or strongly agreed that parenting orders provide flexibility for families regarding parenting time. Similarly, most (81.8%) agreed or strongly agreed that parenting orders provide flexibility for families regarding parenting responsibilities. Fewer respondents (56.3%) agreed or strongly agreed that parenting orders build parenting systems that minimize financial costs to families. A similar proportion (59.7%) agreed or strongly agreed that parenting plans build parenting systems that minimize emotional costs to families. Finally, over two-thirds (68.5%) of respondents agreed or strongly agreed that the provisions for parenting orders are easy to understand and apply.

Table 5.5
Respondents' Opinions Regarding Parenting Orders under the *FLA*

Statements	Strongly Agree		Agree		Disagree		Strongly Disagree		Total	
	n	%	n	%	n	%	n	%	n	%
Parenting Orders provide flexibility for families regarding parenting time.	29	22.0	85	64.4	13	9.8	5	3.8	132	100.0
Parenting Orders provide flexibility for families regarding parenting responsibilities.	23	17.4	85	64.4	19	14.4	5	3.8	132	100.0
Parenting Orders build parenting systems that minimize financial costs to families.	8	6.3	63	50.0	41	32.5	14	11.1	126	100.0
Parenting Orders build parenting systems that minimize emotional costs to families.	10	8.1	64	51.6	38	30.6	12	9.7	124	100.0
Provisions for Parenting Orders are easy to understand and apply.	11	8.5	78	60.0	27	20.8	14	10.8	130	100.0

Source of data: Survey of Professionals.
Total N = 152.

5.4.4 Contact Orders

The *FLA* outlines provisions for contact orders so that non-guardians may apply for contact with a child. The survey contained several questions regarding contact orders, and participants' responses are contained in Table 5.6. Almost all respondents (92.5%) stated that the *FLA* makes clear who may apply for a contact order. When asked to explain their answer, 22 respondents made 24 comments. The most common response (n=10) was that the *FLA* clearly states who can apply and the instructions with the package are also clear, followed by the comment that it is clear for counsel, but not for self-represented parties, who may not know what it means to "stand in the place of a parent" for this purpose (n=7).

Table 5.6
Respondents' Opinions Regarding Contact Orders under the *FLA*

Questions	Yes		No		Total	
	n	%	n	%	n	%
Does the <i>FLA</i> make clear who may apply for a Contact Order?	124	92.5	10	7.5	134	100.0
Does the <i>FLA</i> make clear the conditions that must be met for Contact Orders to be considered by the court?	118	86.8	18	13.2	136	100.0
Are the provisions for Contact Orders under the <i>FLA</i> easy to understand and apply?	109	83.2	22	16.8	131	100.0

Source of data: Survey of Professionals.

Total N = 152.

When asked if the *FLA* makes clear the conditions that must be met for contact orders to be considered by the court, the substantial majority of professionals (86.8%) indicated that it does. When asked to explain why or why not, 15 respondents provided 16 comments. The most frequent comment (n=5) was that it is clear for someone who uses the *Act* on a regular basis, but not clear enough for self-represented parties when there does and does not need to be leave of the court. One respondent commented:

Section 35(5)(b) require[s] one not only to prove that it would be in the child's best interests to have contact with the applicant, but further that the child's health (physical, psychological, emotional) would be "jeopardized" by not having contact. That's a hugely tall order for the applicant to meet. A child might miss a grandparent, but that doesn't mean their health would be "jeopardized" putting them at risk of losing their mental, physical or emotional health. I doubt any applicant would meet that test, unless they had been a primary caregiver ripped from the child's life.

When respondents were asked if the provisions for contact orders are easy to understand and apply, the substantial majority (83.2%) agreed that they were. When asked to explain why or why not, 16 professionals made 16 comments. The most common comment (n=6) was that the provisions were easy to understand and apply for staff, but were not easy for self-represented parties, followed by the comment that the legislation in this area is fairly concise (n=5).

5.4.5 Child Support

The *FLA* introduced a number of child support provisions to make clear the obligations of parents and the rights of children and respondents were asked their opinions of these provisions. Responses to these questions are presented in Table 5.7. The substantial majority of professionals (90.8%) stated that the provisions for child support under the *FLA* clearly state the obligations of parents and the rights of children. When asked to explain why or why not, 24 respondents provided 24 comments. The most common comment (n=9) was that the *Act* seems to clearly define who a parent is, who is considered to be standing in the place of a parent, and what the court would consider when making a determination about this issue.

Table 5.7
Respondents' Opinions of the Child Support Provisions under the *FLA*

Questions	Yes		No		Total	
	n	%	n	%	n	%
Do the provisions for Child Support under the <i>FLA</i> clearly state the obligations of parents and the rights of children?	119	90.8	12	9.2	131	100.0
Do the <i>FLA</i> provisions make determination of Child Support easy?	107	83.6	21	16.4	128	100.0
Are provisions for Child Support for children aged 18-22 when they are pursuing full-time education and contributing to their own education easy to understand and apply?	86	71.1	35	28.9	121	100.0

Source of data: Survey of Professionals.
Total N = 152.

Most professionals (83.6%) agreed that the *FLA* provisions make the determination of child support easy. When asked why or why not, 53 respondents made 61 comments. The most frequently provided comment (n=15) was that the Child Support Guidelines make determination of child support easy, followed by the observation that for self-represented individuals, there continues to be a great amount of dispute as to how to arrive at the payor's appropriate level of income (n=8). Finally, seven responses indicated that the provisions make the determination of child support easier, but not easy. One respondent commented that "*there is only so much the legislation can do. Complexity can and does arise from the circumstances of the parties.*"

Respondents were asked if the provisions for child support for children aged 18-22 when they are pursuing full-time education and contributing to their own education are easy to understand and apply. Over two-thirds of professionals (71.1%) agreed that they are. When asked to elaborate on their opinion, 40 respondents made 45 comments. The most common comment (n=6) was that these provisions are somewhat vague in their wording and that the needs of this group must be clearly outlined and the responsibilities of the parties better defined. Other respondents stated that the legislation provides clear direction (n=5). Specific comments provided by respondents included:

I am still uncomfortable with the differences between the Family Law Act and the Divorce Act. It seems inappropriate for there to be quite substantial differences in the entitlement of young adults to support after 18, simply depending on the marital status of their parents. I prefer the provisions of the Divorce Act, which are more in tune with the reality of young adults – many of whom may be in less than full time study (but who are nonetheless dependent and working hard to become self-sufficient)...young adults also take longer sometimes to complete their education than 22.

The only part that is somewhat unclear is Section 49(4). What is a reasonable contribution to his or her own education and how would that impact child support? Does it change the base amount, or would it impact Section 7 expenses or both?

5.4.6 Support of Spouse or Adult Interdependent Partner

The *FLA* introduced a number of spousal or adult interdependent partner support provisions to make clear the support obligations of spouses and adult interdependent partners, and the survey asked professionals several questions regarding their opinions of these provisions. Responses are presented in Table 5.8. The substantial majority of respondents (85.4%) agreed that the legislation makes clear who may apply for a spousal or adult interdependent partner support order. When asked to explain their response, 14 respondents made 15 comments. The most frequent comments were that the area is well defined (n=5) and that there is always a problem of the definition of an adult interdependent partner under the *Adult Interdependent Relationships Act*, which is not really clear (n=5).

Table 5.8
Respondents' Opinions Regarding the Spousal or Adult Interdependent Partner Support Provisions under the *FLA*

Questions	Yes		No		Total	
	n	%	n	%	n	%
Does the <i>FLA</i> make clear who may apply for a Spousal or Adult Interdependent Partner Order?	105	85.4	18	14.6	123	100.0
Does the <i>FLA</i> make clear the conditions that must be met for a Spousal or Adult Interdependent Partner Support Order to be considered by the court?	98	83.8	19	16.2	117	100.0
Does the <i>FLA</i> make clear the objectives of a Spousal or Adult Interdependent Partner Support Order?	97	84.3	18	15.7	115	100.0

Source of data: Survey of Professionals.

Total N = 152.

Most professionals (83.8%) agreed that the *FLA* makes clear the conditions that must be met for a spousal or adult interdependent partner support order to be considered by the court. When asked to elaborate on their opinion, 14 respondents offered 14 comments. The most common comments were that it is good that the *FLA*

provisions are similar to the *Divorce Act* (n=3) and that the public doesn't understand (n=3). As noted by one professional:

It's confusing enough for me, let alone a self-represented litigant! I don't have the opportunity to read the Family Law Act on a daily basis. I sit in family court several times a year so I have to re-educate myself each time. Perhaps if I was a Family Court Counsellor or in [a] Law Information Centre it would be more reasonable to deal with.

Finally, the substantial majority of respondents (84.3%) agreed that the *FLA* makes clear the objectives of a spousal or adult interdependent partner support order.

5.5 Language of the *Family Law Act*

One of the goals of the *FLA* was to make language simpler and easier for Albertans to understand. Respondents were asked several questions regarding their opinions on whether this goal has been met, and their responses are summarized in Table 5.9.

Table 5.9
Respondents' Opinions on the Language of the *FLA*

Questions	Yes		No		Total	
	n	%	n	%	n	%
Does the language of the <i>FLA</i> reflect current thinking about children and families experiencing family breakdown?	103	81.1	24	18.9	127	100.0
Is the language of the <i>FLA</i> clear?	103	78.6	28	21.4	131	100.0
Is the language of the <i>FLA</i> easy to understand?	99	78.6	27	21.4	126	100.0
Does the language of the <i>FLA</i> facilitate collaboration?	84	73.7	30	26.3	114	100.0
Do you believe that replacing the terms "custody" and "access" has improved provincial family law legislation?	69	51.1	66	48.9	135	100.0
Has replacing the terms "custody" and "access" been effective in reducing the adversarial nature of provincial family law legislation?	57	43.2	75	56.8	132	100.0

Source of data: Survey of Professionals.

Total N = 152.

The majority of respondents (81.1%) agreed that the language of the *FLA* reflects current thinking about children and families experiencing family breakdown. When asked to elaborate on their response, 35 professionals provided 40 comments. The most frequent comment (n=14) was that people still think about custody and access and joint custody is still a very relevant concept and should be part of the *Act*. One respondent commented:

Current thinking by whom? The courts or the ordinary citizens? I think the legislation provides clarity to courts and lawyers but ordinary folks have hard time understanding complexity i.e., layers of rights – guardians, non-guardians, parenting orders/contact orders/decision making orders.

Over three-quarters of respondents (78.6%) thought that the language of the *FLA* is clear. When asked why or why not, 33 respondents provided 36 comments. The most common comment (n=10) was that people need to be familiar with the legal language, followed by the observation that the language of the *FLA* is still open to interpretation at times and can be confusing (n=7).

The same proportion of respondents (78.6%) agreed that the language of the *FLA* is easy to understand. When asked to explain their opinion, 28 professionals offered 29 comments. The most common response (n=20) was that an understanding of legal terminology is required and that the ability to understand the language depends on an individual's literacy level. One respondent commented that *“government lawyers and legislators completely ignored the Provincial Court's warnings pre-introduction. The time spent trying to explain the Act to self-represented (and many lawyers) is staggering and takes up valuable hours in the court room.”*

Almost three-quarters (73.7%) of respondents believed that the language of the *FLA* facilitates collaboration. When asked why or why not, 33 respondents provided 36 comments. The most common comment (n=7) was that the language facilitates collaboration somewhat but it could be enhanced, followed by the observation that it is the parties who determine whether collaboration will be successful (n=7). Specific comments provided by respondents included:

...the language is softer and people tend to relax a little more when you start talking about what role they will play in the child's life and what role the other parent will play in the child's life.

But in some cases (when people just want to fight with each other) the check list of roles and responsibilities seems to give them even more reason to fight about each and every little responsibility instead of just the old custody and access piece.

I am having difficulty answering this question – depending on your definition of facilitate – which I take to mean something less than promote. I think it “allows” collaboration, but does nothing to “promote” or “encourage” collaboration.

Regardless of intent, it is the services in place that will ultimately determine whether collaboration is achieved. Right now, we could use more counselors, legal counsel, psychologists/therapist, court clerks and judges!

The terms “custody” and “access” were not used in the *FLA*. When professionals were asked if replacing these terms has improved family law legislation in Alberta, approximately one-half (51.1%) agreed that it has. When requested to elaborate on their opinion, 81 respondents provided 87 comments. The most common comment (n=32) was that self-represented parties are still accustomed to the old language and custody and access should have remained the same because terminology was never

the problem. A substantial number of respondents also commented that there is not consistent terminology in all aspects, such as between the *FLA* and the *Divorce Act*, which creates double speak and is confusing to the public (n=22). On a more positive note, several respondents commented that the new terminology does not imply ownership and makes the outcome less of a win/loss situation which helps to put the focus on children (n=13). Specific comments provided by respondents included:

People cannot understand “parenting.” It seems to be an all or nothing mentality, where they must have custody of the children to be satisfied. In theory, the idea is a good one. Children are not property and the idea of sharing responsibilities is less contentious than custody; however it does not seem to work in practice.

They are words implying ownership and rights – in fact to be in “custody” means to be “imprisoned” – I think the message has to be that what parents call their parenting arrangement isn’t as important as how it works practically – and previously, people would spend too much time and energy arguing over words – (i.e., joint vs. sole custody) while agreeing where the children would live. “Access” is such a demeaning term to the parent that does not have the children.

Finally, professionals were asked if they thought that the change in terminology has been effective in reducing the adversarial nature of family law legislation in Alberta. Less than one-half (43.2%) of respondents agreed with this statement. When asked to elaborate on their opinion, 68 respondents offered 71 comments. The most common comment (n=15) was that the new terminology is more focused on developing a cooperative parental relationship, followed by the comment that the good intentions of the *Act* are frustrated by the reality of the litigation process which has become worse in the last decade (n=14). Another frequently offered comment was that people understood the difference between custody and access, but now they have to get their heads around a whole new set of terms (n=7). Specific comments provided by respondents included:

Again, the Alberta government has to properly fund interest-based resolution processes, in order to reduce conflict and provide strategies for people to learn about and manage conflict, as opposed to continuing and/or encouraging reliance on court process and third party adjudication. It is the process, not the terminology that makes the difference, at the end of the day.

The language or the system doesn’t create the adversarial nature of the beast. Most family law issues are observed by the parties as win or lose issues. It takes great skill to find “win, win” solutions and many people do not have the desire to do more than have a win for themselves. In addition, you have to remember the stages people go through in a separation. We can have a husband who is angry and a wife who is remorseful and those dynamics affect how they pursue the solution of their case. The alternative measures that are available for the most part simply

divert the problems we have but do not necessarily provide better or more complete solutions. We just lose the ability to track the cases.

I do not believe the language is the central issue. Reducing the necessity for repeat applications would be a more beneficial goal (i.e., use of longevity-based parenting plan models vs. dealing with each incident on a need be basis).

5.6 Overall Satisfaction with the *Family Law Act* and Recommendations for Change

5.6.1 Satisfaction Ratings

Respondents were asked to rate their level of satisfaction with several aspects of the *FLA* on a 10-point scale with 1 being the lowest rating and 10 being the highest. Table 5.10 presents the mean ratings broken down by the respondent's occupation.

Table 5.10
Respondents' Satisfaction Ratings Regarding the *FLA*

Questions	Lawyers		Judges/ Justices		Court Administration		Other ¹		Overall	
	Mean	n	Mean	n	Mean	n	Mean	n	Mean	n
On a scale of 1-10, how would you rate the:										
Fairness of the <i>FLA</i> for families?	6.8	31	7.7	34	7.4	59	6.6	8	7.3	132
Accessibility of the <i>FLA</i> processes for self-represented litigants in Court of Queen's Bench?	6.6	31	6.6	31	5.3	43	4.5	8	6.0	113
Accessibility of the <i>FLA</i> processes for self-represented litigants in Provincial Court?	7.6	31	8.1	22	7.4	54	7.1	8	7.6	115
Efficiency of the processes and procedures associated with the <i>FLA</i> for professionals?	5.0	31	7.1	34	6.8	59	7.0	8	6.5	132
Efficiency of the processes and procedures associated with the <i>FLA</i> for self-represented litigants?	5.9	31	6.6	33	5.7	61	6.3	8	6.0	133

Source of data: Survey of Professionals.

Total N = 152.

¹ Other includes: mediators, psychiatrists, psychologists, social workers, consultants.

When asked to rate the fairness of the *FLA* for families, the overall ratings ranged from 2 to 10 and were generally positive (mean=7.3). Judges/justices provided the highest rating (mean=7.7), while other professionals such as mediators, psychiatrists and social workers gave the lowest rating (mean=6.6).

Respondents were asked to rate the accessibility of the *FLA* processes for self-represented litigants in the court of Queen's Bench and in Provincial Court. Ratings for the Court of Queen's Bench ranged from 1 to 10 with an average rating of 6.0. The

highest ratings were given by lawyers and judges/justices (mean=6.6) and the lowest ratings were given by other professionals (mean=4.5). Ratings for accessibility in Provincial Court also ranged from 1 to 10, but were somewhat higher overall than for the Court of Queen's Bench (mean=7.6). The most positive ratings were given by judges/justices (mean=8.1) and lowest for other professionals (mean=7.1).

When asked to rate the efficiency of the processes and procedures associated with the *FLA* for professionals, responses ranged from 1 to 10, with an overall average rating of 6.5. The highest ratings were given by judges/justices (mean=7.1) while the lowest ratings were provided by lawyers (mean=5.0)

Finally, when asked to rate the efficiency of the processes and procedures associated with the *FLA* for self-represented litigants, responses ranged from 1 to 10, with an average rating of 6.0. The highest rating was given by judges/justices (mean=6.6), while the lowest rating was given by court administrators (mean=5.7).

5.6.2 Recommendations for Processes and Procedures to Make the System Easier for Professionals

Respondents were asked if there was anything they would change about the processes or procedures under the *FLA* that would make the system easier for professionals and 72.5% (n=87) said that there was. When asked what they would change, 82 respondents provided 104 comments. The most frequent comment (n=15) was to reduce the mandatory forms and use less paper, followed by a suggestion to make the use of forms optional (n=14). A number of respondents also commented that the form-driven process should be changed so that they provide more meaningful information to the parties (n=7). Specific comments given by respondents included:

I think that we all need to consider the number of times applications to vary are being made...there is that flexibility which is good for the most part. It's the times when people just file as a "reaction to" something that's transpired in the situation with the other party...perhaps there should be more of a process of "asking for leave" in certain situations [where the parties] have filed more than X number of applications in a certain period of time...just a thought. Some ownership on the resolution of disputes rather than using the court application as a big stick to hit the other party. Has there been any real substantial change in physical circumstances? Is there a real emergency where a child may be at risk? Too often applications are filed and then the parties have lost interest or have reconciled before the court date.

The Statements don't work for all situations; for example, if someone is seeking just retroactive support, the Statement to vary child support by recipient is not suitable, not enough questions, there should be a separate Statement to address these issues. As well varying child support by payors. If the payor wants to just deal with arrears and a stay of enforcement, there should be a further Statement that clearly addresses these issues.

Do away with the forms for each type of application. The “Claim” and “Response” are fine, but an affidavit should be mandatory. Clients need to understand the seriousness of entering into the court process. Simply checking off some boxes and writing a couple of sentences makes the legal process appear to be less complicated than it is. It is unfair for judges to be asked to make decisions affecting children, based on such limited information. It is far too easy to make false allegations, and to file Claims as a form of revenge and to cause difficulty for the other party.

Often the order is granted as per the Claim. The Provincial Court clerk is left to interpret and draft the order from a document that sometimes provides conflicting statements. We are working with Family Justice Services and Law Information Centres to standardize wording where possible and encourage judges to specify conditions on the record. Changing the format of the form would help with this process.

If the commencement documents dealt with exceptions and presumed issues such as a primary residence, access, even specified every second weekend and alternating holidays and child support by the guidelines, the process would be simpler and easier for individuals to understand. The orders would be cleaner and clearer.

Make the paperwork easier for the self-represented litigants. If it is easier for them, it is easier for the clerks. It is very time consuming for the clerks. The orders to be done after court are enormously complicated and time consuming. Under the Provincial Court Act, child support and custody were routinely combined on one order.

Less Paper. Every time someone is served and the Claim and the Statements need to be attached it creates confusion for the public, and a lot of time is spent photocopying and making sure that the right piece of paper is attached. It makes it so time consuming to set up the initial Claim and any Statements filed at a later date. Files have so much information in them that no one reads.

I do not support further “simplifying” just to make it easier for “self-represented.” These are not easy matters and simplicity invites abuse of process.

[I would change] the Response with the Reply Statements, I find more mistakes in the Response than any other document. If someone disagrees with the order or relief sought they often check off that they are applying for the same order or relief as the Claim, this results in duplication of work because half of the parties then file a Reply Statement plus a Statement. It also results in us setting the matter for hearing twice – once for applicant once for respondent.

In my area there are many unrepresented litigants and we do not have a Family Court Counselor readily available. It is not the legislation that needs to change. We need change to provide better support for the litigants.

My understanding at the outset of the implementation of the Family Law Act was to remedy the problem of having numerous files throughout the courts for the same family; my experience has been that this is not the case. There is still a “battle” between Provincial Court and QB as to jurisdiction which results in files existing in numerous courts, i.e., a family has a file in QB Medicine Hat, a file in Provincial Court Medicine Hat and then another file has been started in QB Red Deer; how do we ever figure out which order is in place? And how do we help the public when we don’t know what is happening ourselves?

The forms are very specific and don’t allow any room to accommodate rare and unusual circumstances that arise from time to time. Because of this, I find that we as clerks are left to come up with our own solution. These solutions are often not standardized across the province and forgotten about for the next time the situation arises.

I would direct that hearings in court NOT be adjourned (continued) unless there is an exceptional circumstance. In Queen’s Bench, the general rule is to continue a hearing or trial until finished. In Provincial Court, general rule is when run out of blocked time – get a new date – usually months down the road. Preposterous!!!!

5.6.3 Recommendations for Processes and Procedures to Make the System Easier for Self-represented Litigants

Respondents were asked if there was anything they would change about the processes or procedures under the *FLA* that would make the system easier for self-represented litigants, and 61.9% (n=73) indicated that there was. When asked what they would change, 70 respondents offered 86 comments. The most frequent comment (n=19) was that the forms need to be easier to use and understand and/or that there need to be fewer forms. Specific comments provided by professionals included:

Judges can sign a temporary exemption to the Parenting After Separation Seminar if the person is registered for the course. But, you have to come in at 10:00 to get that exemption signed. It would be helpful if the clerks could sign that exemption. (That would allow the person to file their application, and take the Parenting After Separation Seminar within the next 30 days).

Simplify the forms. Use presumption and state the exceptions which require the assistance of the court. Eliminate the need for the Response.

At the court appearance, after benefit of discussion with a Family Justice Service worker, there is often a request for a consent order. The documents before the court do not indicate consent. The court is left to sort out the issues in the courtroom.

Have Duty Counsel available at Family Court proceedings.

Get away from the complicated supporting documents. When parties come in they are wanting something specific and by the time they leave they are picking everything on the Claim form.

It would seem that this process works quite well in the larger centers, it would be better if those same resources were made available everywhere. I understand the expense would be high, but even if one person could be made responsible for inquiries and assistance this would be helpful.

The paperwork is complicated and time consuming for the self-represented litigants. ...[I]f the Family Court Counselors were not available to assist the self-represented litigants, it would be even more complicated than it is now.

Consider self-represented court, with legal aid, record clerk to re-write orders, maybe social worker present. Different court for parties with lawyers.

Make the language something that the public uses; make the forms less confusing; the public has trouble understanding the service of the Claim and the Response documents.

5.6.4 Recommendations for Changes to Substantive Areas of the Family Law Act

Respondents were asked if there are any substantive areas of the *FLA* where they felt that change was necessary, and 48.1% (n=51) indicated that there was. When asked what changes were necessary, 37 respondents made 52 comments. The most common comment was that the issue of guardianship needs to be clearer (n=9). Specific comments made included:

It should be more clear that respondent fathers regarding parenting applications who are not guardians are entitled to contact time not parenting time. It should be clarified under parenting who is a guardian and who is not...perhaps a question on the Statement would be sufficient for respondent fathers.

A mother should always be deemed to be a legal guardian of a newborn infant. If she has post-partum depression or physical complications or other reasons that she can't immediately provide a home for the baby, she

should still be a guardian. This is a very serious gap in the substantive law created by the Family Law Act.

Amend Section 20(3) to specify that a birth father is not a guardian unless he meets the requirements of Section 20(2), or unless he lives with the child.

5.6.5 Other Comments

Finally, respondents were asked if they had any other comments or concerns about the FLA, and 36 respondents provided 42 comments. These comments were all quite individual in nature and thus could not be collapsed into general groups. Examples of specific comments made included:

I believe that the profusion of self-represented litigants is hardly good for families or the process generally. My experience is, in fact, fewer people should be litigating, not more. Where the inherent impediments of legal expense are removed, and replaced with easier access to the judicial process, we are seeing many more cases in court that have no business being there. Represented litigants are often penalized twice – first because they are forced to undergo significantly more costs opposing frivolous, poorly thought out and presented motions, and then again, where the court is often acting as a defacto guardian ad litem, cross examining witnesses and generally assisting people who have no counsel, instead of acting as impartial arbiters.

Even with the Law Information Centres and Family Justice Services the amount of time it takes to file an application, deal with a self-represented litigant is unbelievable. Then to create the orders and include who was present, how they were served, if counsel appeared or not, if they agreed (which is covered in the title most often). All this information should be endorsements on the file but not be part of the order and then to include all the terms of the order, who will have what decision making responsibilities is all very time consuming. Each Family Law Act order takes between 10-20 minutes to create. Then it has to be reviewed, edited, signed and sent out and then filed away. This whole process can take 30-40 minutes per file. This is not including the amount of time it takes to sit in court with each file or how much time was spent with the applicant and respondent at the counter prior to filing. On a day when you have 30 or more Family Law Act files in court and 20 of them need orders we are spending 2 or 3 days and sometimes more with after court work.

The whole issue of guardianship is difficult for lawyers, parties and even the judges to understand particularly as regards parents of children. Some jurisdictions in Canada and other countries don't even use this additional layer and it makes coordinating orders very difficult. More importantly – trying to legislate who is a guardian results in ridiculous results (i.e., in child protection matters where children are often

apprehended in hospital at birth) – biological parents are both guardians even in case of rape. And in situations where fathers have extensive contact with their children – but do not get into s. 20(2) – they are not guardians. This doesn't make sense. Tinkering with wording is not going to help. Why not just say biological parents are both guardians and allow parties to make application to terminate guardianship. This would actually make sense to the ordinary person.

The judges are becoming Counsel for both parties when self-represented get to the trial stage in Provincial Court. 95% of self-represented do not arrive prepared (i.e., support matters). Even though most judges in Provincial Court try to assist self-represented there is always the allegation "the judge helped my wife/husband more than me." Currently, Provincial Court is facing this perception/allegation in many self-represented venues. Also, Provincial Court must be given more power to order psychological parenting assessments.

I cannot emphasize enough that people require time and direction in completing paper work and it is overwhelming for a lot of people. Please consider negotiating court counselors to attend in rural courts to improvise a good standard of help for these individuals.

I have dealt with the public for years and since the Family Law Act I find that the public is more confused than ever about the forms, the court they are or can file in, the filing of the resulting order. Since June of this year we have a Family Law Information Centre office which has helped with the order preparation and somewhat with the preparation of the forms; however, when the parties get into court they are still confused about what they are asking for as they don't understand the forms that have been filed.

The Family Law Act is a significant improvement from the earlier Acts. The process is easier and the litigants appear to understand how to access the courts when necessary. Generally it is working well.

Over my nine years, I have noticed a huge improvement in the orderliness of court. Further, self-represented are more focused, and I notice, less tense. I hope you are asking them. I could write a long essay!

6.0 SELF-REPRESENTED LITIGANT INTERVIEWS

This chapter presents the findings of the self-represented litigant (SRL) interviews, which examined the opinions and experiences of SRLs while they engaged in the processes and procedures involved with the *Family Law Act (FLA)*. As described in Chapter 2.0, the analysis of the interview data was conducted descriptively in order to determine: (1) how the response process has impacted procedures and outcomes for SRLs under the *FLA*; (2) how procedural changes under the *FLA* have affected the accessibility of court processes for SRLs; and (3) whether the changes to the *FLA* have made it more appropriate, easier to understand, and more effective for SRLs.

6.1 Characteristics of Self-represented Litigants

A total of 33 self-represented litigants were interviewed for the study. Table 6.1 presents the demographic characteristics of the SRLs who were interviewed. A total of 60.6% of participants were female, with 39.4% being male. Participants ranged in age from 21 to 57. The majority of participants (60.6%) were between the ages of 30 and 49, with the remaining aged 20 to 29 (27.3%) or 50 to 59 (12.1%).

Over half of the participants (51.5%), reported residing in Calgary, with 18.2% residing in Edmonton, and 30.3% residing in regional cities/towns in Alberta (i.e., Grande Prairie, Grove Dale, Hinton, High River, Grande Cache, High Prairie, St. Albert, Siksika First Nation, and Strathmore). The majority of participants were employed, with 63.6% being employed full- or part-time and 15.2% being self-employed. The remaining participants were temporarily unemployed, on maternity leave, or on disability (6.1%, respectively), and one participant was a student. About half of the participants (51.5%) identified themselves as being single, while 18.2% were separated, 15.2% were married, 9.1% were living common law, and 6.1% were divorced.

Table 6.1
Demographic Characteristics of Self-represented Litigants

Characteristic	Participants	
	n	%
Gender		
Male	13	39.4
Female	20	60.6
Total	33	100.0
Age		
20 - 29	9	27.3
30 - 39	10	30.3
40 - 49	10	30.3
50 - 59	4	12.1
Total	33	100.0

Table 6.1 (cont'd)

Characteristic	Participants	
	n	%
Residence		
Calgary	17	51.5
Edmonton	6	18.2
Regional	10	30.3
Total	33	100.0
Employment		
Employed (full or part time)	21	63.6
Temporarily unemployed	2	6.1
Self employed	5	15.2
Maternity leave	2	6.1
Student (full or part time)	1	3.0
Disability	2	6.1
Total	33	100.0
Marital status		
Single	17	51.5
Married	5	15.2
Divorced	2	6.1
Separated	6	18.2
Common law	3	9.1
Total	33	100.0

Source of data: Self-represented Litigants Telephone Interview.
Total N=33.

The participants' family characteristics are presented in Table 6.2. Every participant indicated that they had children. The largest proportion of participants (40.6%) had only one child, while 28.1% had two children, 21.9% had three children, and 9.4% had four children. In terms of the child(ren)'s living arrangements, 45.5% lived solely with their mother and 21.2% lived solely with their father, with the remaining living jointly with both parents (15.2%), with their grandparents (6.1%), or on their own (12.1%). Those participants who stated that their children lived on their own were cases where a contact order was made by a grandparent or spousal support was involved.

Table 6.2
Self-represented Litigants' Family Characteristics

Characteristic	Participants	
	n	%
Have children		
Yes	33	100.0
No	0	0.0
Total	33	100.0
Number of children		
1	13	40.6
2	9	28.1
3	7	21.9
4	3	9.4
Total ¹	32	100.0
Child(ren)'s living arrangements		
Solely with father	7	21.2
Solely with mother	15	45.5
Jointly between both parents	5	15.2
With grandparents	2	6.1
Live exclusively on their own	4	12.1
Total	33	100.0

Source of data: Self-represented Litigants Telephone Interview.

Total N=33.

¹ One participant (a grandparent) did not respond to this question.

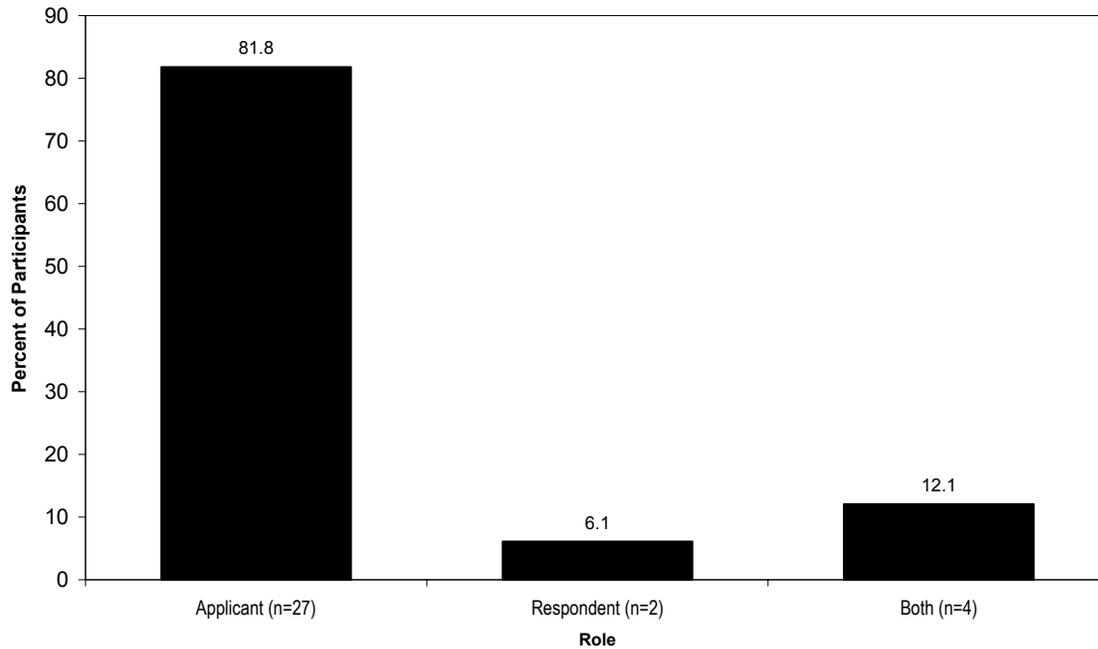
6.2 Response Process, Procedures, and Outcomes

This section of the report contains an analysis of the data pertaining to how the changes to the response process have impacted procedures and outcomes for SRLs under the *FLA*. Specifically this section discusses the procedures for filing applications, non-adversarial alternatives to court for resolving issues, and court procedures and their outcomes in resolving family law conflict.

6.2.1 Filing Process

As shown in Figure 6.1, the largest portion of participants indicated they filed as applicants (81.8%). Only 6.1% filed as respondents, and 12.1% filed as both an applicant and a respondent.

Figure 6.1
Self-represented Litigants' Role in the Filing Process



Source of Data: Self-represented Litigants Telephone Interviews.
Total N=33.

Tables 6.3 and 6.4 outline the filing process for applicants and respondents, respectively. Regardless of whether participants were applicants and/or respondents, the majority filed forms, with 93.5% of applicants filing Claim and Statement forms and 83.3% of respondents filing Response and Reply forms.

As shown in Table 6.3, applicants were asked if they had any difficulty filing their Claim and Statement forms, with the majority at 93.1% stating they had no difficulty filing. The 6.9% of participants who had difficulty filing their Claim and Statement forms were asked why. One participant responded that they felt unclear about the filing procedure (i.e., whether both parties had to be present at the courthouse when filing). The other participant responded that they were unclear about what forms they needed to file.

Applicants who filed Claim and Statement forms were also asked if the respondent to their application filed a Response, and if they did, whether the respondent filed additional Statements along with the Response. Just over half (51.7%) of the applicants had a respondent file a Response, and the Response included additional Statements in 33.3% of the cases. Of the applicants who had to respond to additional Statements, 60% indicated that they did not have enough time to respond to the additional Statements filed by the respondent, explaining that it was due to the respondent filing late in the first place.

Table 6.3
Self-represented Litigants' Opinions Regarding
Ease of Applicant Filing Process

Questions	Participants	
	n	%
Filed claim and statement forms		
Yes	29	93.5
No	2	6.5
Total	31	100.0
If so, difficulty filing claim and statement forms		
Yes	2	6.9
No	27	93.1
Total	29	100.0
If so, respondent filed a response		
Yes	15	51.7
No	14	48.3
Total	29	100.0
If so, respondent filed additional statements		
Yes	5	33.3
No	10	66.7
Total	15	100.0
If so, applicant had enough time to respond to additional statements		
Yes	2	40.0
No	3	60.0
Total	5	100.0

Source of data: Self-represented Litigants Telephone Interview.

Total N=31.

Respondents (see Table 6.4) were also asked if they had any difficulty filing their Response and Reply Statement forms. All respondents who filed a Response stated they had no difficulty filing. These respondents were then asked if the 10-day period allotted was enough time to respond to an applicant's application, and if the applicant provided all the necessary forms to respond. A majority of respondents (80%) stated the 10 days was enough time to respond to an application, with only one individual indicating that they did not have enough time. In the latter case, the respondent stated the applicant had an *ex parte* proceeding (referring to proceedings where one of the parties has not received notice and, therefore, is neither present nor represented). Additionally, all of these respondents indicated that the applicant provided all the necessary forms.

Table 6.4
Self-represented Litigants' Opinions Regarding
Ease of Respondent Filing Process

Questions	Participants	
	n	%
Filed a response to an application		
Yes	5	83.3
No	1	16.7
Total	6	100.0
If so, difficulty filing response and reply statement forms		
Yes	0	0.0
No	5	100.0
Total	5	100.0
If so, enough time to respond to an application (10 days)		
Yes	4	80.0
No	1	20.0
Total	5	100.0
If so, applicant provided all the necessary forms		
Yes	5	100.0
No	0	0.0
Total	5	100.0

Source of data: Self-represented Litigants Telephone Interview.
Total N=6.

6.2.2 Alternatives to Court Procedures and Outcomes

The data that examine if SRLs reached agreements in mediation is contained in Table 6.5. Just over one-third (36.4%) of participants attended mediation. Of these, two-thirds (66.7%) reached either a full or partial agreement in their case by means of mediation. The remaining 33.3% of participants who attended mediation but did not reach some sort of agreement were asked if mediation narrowed some issues regarding their case. All of them stated that mediation did not narrow the issues. When the participants were asked why mediation did not narrow the issues, they acknowledged several reasons. The first related to a lack of confidence in the court process when they came out of mediation, as one participant commented:

I was told that I was wrong and that I had no chance of fighting for my child in court and was basically told that the mother was right in the whole matter... it's not what is right and wrong but what is best for the child... I left feeling I was David against Goliath and that the court process favoured mothers, and that I did not have enough proof or evidence against her lack of parenting... I just left deflated....

The remaining explanations given were that there was no agreement that could have been reached, either due to the parties disagreeing or the other party not attending, and that there were reoccurring scheduling issues that prevented another mediation session from occurring.

Table 6.5
Self-represented Litigants' Responses Regarding Mediation

Questions	Participants	
	n	%
Attended mediation ¹		
Yes	12	36.4
No	21	63.6
Total	33	100.0
If yes, agreement reached		
Yes	8	66.7
No	4	33.3
Total	12	100.0
If no, mediation narrowed issues		
Yes	0	0.0
No	4	100.0
Total	4	100.0

Source of data: Self-represented Litigants Telephone Interview.

Total N=33.

¹ Mediation includes mediation offered through Family Justice Services, such as: Family Court Counsellor, Caseflow Coordinator, and a participant receiving private mediation through the Calgary Co-parenting Centre.

SRLs were also asked if they met with a Dispute Resolution Officer (DRO) in Calgary or a Child Support Resolution Officer (CSRO) in Edmonton. These programs are aimed at helping SRLs resolve child support issues before appearing at the Court of Queen’s Bench. The DRO may also address other family law issues between parties in order to reach resolution before the litigant’s court date. There were no interview participants who met with a CSRO, however, there were a few participants (12.1%; n=4) who met with a DRO. No participant who met with a DRO reached any sort of agreement on their case. These participants were asked if meeting with a DRO helped to narrow some issues regarding their case, and one responding that it had. The remaining three explained that their issues were not narrowed because there were some concerns about meeting with a DRO. One participant described a concern they had as “*miscommunication*,” further commenting, “*All I wanted was information and clarification... I did not want to do anything I would regret later and wanted to make sure I was doing the right thing.*” Other difficulties participants experienced in meeting with a DRO was that they felt the process itself was too complicated, and that during the meeting they felt pressured into making an agreement regardless if they felt ready for one or not.

Another dispute resolution method is Caseflow Conferencing (CFC), which SRLs are required to have scheduled prior to appearing in docket court. Data regarding CFC is presented in Table 6.6. Just over one-third (37.5%) of the participants went to a CFC. The majority of these participants (88.9%) reached some sort of agreement in CFC, either via a consent order or an interim/procedural agreement.

Table 6.6
Self-represented Litigants' Responses Regarding Caseflow Conference

Questions	Participants	
	n	%
Participated in Caseflow Conference ¹		
Yes	9	37.5
No	15	62.5
Total	24	100.0
If yes, total agreements (consent or interim/procedural ²)		
Yes	8	88.9
No	1	11.1
Total	9	100.0

Source of data: Self-represented Litigants Telephone Interview.

Total N=24.

¹ N=9 participants were not asked this question because the participant went to Court of Queen's Bench or a regional court where there is no Caseflow Conferencing, or the participant was not assigned or appeared for a court date.

² Interim/procedural agreements include: attending Parenting After Separation, Mediation, Judicial Dispute Resolution, Focus on Communication in Separation, and Brief Conflict Intervention.

6.2.3 Court Procedures and Outcomes

As Table 6.7 illustrates, a majority of SRLs had their cases dealt with in Calgary court (60.6%), which is expected given a greater majority of interviewed participants were from Calgary and the surrounding area. The remaining participants attended either Edmonton court (21.2%) or courts in regional communities (18.2%). Nearly all (93.9%) the participants interviewed were assigned a court date, with 80.6% of them appearing for this court date. A majority of participants (92%) had their applications proceed to Provincial Court, and only 8% proceeded to Court of Queen's Bench.¹²

Participants who did not appear for their assigned court date (19.4%) were asked to explain why. Participants gave several reasons, which included: the court date had not occurred before the time of the interview, they are going/gone through mediation, or that they were granted leave of court.

For those cases that proceeded to Provincial Court, participants were asked if they had to attend Docket Court and, if so, how many times (see Table 6.8). Nearly two-thirds (65.2%) of the participants were required to attend Docket Court. Nearly half of these participants only had to appear once (46.7%), while 40% appeared two or three times, and 13.3% appeared more than four times. When participants were asked why they were required to attend Docket Court more than once, the reasons included: adjournments or rescheduling of court proceedings, having to go to court for more than one issue (e.g., guardianship and then maintenance), and to vary an existing order.

¹² Given only n=2 participants proceeded in Court of Queen's Bench, further analysis of this group was limited.

Table 6.7
Self-represented Litigants' Responses Regarding Their Court Appearance

Questions	Participants	
	n	%
City/town case was dealt in		
Calgary	20	60.6
Edmonton	7	21.2
Regional	6	18.2
Total	33	100.0
Assigned a court date		
Yes	31	93.9
No	2	6.1
Total	33	100.0
If so, appeared for court date		
Yes	25	80.6
No ¹	6	19.4
Total	31	100.0
If so, level of court application proceeded		
Provincial Court	23	92.0
Court of Queen's Bench	2	8.0
Total	25	100.0

Source of data: Self-represented Litigants Telephone Interview.

Total N=33.

¹ A total of four respondents did not appear for their court date because it had not yet occurred at the time of the interview.

Table 6.8
Self-represented Litigants' Responses Regarding
Their Appearance in Docket Court

Questions	Participants	
	n	%
Required to attend Docket Court		
Yes	15	65.2
No	8	24.8
Total	23	100.0
If yes, number of appearances		
1	7	46.7
2 - 4	6	40.0
>4	2	13.3
Total	15	100.0

Source of data: Self-represented Litigants Telephone Interview.

Total N=23.

Of the 23 participants who appeared in Provincial Court, there were only three who had a case proceed to a trial.

6.3 Accessibility of FLA Processes and Procedures

This section of the report contains an analysis pertaining to how procedural changes under the *FLA* have influenced the accessibility of court processes for SRLs. Accessibility is defined as to how simple and easy it is for SRLs to approach, reach, speak with, or use associated programs, services, and court staff, when they are

needed most during the court process. Below, findings are presented regarding the accessibility of court programs and services, information materials on the *FLA*, court forms, and how associated court processes and procedures prepare litigants for their court appearance.

6.3.1 Court Programs and Services

Typically, the initial stage of entering into the court process involves completing an intake with a Family Justice Services (FJS) Family Court Counsellor. As shown in Table 6.9, a majority of participants (87.9%) completed an intake with FJS. Approximately three-quarters (75.9%) of those participants indicated that FJS improved their understanding of the court procedures and the options available to them. When asked how FJS improved their understanding, participants commented that FJS provided useful information, provided mediation and support, and assistance with applications and documentation. As one participant explained, *“They helped me to fill out the paperwork and to understand the new terminology...it’s not just custody anymore, it’s all these levels of parenting and access...it’s not just about one thing.”* Two other SRLs commented on the assistance they received in understanding court procedures and processes as follows:

At first I did not understand what I had to do, never been in the family court system, it was good to have someone to walk me through it.

They gave me the run down... it was my first contact with any family court process... they were very forthright regarding the courses offered... in my experience with going to court and being in the court room, they were very helpful and knowledgeable about the whole process.

The seven participants who stated that FJS did not improve or only somewhat improved their understanding of court procedures and the options available to them explained that some of the problems were due to court procedures not being clear. As two participants stated:

...they [FJS] did not really define what the procedures were going to be. For instance, I did not know we were going through Caseflow, my understanding is that we would be seeing a judge to decide matters and that was not the case at all.

...not really told about the procedure of going to court for the case... went to the court room and sat outside, not really knowing to go into the courtroom. When we were told to go into the court room the judge was on last call... when in the court room I was not sure of where to stand... not really knew what to expect.

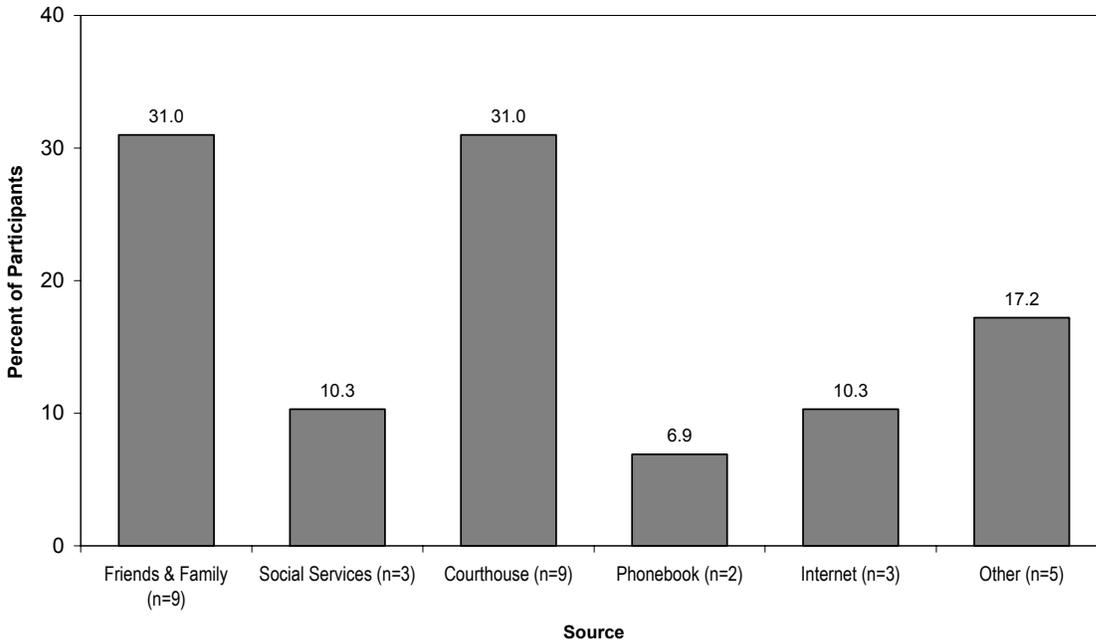
Table 6.9
Self-represented Litigants' Experience with Family Justice Services

Questions	Participants	
	n	%
Completed an intake with Family Justice Services		
Yes	29	87.9
No	4	12.1
Total	33	100.0
If so, improved understanding of court procedures and of options available		
Yes	22	75.9
No	5	17.2
Somewhat	2	6.9
Total	29	100.0

Source of data: Self-represented Litigants Telephone Interview.
 Total N=33.

Figure 6.2 illustrates how SRLs learned about FJS. Friends and family and the courthouse were the main sources for participants to learn about FJS (31%, respectively), followed by other sources such as legal aid, lawyers, and mediation (17.2%), Social Services and the internet (10.3%, respectively), and the phonebook (6.9%).

Figure 6.2
How Self-represented Litigants Learned about Family Justice Services



Source of Data: Self-represented Litigants Telephone Interviews.
 Total N=29. This question was a multiple response item, i.e., participants could choose more than one response.
 * Other sources include: legal aid, lawyer, mediation, library, and counsellor.

The Family Law Information Centre (FLIC) provides information, materials, assistance and referrals regarding Court of Queen’s Bench family law procedures. As illustrated in Table 6.10, 42.4% of participants accessed FLIC. Of those participants who accessed FLIC, a majority (85.8%) agreed that FLIC improved their understanding of court procedures and the options available to them. Participants commented that FLIC provided them with the necessary help in preparing their paperwork, gathering contact information for relevant resources, obtaining general information, and just gave them a deeper understanding of the court process. As two participants commented:

Stress is high and you may not understand what you’ve been told... but I found that this is a very low stress process.

I just never knew I had the right to go back and get custody of my daughter, and through this process I learned that I could.

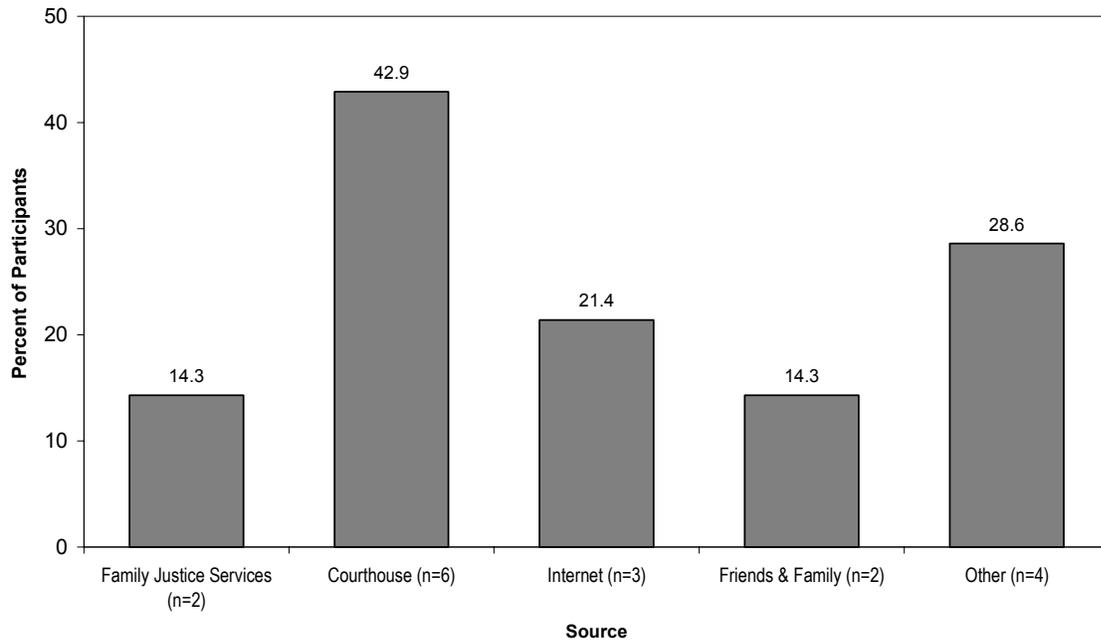
Table 6.10
Self-represented Litigants' Experience with Family Law Information Centres

Questions	Participants	
	n	%
Accessed a Family Law Information Centre		
Yes	14	42.4
No	19	57.6
Total	33	100.0
If so, improved understanding of court procedures and of options available		
Yes	12	85.8
No	1	7.1
Somewhat	1	7.1
Total	14	100.0

Source of data: Self-represented Litigants Telephone Interview.
Total N=33.

Figure 6.3 describes how participants learned about FLIC. The primary source for participants was the courthouse (42.9%), followed by other sources such as the phonebook, a counsellor, or lawyer (28.6%), the internet (21.4%), and FJS and friends and family (14.3%, respectively).

Figure 6.3
How Self-represented Litigants
Learned about Family Law Information Centres



Source of Data: Self-represented Litigants Telephone Interviews.
 Total N=14. This question was a multiple response item, i.e., participants could choose more than one response.
 * Other sources include: phonebook, counsellor, lawyer, and past experience.

SRLs were asked if they attended Parenting after Separation seminar (PAS) and/or Focus on Communication in Separation course (FOCIS). The PAS seminar offers parents information about the process of separation and divorce along with its effects on children, communication techniques, and legal information that affects parents and children. The FOCIS course teaches parents how to communicate effectively while living apart, aiming at reducing conflict and improving long-term outcomes for children. Responses from participants are shown in Table 6.11. Only five (15.2%) participants attended PAS and no participants interviewed attended FOCIS. With regard to PAS, participants commented on how the information received was helpful, particularly regarding child support calculations and child care. A couple of participants commented on how information received was not that helpful because they already knew the information that was given, but went to the seminar because they were required to attend.

Table 6.11
Self-represented Litigants' Attendance at Court Programs

Questions	Participants	
	n	%
Attended a Parenting After Separation Seminar		
Yes	5	15.2
No	28	84.8
Total	33	100.0
Attended a Focus On Communication In Separation course		
Yes	0	0.0
No	28	84.8
Not aware of course	5	15.2
Total	33	100.0

Source of data: Self-represented Litigants Telephone Interview.
 Total N=33.

6.3.2 Information Materials

When SRLs were asked whether or not they accessed information materials on the *FLA* or the procedures involved, 72.7% replied that they had accessed some type of information material (see Table 6.12). Most participants (81.8%) found the language and terminology easy to understand. Those participants who replied that the information materials accessed were somewhat or not that easy to understand (18.2%), explained that the language was convoluted, unclear, and seemed to be written in court language, as illustrated in this example, “*I could see how it could be hard to understand... it is not really worded for the common man... you really have to look through it.*”

Table 6.12
Self-represented Litigants' Experience with
Information Materials on the *Family Law Act*

Questions	Participants	
	n	%
Accessed information materials on the <i>Family Law Act</i>		
Yes	24	72.7
No	9	27.3
Total	33	100.0
Language and terminology were easy to understand		
Yes	18	81.8
No	1	4.6
Somewhat	3	13.6
Total	22	100.0
Helped to understand the <i>Family Law Act</i> and related procedures		
Yes	18	81.8
No	2	9.1
Somewhat	2	9.1
Total	22	100.0

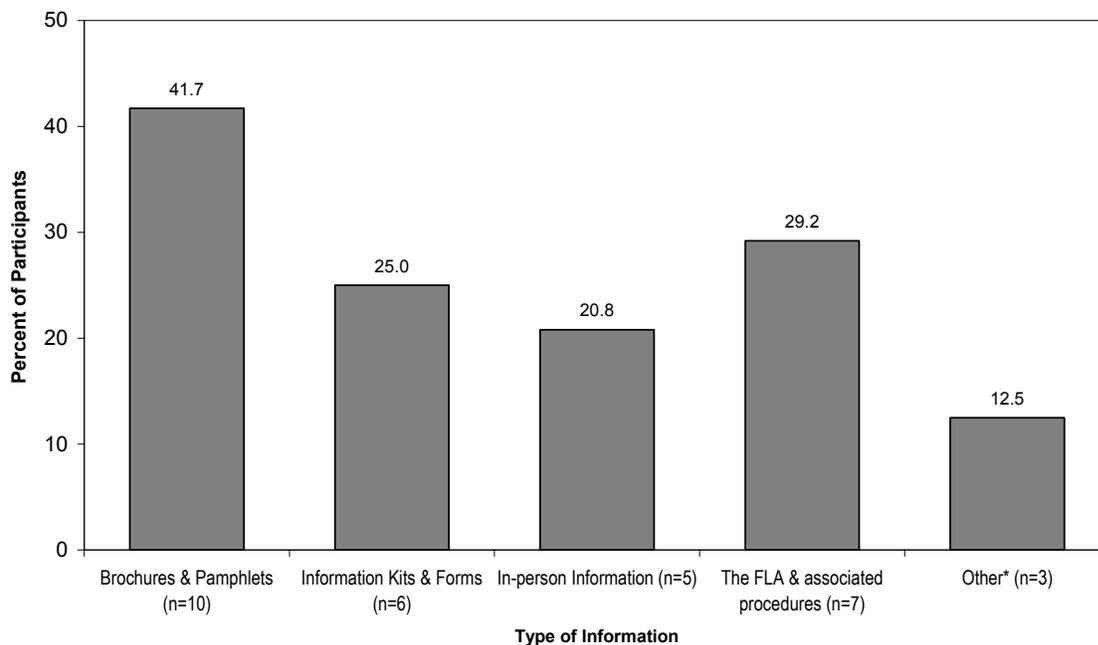
Source of data: Self-represented Litigants Telephone Interview.
 Total N=33.

Consequently, most participants (81.8%) also found that the information materials accessed on the *FLA* helped them to understand the *FLA* and related procedures. Those participants who stated the information materials accessed did not help them to understand the *FLA* and related procedures (n=2) remarked about the language itself and how the materials did not explain how to implement particular procedures specific to their case. As one participant stated, “an average Joe would not understand the material.”

With regard to understanding particular procedures, one participant commented on how their understanding of family law came from another province and the differences in Alberta’s family law confused them. Two other participants commented that going through the process was easier than reading about it; however, they found that there was no information on the number of times they had to go through certain court programs (e.g., mediation) when they believed it was clear it was not working.

The types of information materials that participants accessed on the *FLA* or related procedures is shown in Figure 6.4. The primary type of information accessed was brochures and pamphlets (41.7%), followed by the *FLA* itself (29.2%), information kits and forms (25%), in-person information (usually at the courthouse) (20.8%), and other types of information such as internet (12.5%).

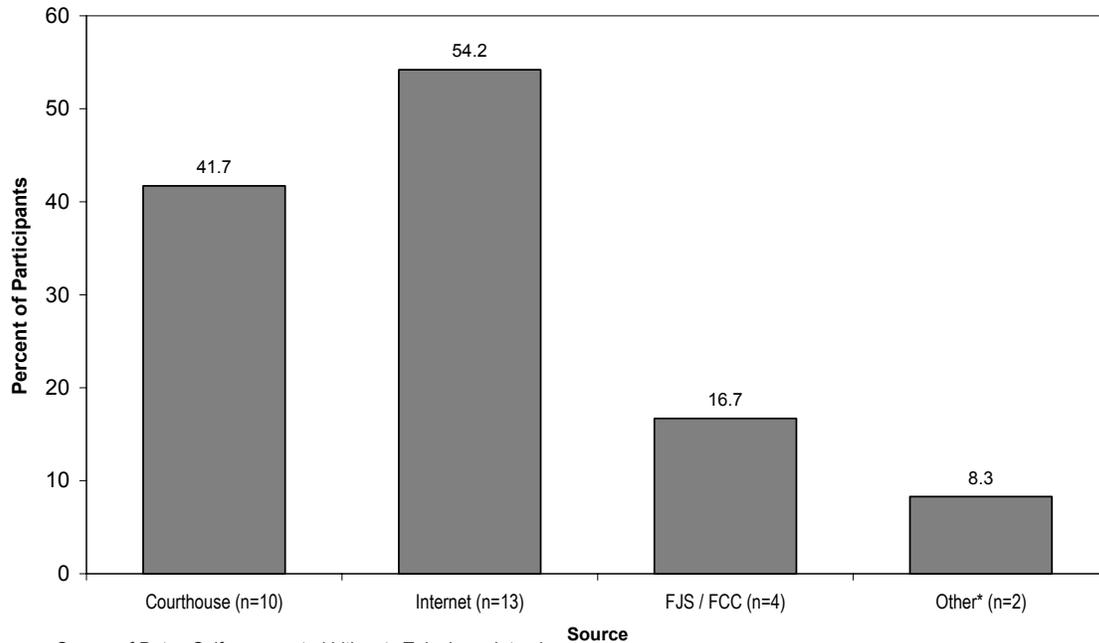
Figure 6.4
Types of Information Accessed by Self-represented Litigants
on the *Family Law Act*



Source of Data: Self-represented Litigants Telephone Interviews.
 Total N=24. This question was a multiple response item, i.e., participants could choose more than one response.
 * Other types of information include: online and on the phone.

The sources of information accessed by SRLs, as shown in Figure 6.5, are predominately the internet (54.2%) and the courthouse (41.7%), followed by FJS, including Family Court Counsellors (FCCs) (16.7%) and other sources such as FLIC and lawyers (8.3%).

Figure 6.5
Sources of Information Accessed by Self-represented Litigants on the *Family Law Act*



Source of Data: Self-represented Litigants Telephone Interviews.
Total N=24. This question was a multiple response item, i.e., participants could choose more than one response.
* Other sources include: Family Law Information Centre and lawyer.

6.3.3 Court Forms

Most of the participants (78.8%) were required to complete forms during the court process as shown in Table 6.13. Participants who completed forms were asked if the instructions were easy to understand and if the forms were easy to complete. All participants who responded to these questions stated that the instructions were easy to understand and the forms were easy to complete. However, 53.8% of participants required assistance to understand and effectively complete their forms. Participants primarily received help from Family Justice Services (78.6%), and occasionally from Family Duty Counsel (14.3%) or a friend (7.1%).

Table 6.13
Self-represented Litigants' Experience with Court Forms

Questions	Participants	
	n	%
Required to complete forms		
Yes	26	78.8
No	7	21.2
Total	33	100.0
If so, instructions for completing forms easy to understand		
Yes	25	96.1
No	0	0.0
No response	1	3.9
Total	26	100.0
If so, forms easy to complete		
Yes	25	96.1
No	0	0.0
No response	1	3.9
Total	26	100.0
If so, required assistance to understand and effectively complete forms		
Yes	14	53.8
No	11	42.3
Somewhat	1	3.9
Total	26	100.0
If yes, who helped		
Family Justice Services ¹	11	78.6
Family Duty Counsel	2	14.3
Friend	1	7.1
Total	14	100.0

Source of data: Self-represented Litigants Telephone Interview.

Total N=33.

¹ Includes staff, Family Court Counsellors, or Caseflow Coordinators.

In addition, participants were asked if they had filed Claim and Statement forms at the courthouse, if these forms were difficult to find, and where they obtained these forms. Table 6.14 shows that most (93.5%) filed Claim and Statement forms. The majority (89.7%) had no problems finding the forms, with only 10.3% participants who found the Claim and Statement forms difficult to find.

With regard to where participants obtained the Claim and Statement forms, the primary source was the courthouse (62.1%), followed by FJS or a FCC (24.1%), and other sources such as the internet and FLIC (13.8%).

Table 6.14
Self-represented Litigants' Experience with Claim and Statement Forms

Questions	Participants	
	n	%
"Filed" claim and statement forms at the courthouse		
Yes	29	93.5
No	2	6.5
Total	31	100.0
If so, were forms difficult to find		
Yes	3	10.3
No	26	89.7
Total	29	100.0
If so, where obtained forms		
Courthouse		
Yes	18	62.1
No	11	37.9
Total	29	100.0
Family Justice Services/Family Court Counselor		
Yes	7	24.1
No	22	75.9
Total	29	100.0
Other ¹		
Yes	4	13.8
No	25	86.2
Total	29	100.0

Source of data: Self-represented Litigants Telephone Interview.

Total N=31.

¹ Other includes internet and Family Law Information Centre.

It is interesting to note that the language of previous legislation (e.g., custody, access, and maintenance) was still being actively used by interviewed participants when they were asked about the language and terminology of information materials and court forms.

6.3.4 Court Procedures

Court processes and procedures are in place to prepare SRLs with their court appearance. Table 6.15 illustrates that just over half (56.5%) of the participants were greeted by FJS staff upon arriving for their court appearance at Provincial Court. A majority (69.2%) of these participants indicated that the FJS staff was helpful. Participants commented that this was because the FJS staff helped them to complete the necessary paperwork, provided mediation, and provided assistance and information on court procedures. As one participant commented, FJS staff told them *"when there was a change of courtroom, where and how to check in, [and] how long it would take to be heard...."*

The three participants who responded that FJS staff was not helpful expressed discontent pointedly at a particular staff member who they had come in contact with, as either being impolite, not neutral toward their situation, or generally not helpful.

Table 6.15
Self-represented Litigants' Experience with
Family Justice Services upon Arriving at Provincial Court

Questions	Participants	
	n	%
Greeted by Family Justice Services staff		
Yes	13	56.5
No	10	43.5
Total	23	100.0
If so, was Family Justice Services staff helpful		
Yes	9	69.2
No ¹	3	23.1
No response	1	7.7
Total	13	100.0

Source of data: Self-represented Litigants Telephone Interview.

Total N=23.

¹ Includes one participant replying that they found Family Justice Services staff somewhat helpful.

Family Justice Services Family Court Counsellors are integrated into a variety of stages within court processes and procedures, with Table 6.16 illustrating participants' experiences with their contact with FCCs before appearing in court, during a CFC, and when appearing in Docket Court.

For SRLs who went to Provincial Court, a majority (82.6%) met with a FCC before their court appearance. During this stage, only 36.8% had the other party present when meeting with a FCC and 5.3% had the other party sometimes present for this discussion with the FCC. The majority of participants (68.4%) who met with a FCC before appearing in court found the discussion with the FCC helped them to better identify issues concerning their application(s). Most described positive experiences in how they were assisted and provided with information on court procedures, as one participant described:

They were very helpful and told me how everything is going to go... gave me a play by play on what to expect, and she stood by me when we started talking [in court]... I knew it was going to be difficult being self-represented and having a person there that was knowledgeable was extremely helpful.

Table 6.16
Self-represented Litigants' Experience with Family Court Counsellors

Questions	Participants	
	n	%
Met with Family Court Counselor before court		
Yes	19	82.6
No	4	17.4
Total	23	100.0
If so, was the other party present for this discussion		
Yes	7	36.8
No	11	57.9
Sometimes	1	5.3
Total	19	100.0
If so, did the discussion help to better identify issues concerning the application		
Yes	13	68.4
No	6	31.6
Total	19	100.0
Family Court Counselor present in Caseflow Conference		
Yes	5	55.6
No	2	22.2
Do not know/no response	2	22.2
Total	9	100.0
If so, was their presence helpful		
Yes	1	20.0
No ¹	4	80.0
Total	5	100.0
Received support from a Family Court Counselor when appeared in Docket Court		
Yes	9	60.0
No	6	40.0
Total	15	100.0
If so, was their support helpful		
Yes	9	100.0
No	0	0.0
Total	9	100.0

Source of data: Self-represented Litigants Telephone Interview.

Total N=23.

¹ Includes one participant replying that the Family Court Counselor's presence in Caseflow Conference was somewhat helpful.

Even though participants responded that the FCC was helpful at this stage in the court process, there were some negative sentiments regarding how court procedures were implemented. One participant explained that their "...*understanding of the [court] procedure did not come in the way it was described to...*" them. Some other participants commented that the problems that arose in meeting with the FCC were not due to the FCC but the fact that they had to appear a couple of times at court because the other party was absent from the discussions with the FCC. As one participant noted:

He [the other party] was at some... there were seven in total and he appeared for two... I did not understand why I had to come back over and over again as he did not show up.

Participants also described how there were fundamental problems with agreeing with the other party and how the FCC could not assist on these issues, either because the other party sent their lawyer to adjourn the process, or, as one participant explained:

We were at two ends of the table... it boiled down to stubbornness... in fact I think that process can be shortened up, there should be one court date in which you mediate and then an actual court appearance... we came back three times before coming to an agreement... I could understand if information was missing, but all the information was there, we just were not agreeing.

During the Caseflow Conference (CFC), just over half (55.6%) of the participants recognized that a FCC was present in their CFC. A majority of these participants (80%) explained that the presence of the FCC was not helpful in the CFC as the FCC did not seem to be actively engaged in the discussions, as one participant exclaimed, “*They keep silent as they seem to not want to take a side.*”

When appearing in Docket Court, 60% of the SRLs had the support of a FCC. All of these participants stated that the presence of the FCC was helpful because of the support that the FCC provided, the information given regarding court procedures, and in presenting the application(s) in front of the judge on their behalf.

With regard to Caseflow Coordinators, Table 6.17 shows that two-thirds (66.7%) of the participants who participated in a CFC stated that the discussions that occurred in CFC helped them to understand the issues in their application(s).

Table 6.17
Self-represented Litigants' Experience with Caseflow Conferences

Questions	Participants	
	n	%
Participated in Caseflow Conference		
Yes	9	37.5
No	15	62.5
Total	24	100.0
If so, did the discussion help to understand the issues regarding the application		
Yes	6	66.7
No	2	22.2
No response	1	11.1
Total	9	100.0

Source of data: Self-represented Litigants Telephone Interview.
Total N=24.

Participants expressed opinions such as:

I understand a little more about it, as before I did not know what anything meant or what to do.

They set up an interim order and we were able to come to a temporary order in the meantime before going to court.

[The Caseflow Coordinator] explained what was happening and what was going to happen next.

However, some participants explained that, even though the Caseflow Coordinator helped them to understand the process, they came out of the CFC feeling uncomfortable about the agreement that was reached. As some participants stated:

I'm not sure I should [have] agreed to it as I am unsure I received the correct information to go into Caseflow.

We came to an interim agreement that I was not happy with...everything in that order my ex has breached.

Two participants stated that they did not find the discussions with the Caseflow Coordinator helpful in clarifying the issues regarding their application(s). One participant stated that they already knew the issues and the other participant commented that they felt that the process was unfair.

Duty Counsel are lawyers paid by Legal Aid Alberta who help people understand the court process and provide free legal advice. In Provincial Court, 40% of the participants who appeared for their court date received support from Family Duty Counsel prior to appearing in Docket Court, and out of these participants, all of them found that the support was helpful (see Table 6.18).

Table 6.18
Self-represented Litigants' Experience with Family Duty Counsel

Questions	Participants	
	n	%
Received support from Family Duty Counsel prior to appearing in Docket Court		
Yes	6	40.0
No	9	60.0
Total	15	100.0
If so, did you find the support helpful		
Yes	6	100.0
No	0	0.0
Total	6	100.0

Source of data: Self-represented Litigants Telephone Interview.
Total N=15.

When the participants were asked how the Duty Counsel supported them before appearing in Docket Court, participants commented that it gave them an understanding of court procedures:

They made sure I knew what was going on and asked if I needed any assistance.

[They] just answered all my questions and gave me wise information... and I found that the court was very intimidating for me and she helped relieve that stress.

Participants also commented that Family Duty Counsel were helpful with making sure the paperwork they would be presenting before the judge was correct.

When it came to appearing in Docket Court (see Table 6.19), a majority of the participants (80%) who were required to attend Docket Court felt prepared for what they experienced. Participants were then asked why they felt prepared for Docket Court, with responses indicating that this was due to the assistance received from court staff (i.e., Family Court Counsel), and that they had obtained all the necessary information and paperwork prior to appearing which allowed them to feel prepared when they presented their application(s) in front of the judge.

Table 6.19
Self-represented Litigants' Experience with Docket Court

Questions	Participants	
	n	%
Felt prepared for what you experienced		
Yes	12	80.0
No	3	20.0
Total	15	100.0
Appeared more than once		
Yes	8	66.7
No	7	33.3
Total	15	100.0
If so, continued to represent themselves		
Yes	8	100.0
No	0	0.0
Total	8	100.0

Source of data: Self-represented Litigants Telephone Interview.
Total N=15.

The three participants who were required to attend Docket Court who did not feel prepared for what they experienced explained that this was because of their lack of understanding of the point of the process, feelings of confusion about the entire experience, and feeling that they had a lack of information about the fundamentals. One participant expressed their lack of familiarity by saying that they did not know when *“...to go into the court [room], was not sure of where to stand, how to address the judge... thought docket was for making a ruling... did not realize there was much more to be said.”*

Of those participants who appeared at Docket Court, 66.7% attended multiple Docket Court appearances, with all of these participants continuing to represent themselves at those additional appearances. When the participants were asked why they continued to represent themselves, the primary response was that it was purely financial. As these participants stated:

I knew a lawyer would be a waste of time and money... and the chances of returning lost costs for child support are nil to none.

I cannot afford a lawyer or anything.

Participants also described how they had alternative support while in court (e.g., Family Duty Counsel) and therefore did not need representation, or they assumed that the respondent would not show for the court date and thought having a lawyer would have been a waste of time and money.

For the two participants who proceeded to Court of Queen's Bench, both had Duty Counsel present to assist them, and both found that their presence was helpful in understanding the court process, as one participant commented, "*I don't think I would have been able to do it without her [Duty Counsel]... was maybe in court for two minutes, she dealt with the whole thing, [and] it was great.*"

6.4 Overall Experience

The final section of this chapter describes SRLs' overall experiences with the *FLA*. Particularly, this section illustrates how SRLs have rated their experiences, how and why the *FLA* met their family's needs, the duration of reaching a resolution, along with discussions with SRLs regarding what kinds of improvements they deemed necessary to improve the *FLA* and associated processes and procedures.

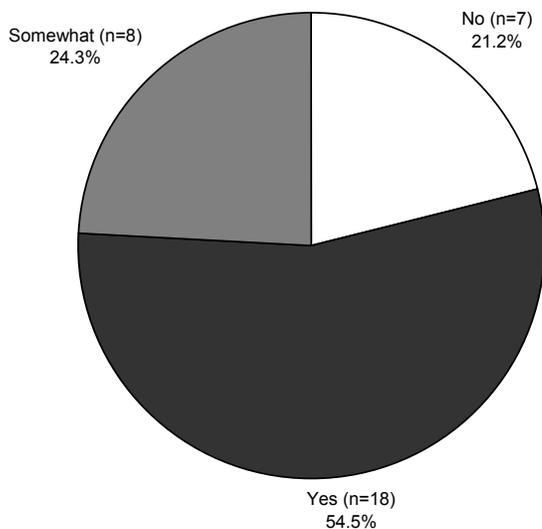
6.4.1 Ratings of the *FLA*

Overall, participants seemed happy with *FLA* processes and procedures. On a scale of 1 to 10, with 1 being the lowest and 10 being the highest possible rating, participants were asked about the accessibility, fairness, efficiency, and their overall experience with the processes and procedures of the *FLA*. On average, participants rated accessibility at 7.3, fairness at 6.6, efficiency at 6.3 and overall experience at 6.9.

6.4.2 Meeting Family Needs

As illustrated in Figure 6.6, the majority of participants (54.5%) indicated that the *FLA* met their family's needs. One-quarter (24.3%) of participants indicated that the *FLA* somewhat met their family's needs, with 21.2% having responded that the *FLA* did not meet their family's needs.

Figure 6.6
How the *Family Law Act* met Self-represented Litigants' Family Needs



Source of Data: Self-represented Litigants Telephone Interviews.
Total N=33.

When SRLs were asked why they felt as though the *FLA* met their family's needs, the responses revolved around several themes. The primary responses by participants demonstrated overall contentment with the results, such as "*It was good, I got everything I wanted.*"

The remaining themes centred on how the *FLA* benefited children by focusing on family and financial stability. For example:

I've been after the kids because they needed stability in their lives and they weren't getting it... so I stepped in. I just wish there was something there for grandparents.

I guess it provided financial support for my kids... so their lifestyle has not changed too much.

Some comments pertained to strengths in the processes and procedures, for example:

I feel they have been fair enough with us, and the whole system has been pretty much fair, it's a give a little take a little situation.

It was dealt with very professionally. When a person is going through such a trying time and have legal support... just to have that little bit of trust and confidence... the Family Court Counsellor gave excellent information, was very supportive, and did not make it a trying time at all.

Another comment by one participant who went through the court process before the *FLA* was implemented illustrates what they thought about the changes taking place in Alberta's family law courts:

14 years ago I was battling for custody of my own children and that cost me in legal fees of up to \$15,000 and the court orders were never upheld... it was the most stressful thing I've been through in my life and it was sucking my bank account dry as a single mother... so for me, this process is a gift. I think that what is happening at the family court is one of the greatest things the province has done.

When participants were asked why they felt as though the *FLA* did not meet their family's needs, some participants felt that the processes were ineffective for their particular case, either because they did not get the results they were after or they felt forced into programs that were not working (e.g., mediation), as this participant explained:

I kept being forced into mediation where nothing in mediation is on record or can go into court... so a lot of things said and behaviours expressed on either side, the judge never saw.

Some participants also commented about the fairness of the court process. Participants either expressed that the process was just generally unfair or they felt that the process was skewed towards the other party, thereby not benefiting the needs of the child(ren). As one participant stated:

I was shocked at how they supported a person that was not taking care of the children nor was he planning to... it just seemed they were concerned with his needs rather than mine, and I was the one taking care of the children.

There were also some sentiments by participants regarding lost faith in the court process, as one participant blatantly stated, "*I do not have a lot of faith in [the] justice system.*"

When participants were asked why they felt as though the *FLA* "somewhat" met their family's needs, participants replied that they felt that the process was inefficient, the information was unclear about court procedures, or simply that they could not comment fully because the process (for them) was not yet concluded. With regard to comments on procedural inefficiency, participants felt that the other party was using the process to stall, that going through the process to obtain resolution was a struggle, or that they were not happy with the agreement that was reached, as expressed in these comments:

The children were not put first, as the respondent is using stall tactics... Nothing has changed as the children are not receiving the child support... he should not be able to use the law to stall... and should accept his responsibilities.

I was up in front of so many judges... most of them did not want to rule... I spent 4 hours in court once a month just because the other party was not prepared (or present) and it did not seem that any of the judges were bothered by this.

Eventually we came to an agreement but it was quite a struggle getting there.

We felt pushed into an agreement... a consent order is being processed and I'm not 100% comfortable to what we agreed to... Thus far, half of the agreements in that consent order have already been withdrawn by the respondent.

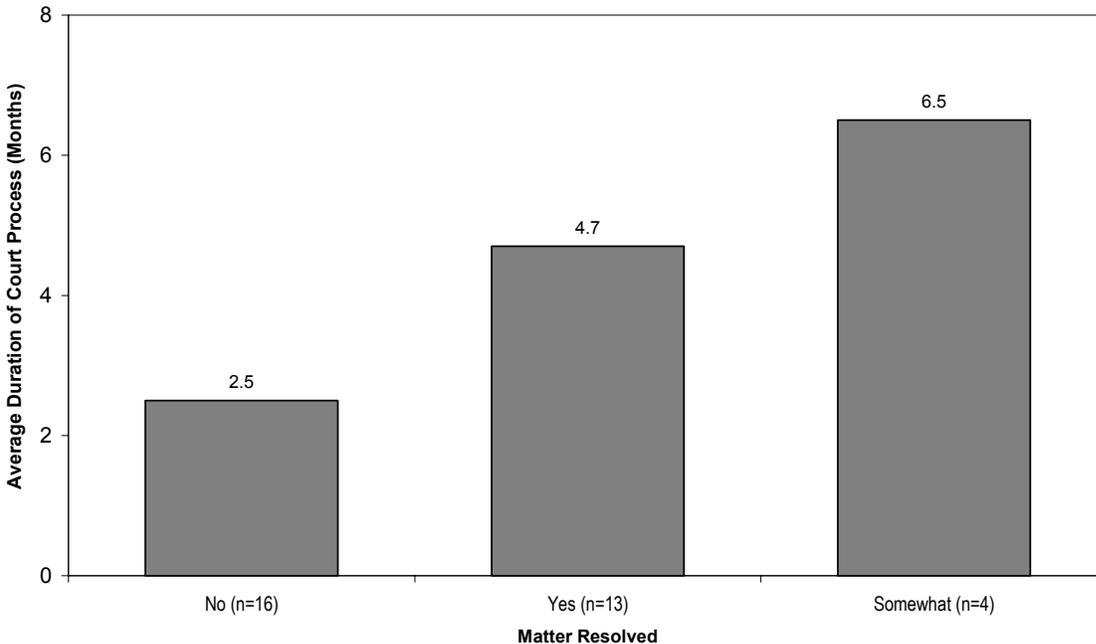
Participants also commented on how the information about court procedures was unclear. One participant explained:

The information was somewhat vague... it was not intentionally misleading, but it was not as clear as it should have been... I think, although I understood Caseflow Conference as part of the process, my understanding was that we would be presenting our case, so we educated ourselves in how to present the case in court. But when we got there, we were told that was not the way it was going to go.

6.4.3 Resolution

Data regarding the duration SRLs were in the court process and whether their matter was resolved are shown in Figure 6.7. Those participants who had somewhat resolved their matter have the highest average duration of being in the court process at 6.5 months, followed by participants who had resolved their matter at approximately 4.7 months. The participants who had not yet resolved their matter are averaging 2.5 months; however this will rise as their matter continues towards reaching a resolution.

Figure 6.7
Duration of the Resolution of the Court Process
According to the Self-represented Litigants



Source of Data: Self-represented Litigants Telephone Interviews.
 Total N=33.

The participants who stated their matter was not yet resolved explained that it was for a variety of reasons. The most common was that they were waiting on something else, such as the respondent, paperwork, another case that their case was contingent on, or a court decision. Another common response was that the case reached an interim agreement or was adjourned to another date. Participants exhibited some frustration when experiencing adjournments, commenting that, *“They keep sending us to one or another [court] instead of setting an earlier trial date. And I think the reason for that is not recognizing that it was not going to take place in mediation.”*

One participant attributed their adjournments to the fact that they were self-represented, as expressed here. *“I think that because I was representing myself I was not given due process, I was put off... so I am in the process of getting representation as I felt my voice was not heard in the court.”*

Participants who felt that their matter was somewhat resolved explained that this was either because they had successfully applied for a court order on one issue but had to appear again in court for another or that they were not satisfied with the consent order that was granted, as one participant explained, *“We have a consent order we do not agree with, and need a lawyer to clear things up. It was a waste of time going through this process... would have been better to get a lawyer.”*

6.4.4 Recommendations

The SRL interviews concluded with participants commenting on whether there was anything they would change about the processes or procedures that would make it easier for individuals who are self-represented. The primary response (36.4%; n=12) was that no changes were necessary, either because participants liked the process they went through, they got done what they wanted to accomplish, or they generally had no comments aimed at improvements.

A number of themes emerged from participants who offered suggestions for changes to the processes and procedures in order to make it easier for individuals who are self-represented. These included:

- increase the focus on children by eliminating the ability to stall the court process;
- increased or more effective use of court staff;
- increased efficiency of court procedures;
- specific guidelines which outline court proceedings and associated processes;
- increased flexibility in the use of Alternative Dispute Resolution (ADR);
- more accessible services and information; and
- more support for the primary caregiver.

With regard to participants commenting that there should be an increased focus on the children, they expressed that this would be accomplished by eliminating the ability for the other party to stall the court processes and procedures. Some examples of comments include:

I was told that this was something you could do yourself... I went to legal aid [and the] respondent went to legal aid and got a lawyer, and did not go through the same things I did. I just think there should be something in place to put the child first so that parents cannot use their own issues in order to stall what is in the best interests of the child.

As family law goes, I don't think the respondent or anyone should be able to postpone the process as the children need closure on this type of stuff.

Participants commenting that there should be either an increased number or a more effective use of court staff explained that the number of SRLs at family court far outnumbered court staff (i.e., Family Court Counsellors), which resulted in some SRLs not getting a chance to go over their application(s) before appearing in court. As one participant stated, *"They also need more staff as they seem really overworked."*

Participants who commented that there should be increased efficiency regarding court procedures mentioned increasing the awareness of judges and justices with the happenings of a case in both the Court of Queen's Bench and Provincial Court. They also professed a need for a "one-stop" location for information instead of being sent to multiple locations to find the information they need, as one participant commented, "...sometimes when you ask at the counter, sometimes they tell you to go to another floor and then they tell you to go another floor, so the organization that way is not good."

Comments pertaining to increasing the efficiency of court procedures all seemed to tie into SRLs wanting to go through the process faster, as this participant said, "*Just the fact of getting those orders generated faster.*"

There were a few participants who recommended having specific guidelines created that outlined all aspects of the court proceedings and associated processes or one general pamphlet that lists all the services and programs and where they can be accessed. For example:

Docket court should be explained better to a self-represented person so they are prepared for what they are walking into. I was never told that was where you tell your side of the story.

Some things I had no idea, no one told me... still not sure of the procedure with the next court date coming up... maybe a booklet or pamphlet, "if this happens then do that", a more step by step direction, more information on the whole process from start to finish.

There could be a guide... you know, about what to expect kind of thing.

A sentiment that was expressed by several participants earlier in the interview regarding improving the flexibility of alternative dispute resolution methods was touched upon a bit more when asked if there was anything they would change about the process. Participants sometimes felt pressured to make a decision in mediation, which resulted in resolutions they were not completely comfortable with. Examples of these comments included:

It felt as though I was pushed through the [alternative dispute resolution] process, a process that was not really relevant to my particular issue. What I wanted the judge to hear and what happened were two different things. I would advise them [others] to seek a lawyer.

Not forcing people to go through mediation.

Some participants commented upon making services and information more accessible, as one participant explains, "*I would display the [court] forms in open access categories under what exactly the forms are for so they can be grabbed freely.*"

Participants expressed having some problems dealing with the time restraints of court processes and procedures, which resulted in their own costs through time off work

and usage of vacation time to appear at court. As one participant commented, *“The hours for people like me that work is one thing, that a lot of services could be more accessible to single working parents... maybe having more offices in the city?”*

Lastly, a general comment made by a participant regarding court support and the primary caregiver, stated, *“I would just have a little more support for the parent that is taking care of the children... more focus on the caretaker other than the absent fathers.”*

7.0 SUMMARY AND CONCLUSIONS

This chapter summarizes the major findings of the legislative review, caseload and outcomes analyses, survey of professionals, and self-represented litigant interviews, and concludes with a discussion of the importance of these findings and their implications for possible future reforms of the *FLA*.

7.1 Summaries

7.1.1 Legislative Review

The legislative review addressed six key substantive areas of the *FLA*: the best interests test, guardianship, parenting orders, contact orders, child support, and spousal/adult interdependent partner (AIP) support. The former legislation (replaced by the *FLA*) was examined and key changes to these substantive areas introduced by the *FLA* were identified. Further, the *FLA* was compared to relevant legislation in other jurisdictions. A supplementary Case Law Review was also conducted. The highlights of the review are presented below.

Best Interests of the Child

- The application of the best interests test under the *FLA* is not dramatically different than it was under the former legislative framework. However, the *FLA* codified the best interests test and, in doing so, made explicit which factors must be considered when determining the best interests of the child and the contexts in which those factors are applicable.
- Comparably, the meaning and application of the best interests test across jurisdictions are largely similar throughout Canada, with one notable exception. The *FLA* specifies the inclusion of family violence as a factor to be considered when determining the child's best interests.
- The case law is unclear regarding the application of the "fitness" test versus the "best interests" test in the context of the *FLA*. This might be addressed by adding a provision to the *FLA* which clarifies the circumstances under which the fitness test applies in contrast to the best interests test.
- While s. 18 of the *FLA* states that the best interests are the sole consideration, other provisions of the *FLA* suggest otherwise, giving rise to some uncertainty and confusion. Clarification of the inconsistency regarding "sole consideration" of the best interests of the child is necessary.

Guardianship

- The *FLA* consolidated and enumerated the powers, responsibilities, and entitlements of guardians in one piece of legislation, enabling courts to parcel out the various components, as required, if the parents or guardians cannot agree on how to share them. This constitutes a simplification over the former legislative framework.
- Under the *FLA* the concept of “guardianship” was retained while “custody” (and its counterpart “access”) was eliminated from the lexicon of legal statuses.
- “Guardianship” under the *FLA* constitutes the foundation of all parental authority.
- The *FLA* modernized the guardianship regime in Alberta family law by reversing the regime defaulting guardianship to the mother and stating that both the mother and father will be guardians unless they fall within the noted exceptions.
- If a parent is not a guardian by default under the *FLA*, he/she may apply to the court for guardianship. The *FLA* clearly provides that any non-guardian parent, any third party who has had care and control of a child for 6 months, or the child himself, may apply for guardianship.
- The concept of “guardianship” is not employed in all jurisdictions and, where it is employed, it assumes different meanings. There are no other jurisdictions in Canada where the concept of “guardianship” encompasses the same authority, with the same default regime as Alberta.

Parenting Orders

- The concepts of “custody” and “access” under the previous Alberta family law legislation have been replaced by the concepts of “parenting time” and “contact” under the *FLA*.
- Parenting orders have replaced custody and access orders between guardians, resulting in a functional descriptive approach to parenting arrangements. They allocate “parenting time” between guardians, which includes the power to make day-to-day decisions affecting the child. Regardless of how much “parenting time” is allocated to one guardian, the other may still retain all or some of the rights associated with guardianship.
- Unlike the former legislative framework, the *FLA* establishes statutory presumptions for guardianship. The statutory presumptions establish a default arrangement that applies unless the parties agree or the court provides otherwise. Where the *FLA* starts with a presumption of equality and shared guardianship, the custody/access regime tends to start with an all or nothing approach to parenting on separation.

Contact Orders

- Contact orders provide a separate mechanism for *non-guardian* third parties (i.e., grandparents, non-guardian parents) who have an interest in having contact with a child or children.
- Most non-parent contact order applicants are subject to a two-stage application process whereby the court first considers their application for leave to apply, and then, if the leave application is successful, considers the substantive application for a contact order. Parents, persons who stand in the place of a parent, and grandparents in some situations may apply directly for a contact order.
- Grandparent access orders, formerly provided for under the previous legislative framework, have been replaced by contact orders under the *FLA*. Now, if a grandparent seeks contact with a grandchild, he/she does so pursuant to a contact order. A grandparent may apply directly if: guardians are living separate and apart; a guardian has died; and, a grandparent's contact with a child has been interrupted by the separation of guardians or death of a guardian. Otherwise, they must seek leave of the court prior to applying for contact.
- The court must be satisfied of three factors before making a contact order: contact between the child and the applicant is in the best interests of the child; the child's health may be jeopardized if contact between the child and the applicant is denied; and, the guardians' denial of contact between the child and the applicant is unreasonable.
- By way of comparison, all other Canadian jurisdictions generically provide for "access" between children and non-custodial parents, grandparents, and other interested third parties. Parents and third parties alike may exercise access, although their respective rights of access are not necessarily uniform. In most jurisdictions, mothers and fathers will have a presumptive right of access, while other parties must apply for and be granted access based on the best interests of the child.

Child Support Obligations

- Child support obligations under the previous Alberta family law legislation were not explicit and varied depending on the legislation. The *FLA* addressed the outstanding uncertainty by clearly defining the parameters of child support obligations, including who constitutes a child, who is and is not obligated to pay, the circumstances under which a child support order can be made, and the applicable guidelines for determining the amount.
- The *FLA* provisions eliminate any distinction between the treatment of children of married and unmarried parents.

- The *FLA* is explicit that all parents, regardless of whether they were married or unmarried, separated or living together, have an obligation to support their child(ren).
- In keeping with a presumptive approach to guardianship under the *FLA*, the rules related to child support obligations are also presumptive. This means that the obligation for a parent to provide support is automatically triggered provided that the child meets the definition of child.
- For the purposes of child support, the *FLA* defines “child” as a person who (1) is under the age of 18 years, or (2) is at least 18 years but not older than 22 years of age, and is unable to withdraw from his/her parent’s charge because of being a full-time student. This stands in contrast to the previous legislative framework, where the support obligation for adult children was interpreted broadly, and the *Divorce Act*, which stipulates no age or level of education cut-off for adult children, and provides for support of adult children for reasons of illness or disability.

Spousal/Adult Interdependent Partner Support

- The *FLA* introduced a more clear approach to spousal support by harmonizing the terms of support with the *Divorce Act*, replacing terminology of “alimony,” “maintenance” and “support” with the single term of “support,” disentangling the entitlement to support from the establishment of fault, and assigning concrete factors for the court to refer to when making a support order.
- Like guardianship and child support provisions under the *FLA*, the provisions dealing with spousal support are presumptive in that they establish a general rule in relation to the obligation of support. The *FLA* provides generally that every spouse or adult interdependent partner (AIP) has an obligation to provide support for the other spouse or AIP, provided the need of a spouse/adult interdependent partner for support and the ability of the other spouse/partner to pay the support. The obligation is qualified by the requirement of certain conditions.

7.1.2 Caseflow and Outcomes under the *FLA*

The caseflow and outcomes analyses examined the overall impact of the *FLA* on family law caseflow in Alberta, the impact of the response process, and outcomes for a number of relevant alternative dispute resolution programs. Specifically, the analyses examined: the effect of the *FLA* on workload and human resources in Alberta’s Provincial Court, Court of Queen’s Bench, and Family Justice Services; the impact of alternative dispute resolution programs and processes on cases, procedures and outcomes under the *FLA*; the effect of the response process on procedures and outcomes under the *FLA*; and finally, whether the *FLA* has made family law processes more efficient.

FLA Impact on Workload and Human Resources

- The number of family law issues before the Provincial Court increased significantly between January 1, 2005 and December 31, 2007, particularly in Calgary and the Region (i.e., family law courts other than Calgary and Edmonton). This increase could be explained by the increased jurisdiction of the Provincial Court with the enactment of the *FLA*.
- The number of *FLA* Claims before Alberta Court of Queen's Bench saw a relative increase following the introduction of the *FLA*, but by December 2007, returned to levels just over 31% higher than those that existed when the *FLA* was enacted.
- From December 2003 to December 2007, there was a steady increase in applications to the Edmonton Provincial Court Caseflow Conference program, particularly following October 2005 (the enactment of the *FLA*). This is likely due to the increased jurisdiction of the Provincial Court with the enactment of the *FLA*.
- By 2007, the number of applications proceeding to Edmonton Caseflow Conferences was approximately double that which existed prior to the *FLA*.
- The number of Provincial Court Family Justice Service intakes across the province has increased to a rate approaching double that which existed prior to *FLA* being enacted.
- Other than an immediate increase in Provincial Court Family Justice Services Mediation referrals when the *FLA* was implemented, Mediation numbers throughout all regions in Alberta have decreased to levels consistent with those that existed prior to the enactment of the *FLA*.
- The Court of Queen's Bench Child Support Resolution (CSR) program (a dispute resolution program for child support issues in Edmonton) saw an immediate increase in the number of sessions attended following the enactment of the *Act*, and more or less maintained this level until the end of 2007.
- The Court of Queen's Bench Dispute Resolution Officer (DRO) program (a dispute resolution program for child support issues in Calgary) saw a dramatic increase in sessions attended since early 2006, and maintained a high level of attendance through 2007.
- Family Law Information Centres (FLIC) have witnessed an increasing demand, as the total number of overall inquiries to Calgary and Edmonton FLIC offices from January 2004 to December 2007 have increased by 50% since the enactment of the *FLA*.

- As inferred from Family Justice Services intake data, there has been a steady increase in self-represented litigants (SRLs) proceeding in Provincial Court since the enactment of the *FLA*.
- A large majority of applications proceeding to Caseflow Conferences in Edmonton did not involve a solicitor, and the total number of applications that involved SRLs has steadily increased over time.

Programs and Services Outcomes

- Just over half of the Caseflow Conferences in Edmonton Provincial Court from October 2005 to December 2007 were concluded, whether by final consent order, withdrawal or abandonment, adjournment to docket court (Provincial Court), *sine die*, or other reasons.
- Just less than half of the Edmonton Caseflow Conferences from October 2005 to December 2007 were adjourned to a future Caseflow Conference, whether due to referral to mediation, involvement of legal aid or a solicitor, client request, or referral to service or a Family Court Counsellor.
- In Calgary Provincial Court, roughly half of the Caseflow Conferences from November 2006 to December 2007 were concluded, whether by adjournment to docket court, withdrawal or abandonment, or consent order.
- Just under half of Calgary's Caseflow Conferences were adjourned to a future date, whether by client request, referral to a Family Court Counsellor, service, or Mediation, consultation with a lawyer, or other reasons.
- Family Justice Services Mediations had a relatively high rate of resolution in all regions. Partial agreements were more likely to be reached in Calgary than in any other Region.
- One year after the enactment of the *FLA*, nearly half of the applications that proceeded to Provincial Court Judicial Dispute Resolution (JDR) in Edmonton reached resolution by court order, with an additional one-third being withdrawn or dismissed.
- In 2007, three-quarters of Provincial Court JDR sessions in Calgary were resolved, either by court order or by withdrawal/dismissal.
- The Edmonton CSR Program from October 2005 to December 2007 had nearly two-thirds of its sessions reaching either full or partial settlement.
- The Calgary DRO Program from October 2005 to December 2007 had two-thirds of its sessions reaching either full or partial settlement; however, more partial settlements were recorded for DRO than CSR.

FLA Response Process

- From October 2005 to December 2007, JOIN recorded nearly 22,000 *FLA* orders requested in Claims.
- Roughly one-quarter of orders requested in Claims and additional orders requested in Responses in Provincial Court from October 2005 to December 2007 had Responses filed; a response was filed roughly two-thirds of the time when a variation to an existing order was requested in a Claim or Response.
- Nearly two-thirds of Provincial Court orders or variations to existing orders requested in Claims resulted in a final order. This compares to roughly half of orders requested (new and variations to existing orders) in Responses.
- Very few Provincial Court *FLA* files were transferred to Court of Queen's Bench.
- Respondents in Provincial Court were slightly more likely than applicants to have their requests withdrawn, dismissed, or denied; this happened in roughly one-third of the orders they requested (new and variation to existing orders).
- For new orders requested in Claims, it was only slightly more likely that a final order would be granted when a Response was filed.
- Responses were filed an average of 24.6 days after a file was opened in Provincial Court; however, this could be as low as the same day or as high as over one year.
- On average, 56 days elapsed between the Response being filed and a final order being granted; however, this ranged from the same day to as high as just under one year.
- On average, nearly 60 days passed before a final order was made from the time an *FLA* file was opened.
- On average, processing time was slightly longer when a Response was filed.
- The average number of days for family law files to be processed began to decrease immediately after the *FLA* was enacted in October 2005, and has continued to steadily decrease.
- A large majority of *FLA* documents filed in Court of Queen's Bench were *FLA* Claims. Just over one-quarter were Applicant Statements.
- *FLA* Responses comprised only 5.5% of *FLA* documents filed in Court of Queen's Bench; thus, for approximately every 9 *FLA* Claims, a Response was filed.

- *FLA* Reply Statements and Respondent Statements composed just over 2% of the *FLA* documents filed in Court of Queen's Bench.

7.1.3 Survey of Professionals

Surveys were completed by 152 professionals who have had direct experience with the *FLA*. Data analyses examined: how the response process has impacted procedures and outcomes under the *FLA*; how procedural changes under the *FLA* have affected the efficiency of the court process; how effective the *FLA* is in serving the best interests of children and families; how the substantive changes under the *FLA* have made it fairer and more effective; and finally, whether the language of the *FLA* is appropriate, easier to understand, and more effective. Highlights from the findings are presented below.

Demographic Information

- Roughly equal proportions of professional respondents indicated that they conducted most of their work in Edmonton, Calgary, or other Albertan cities, with a few respondents working primarily in rural communities.
- Court administration workers (e.g., Family Court Counsellors, Caseflow Coordinators, judicial clerks, court clerks, and Family Justice Services' staff) comprised a majority of respondents, followed by judges/justices and lawyers.
- Roughly equal proportions of respondents worked in Provincial Court, Court of Queen's Bench, and in both courts.
- Over two-thirds of the respondents have worked in the area of family law for more than five years.

Knowledge of Previous Legislation

- The vast majority of professional respondents said they had experience with the previous legislation.
- Almost two-thirds of professionals agreed that efforts to improve processes and procedures under the *FLA* have been successful overall; however, lawyers and court administration personnel were less positive than were judges/justices and the other professions.
- Related to procedural changes, respondents commonly explained that there are too many forms and that the forms are too restrictive, redundant, inappropriate, or complicated.
- Respondents commonly explained that efforts to improve the processes and procedures under the *FLA* were successful because they are more user-friendly for SRLs and are more client-focussed.

- None of the respondents reported that their workload has decreased; almost two-thirds of the respondents reported that their workload had increased; and over one-third said that their workload has stayed the same since the implementation of the *FLA*. Court administration staff were by far the most likely to report an increase in workload.
- Nearly three-quarters of the judges/justices surveyed thought the procedural changes introduced with the *FLA* better served SRLs, whereas almost two-thirds of court administration staff did not agree that procedural changes better served SRLs.
- Overall, respondents were more positive about the substantive changes to the *FLA* than they were the procedural changes.
- A majority of respondents agreed that consolidation of the previous legislation was greatly needed.

Processes and Procedures under the *FLA*

- Over two-thirds of professionals were aware of problems because of overlapping jurisdictions between Provincial Court and Court of Queen's Bench; confusion commonly arose from SRLs applying in the wrong court or proceedings occurring simultaneously in both courts.
- Almost 60% of professionals agreed that the *FLA* Claim form was easy to use and almost two-thirds replied that the *FLA* Response form was easy to use.
- Those professionals who commented that the forms were not easy to use explained that it was because they are too rigid, contrived, difficult, or complicated; they further explained that SRLs lack an understanding of the law and end up using forms as "shopping lists."
- Two-thirds of professionals said that the use of standardized statements provides for an efficient Claim and Response process for self-represented and represented litigants, as it encourages people to be quick and concise.
- Standardized statements were criticized for not always being efficient because of the redundancy, as in the case of repeated information being required when making two or more applications, and the restrictiveness, which limits SRLs and/or lawyers from adding other useful information to the Statement.
- The vast majority of respondents stated there was enough time allotted for the response process; they further elaborated that the timelines are flexible, and adjournments are usually granted.

Efficiency of Programs and Services under the *FLA*

- Overall, the professionals interviewed were very positive about the programs and services, except in cases where they were not available in their jurisdiction.
- Many respondents were not familiar with or had no opinion about many of the programs or services; this was usually due to a program/service being offered in a court other than the one the respondent worked in.
- The vast majority of respondents agreed that the Parenting After Separation seminar and the Focus on Communication in Separation course were effective in improving the efficiency of the family law system under the *FLA*.
- Most respondents thought that Family Justice Services and the Family Law Information Centre were effective services (especially for SRLs), improving the efficiency of the family law system under the *FLA*.
- Only 3.6% of the respondents thought the Caseflow Conference Program was ineffective in improving the efficiency of the family law system; however, over half were either unfamiliar with the service or had no opinion.
- Respondents were very positive about the services provided by Family Court Counsellors, commenting that the service is excellent and that Family Court Counsellors provide beneficial information and support to self-represented litigants.
- The professionals were very positive about Judicial Dispute Resolution, indicating that they thought the service was effective in improving the efficiency of the family law system under the *FLA*; professionals recognized the benefit of a judge's experience in negotiating a situation.
- Professionals expressed that Brief Conflict Intervention was an effective program for improving the efficiency of the family law system for those situations that are more difficult to mediate.
- Almost three-quarters of respondents agreed that Duty Counsel improved the efficiency of the family law system under the *FLA*, as they were viewed as an excellent resource for parents to ask quick and simple legal questions.
- The professionals who were familiar with Civil Practice Note 1: "Case Management" agreed that it is effective in improving the efficiency of the family law system as it is helpful for high conflict families; however, professionals commented that it is rarely utilized.

- Almost one-half of professionals agreed that Family Law Practice Note 7: “Use of Independent Parenting Experts” improved the efficiency of the family law system; however, this service was often not available in certain regions (nor in Provincial Court) and/or there was no local availability of qualified experts in particular jurisdictions.
- The professionals who were familiar with Family Law Practice Note 9: “Dispute Resolution Officers or Child Support Resolution Officers” agreed that these programs are effective in improving the efficiency of the family law system; it is viewed as an excellent resource for parents trying to determine child support.
- Over three-fifths of professionals said that the number of dispute resolution programs and/or services is not sufficient to support the goals of the *FLA*; more programs/services are needed, especially in outlying communities, and many should be offered in both courts.

Substantive Areas of the *Family Law Act*

- Best Interest Factors
 - Almost all respondents stated they thought that the consideration of best interest factors in the *FLA* protects the best interests of children.
 - Just over one-half of respondents stated that some best interests factors should be emphasized over others because physical and emotional safety is sometimes overshadowed by less pressing concerns, or that emphasis should be contingent upon the unique circumstances of each party.
 - Some professionals emphasized that judicial discretion in the weighting of factors is appropriate, with each situation being unique and not appropriately reduced to a base formula.
 - Three-quarters of respondents indicated that it is more beneficial to outline specific best interests factors in the legislation than to broadly define them as it provides structure and removes subjectivity; however, the court’s discretion should not be fettered.
 - Less than one-half of professionals thought that the *FLA* affords better protection to ensure the child’s physical, psychological, and emotional safety than other jurisdictions, as these issues have always been the paramount concern of the court regardless of how legislation is worded.
- Guardianship
 - Over three-quarters of respondents agreed or strongly agreed that the *FLA* does a good job of balancing the interests of mothers, fathers, and children, particularly when the parents do not live together in a family unit.

- Most respondents agreed or strongly agreed that the subsection providing that both parents are guardians of a child when mothers and fathers live together in one of a number of types of relationships is easy to understand and apply.
 - Almost two-thirds of respondents agreed or strongly agreed that the section of the *FLA* providing that when mothers and fathers do not live together in one of the specified relationships, guardianship is determined by the usual residence of the child, is easy to understand and apply.
 - Almost two-thirds of respondents indicated that s. 21 of the *FLA* provides a clear enough statement that, unless there is a court order to the contrary, guardians have equal powers.
 - The majority of respondents who stated that the *FLA* does not clearly state that guardians have equal powers agreed that a statement establishing guardians as “joint guardians” would be easier to understand.
 - A substantial majority of respondents stated that the list of powers of guardianship in s. 21(6) of the *FLA* assists the court in making flexible and appropriate guardianship orders and parenting orders under s. 32, because it is more clear what role a guardian is supposed to take in the child(ren)’s life.
- Parenting Orders
 - A substantial majority of respondents agreed or strongly agreed that parenting orders provide flexibility for families regarding parenting time.
 - Most professionals agreed or strongly agreed that parenting orders provide flexibility for families regarding parenting responsibilities.
 - Just over half of the respondents agreed or strongly agreed that parenting orders build parenting systems that minimize financial costs to families.
 - Approximately 60% of respondents agreed or strongly agreed that parenting plans build parenting systems that minimize emotional costs to families.
 - Over two-thirds of respondents agreed or strongly agreed that the provisions for parenting orders are easy to understand and apply.
 - Contact Orders
 - Almost all the respondents stated that the *FLA* makes clear who may apply for a contact order; however, SRLs may not know what it means to “stand in the place of a parent” for this purpose.

- The substantial majority of professionals indicated that the *FLA* makes clear the conditions that must be met for contact orders to be considered by the court; however, it is clearer for someone who uses the *Act* on a regular basis than for those who do not (e.g., SRLs).
- A substantial majority of respondents agreed that the provisions for contact orders are easy to understand and apply for professionals.
- Child Support
 - The majority of professionals stated that the provisions for child support under the *FLA* clearly define who a parent is for the purposes of child support, who is considered to be standing in the place of a parent, and what the court would consider when making a determination about this issue.
 - Most professionals agreed that the *FLA* provisions make the determination of child support easier; however, there continues to be a great amount of dispute as to how to arrive at the payor's appropriate level of income.
 - Over two-thirds of professionals agreed that the provisions for child support for children aged 18-22 when they are pursuing full-time education and contributing to their own education are easy to understand and apply. However, some professionals stated that child support provisions are somewhat vague and that the needs of this group must be clearly outlined and the responsibilities of the parties better defined.
- Spousal or Adult Interdependent Partner Support Orders
 - A substantial majority of respondents agreed that the legislation makes clear who may apply for a spousal or adult interdependent partner support order.
 - Most professionals agreed that the *FLA* makes clear the conditions that must be met for a spousal or adult interdependent partner support order to be considered by the court.
 - A majority of respondents agreed that the *FLA* makes clear the objectives of a spousal or adult interdependent partner support order.

Language of the *Family Law Act*

- The majority of respondents agreed that the language of the *FLA* reflects current thinking about children and families experiencing family breakdown.
- Professionals recognized that people still think about custody and access and joint custody as relevant concepts.

- Over three-quarters of respondents thought that the language of the *FLA* is clear but still relatively unfamiliar and open to interpretation at times.
- Over three-quarters of respondents agreed that the language of the *FLA* is easy to understand, but that an understanding of legal terminology is required and the ability to understand the language depends on an individual's literacy level.
- Almost three-quarters of respondents believed that the language of the *FLA* somewhat facilitates collaboration but it could be enhanced, and that collaboration depends more upon the parties.
- Approximately one-half of professionals agreed that replacing the terms "custody" and "access" with "parenting" has improved family law legislation in Alberta; however, some professionals believed that SRLs are still accustomed to the old language, and that custody and access should have remained the same because terminology was never the problem.
- Several respondents stated that the new terminology does not imply ownership and makes the outcome less of a win/loss situation; this helps put the focus on children.
- Less than one-half of respondents agreed that the change in terminology has been effective in reducing the adversarial nature of family law legislation in Alberta.

Overall Satisfaction with the *Family Law Act*

- Ratings by professionals of the fairness of the *FLA* for families were generally positive, with judges/justices providing the highest rating.
- Respondents' ratings of the accessibility of *FLA* processes for SRLs in Court of Queen's Bench were highest among lawyers and judges/justices and lowest by other professionals; however, the ratings were relatively low overall.
- Ratings of the accessibility of *FLA* processes for SRLs in Provincial Court were somewhat higher than for the Court of Queen's Bench, with the most positive ratings given by judges/justices.
- Ratings of the efficiency of *FLA* processes and procedures for professionals averaged 6.5 out of 10, with the highest ratings given by judges/justices and the lowest ratings given by lawyers.
- Ratings of the efficiency of *FLA* processes and procedures for SRLs produced an average rating of 6.0, with the highest rating given by judges/justices and the lowest given by court administrators.

7.1.4 Self-Represented Litigant Interviews

Interviews were conducted with 33 self-represented litigants. Analyses examined: how the response process has impacted procedures and outcomes for SRLs under the *FLA*; how procedural changes under the *FLA* have affected the accessibility of court processes for SRLs; and whether the changes to the *FLA* have made it more appropriate, easier to understand, and more effective for SRLs. Highlights of the findings are presented below.

Response Process, Procedures, and Outcomes

- Over three-quarters of SRLs filed as applicants; only two SRLs were respondents and four had experience in both roles.
- A majority of participants (92%) proceeded in Provincial Court.
- The majority of applicants filed Claim and Statement forms and the majority of respondents filed Response and Reply Statement forms; applicants and respondents rarely had any difficulty filing their respective forms.
- Just over half of applicants had a respondent file a Response; out of those applicants, one-third had the respondent file additional Statements. The majority of these applicants reported not having enough time to respond.
- Over one-third of participants attended mediation, with two-thirds of these reaching either full or partial agreement; none of the remaining participants indicated that mediation helped to narrow issues with their case.
- Very few participants met with a Dispute Resolution Officer; however, of those who did, none reached any sort of agreement on their case.
- Just over one-third of participants went to a Caseflow Conference; the majority reached some sort of agreement, either via a consent order or an interim/procedural agreement.
- Nearly all participants who were assigned a court date appeared for their court date; most had their application proceed in Provincial Court.
- Almost two-thirds of the participants who had their application proceed to Provincial Court were required to attend Docket Court.
- Multiple appearances in Provincial Court Docket Court were quite common as more than half of participants who appeared more than once.

Accessibility of *FLA* Processes and Procedures

- The majority of SRLs completed an intake with Family Justice Services and approximately three-quarters of those participants indicated that the intake improved their understanding of court procedures and the options available to them.
- Less than half of the participants accessed a Family Law Information Centre; however, the majority agreed that the Family Law Information Centre improved their understanding of court procedures and the options available to them.
- Very few of the participants attended a Parenting After Separation (PAS) seminar, but participants who did attend commented that PAS was particularly helpful for issues such as child support and child care.
- Just under three-quarters of participants accessed information materials on the *FLA* or the procedures involved, and a large majority found the language and terminology easy to understand.
- Most participants found that the information materials accessed on the *FLA* (i.e., brochures and pamphlets, the *Act*, information kits and forms) helped them to understand the *FLA* and related procedures.
- All of the participants who were required to complete court forms stated that the instructions were easy to understand and the forms were easy to complete; however, just over half of these participants required assistance to either understand or effectively complete their forms.
- Upon arriving for their court appearance at Provincial Court, just over half of the participants were greeted by Family Justice Services' staff, and a majority of these participants indicated that this was helpful, especially in preparing their applications.
- A majority of participants found the support, information, and assistance of a Family Court Counsellor beneficial before and during their court appearance, but not during Caseflow Conferencing.
- Most participants who participated in a Caseflow Conference indicated that the discussions that occurred with the Caseflow Coordinator helped them to understand the issues in their application(s).
- Participants found that the support from Duty Counsel in both Provincial Court and Court of Queen's Bench was helpful in understanding court procedures and in preparing the paperwork that would be presented in court.
- The majority of participants who were required to attend Docket Court felt prepared for what they experienced, given the assistance from court staff, and having obtained all the necessary information and paperwork prior to appearing.

Overall Experience

- SRLs rated the accessibility, fairness, efficiency, and overall experience with the *FLA* and its associated processes and procedures positively.
- The majority of participants felt that the *FLA* either met or somewhat met their family's needs.
- Those participants who found that the *FLA* did not meet their family's needs felt it was mainly because they found the process either ineffective or unfair for their particular case.
- Some participants felt that the other party was able to use the process to stall or that going through the process to obtain a resolution was a struggle.
- A common sentiment by several participants throughout the interview indicated they felt pressured to reach resolution in alternative dispute resolution programs regardless of whether they were comfortable with the outcome.
- For all participants whose matter reached resolution, the time to resolution was approximately 4.7 months, whereas those whose matter was somewhat or not yet resolved had been in the system an average of 6.5 and 2.5 months, respectively.
- Participants exhibited some frustration when experiencing adjournments, as they felt that delays in the court process were not in the best interests of the child(ren).

7.2 Discussion and Conclusions

Alberta's *Family Law Act* was the response to the need for a simpler, more effective, efficient and accessible provincial family law system, one that took into consideration the best interests of children and families, minimized the negative impact of family breakdown, and modernized Alberta family law. To achieve these ends, a number of key procedural and substantive changes were introduced with the *Act*. It was the purpose of this evaluation to determine whether these changes improved family law in Alberta in the desired ways. The following research questions were addressed:

1. How have procedural changes under the *FLA* impacted workload and human resources in Alberta's Provincial Court, Court of Queen's Bench, and Family Justice Services?
2. How has the use of alternative dispute resolution programs and processes impacted cases, processes and outcomes under the *FLA*?
3. How has the response process impacted procedures and outcomes under the *FLA*?

4. Have procedural changes under the *FLA* made the processes more efficient?
5. Have procedural changes under the *FLA* made processes simpler and more accessible for SRLs?
6. Is the *FLA* effective in serving the best interests of children and families?
7. Have the substantive changes introduced by the *FLA* made family law more fair and effective?
8. Is the language of the *FLA* more appropriate, easier to understand, and more effective?

7.2.1 Family Law Procedure in Alberta

The evaluation set out to examine whether the new processes and procedures introduced with the *FLA* simplified family law in Alberta, improved accessibility for self-represented litigants, supported alternatives for resolving separation issues, and streamlined court procedures, providing for a more efficient, effective, and accessible provincial family law system. These factors were explored using analyses of caseload and outcomes data, surveys of professionals, and interviews with self-represented litigants.

Overall, the data suggest that the *FLA* has resulted in an increased workload and human services demand for Provincial Court, Court of Queen's Bench and associated services (e.g., Family Justice Services). Trends illustrated by the caseload data demonstrate an increase in the number of family law activity in the courts since the introduction of the *Family Law Act*, particularly for Provincial Court and its associated services (e.g., Family Justice Services Caseflow Conferencing, Mediation, etc.). Though Court of Queen's Bench has not seen the marked increase in *FLA* activity since the introduction of the *FLA*, the increase in caseload through its associated dispute resolution services (i.e., CSR, DRO) suggest that parties may be settling some matters outside the court room. The Provincial Court data also suggest that an increasing number of individuals are proceeding under the *FLA* without legal representation. These trends indirectly point to an increasing demand for staff and resources in the services that support self-represented litigants. Information provided by professionals working with the *FLA* confirm these hypotheses, with a majority of professionals (particularly court clerks) stating that their workload had increased; only judges/justices were more likely to state that their workload had stayed the same. Though Alberta's substantial population growth may account for some of these increases, it is likely that greater family law jurisdiction for Alberta's Provincial Court as a result of the *FLA* and improved accessibility of the system for self-represented litigants are also causes.

In the spirit of supporting a more efficient and effective court process, procedures introduced with the *FLA* acknowledged the importance of dispute resolution programs and services, and information and supports for self-represented litigants. Though many of these options existed prior to the implementation of the *FLA*, initiatives such as Intake

and Caseflow Management (Family Court Counsellor intake, Caseflow Conference), the Dispute Resolution Officer and Child Support Resolution Programs, Judicial Dispute Resolution, Duty Counsel, and others, assist many applications in reaching resolution prior to proceeding to the court room. As demonstrated by the program outcomes data in Chapter 4.0, the dispute resolution programs and services available in Provincial Court and Court of Queen's Bench are effective means of reaching resolution prior to the application proceeding to the court room (i.e., Docket Court or Chambers) or trial. The professionals surveyed confirm the effectiveness and procedural efficiency created by the availability of these programs and services. According to professionals, the greatest issues regarding these programs were that there are not enough options available, and that they are often not available in all jurisdictions or both levels of court. Information provided by self-represented litigants also points to the effectiveness of dispute resolution options, indicating that these programs and services help them to reach resolution prior to proceeding to the court room. Sources of information such as Family Law Information Centres and Family Justice Services also proved to be important for self-represented litigants in that they improve understanding of court procedures and the options available to them. One of the few concerns expressed by self-represented litigants was that they often felt pressured to reach an agreement in dispute resolution (e.g., DRO, mediation) before they were ready to do so. Additionally, some self-represented litigants felt there needed to be more information regarding the options available. Thus, the findings from the evaluation clearly point to the importance of alternative dispute resolution services and court supports in improving procedural effectiveness and efficiency under the *FLA*.

The extent to which efforts to streamline court procedures have been successful is somewhat unclear, with the evaluation producing mixed findings. A majority of professionals reported having experienced complications as a result of overlapping jurisdictions between Provincial Court and Court of Queen's Bench, expressing that confusion often arises among self-represented litigants regarding which court to proceed in, or proceedings on the same case may occur in both courts simultaneously. With regard to the Claim and Response process in particular, findings were also mixed. Aggregate data from Provincial Court and Court of Queen's Bench indicated that the response process is perhaps not used to the fullest extent it was intended, with a substantial number of orders requested in Claims not having Responses filed (despite having final orders granted). Though overall, professionals believed the Claim and Response process under the *FLA* is simpler and more efficient than the system under the previous legislation, many thought there were too many forms, and that the forms were too restrictive, redundant, and complicated, particularly for self-represented litigants who lack knowledge of the law. Further, though professionals expressed that the *FLA* procedures are more client focused, opinions differed as to whether it better served self-represented litigants, with judges/justices being quite positive and court administration staff being more negative. In contrast, self-represented litigants reported having little difficulty completing and filing their forms on their own, or had enough information and support to assist them if they had difficulty. Though a majority of professionals felt the time allotted for filing the Claim and Response forms was sufficient – particularly because adjournments are often granted without difficulty if need be – a majority of self-represented litigants (particularly applicants) felt there was not enough time. However, many also expressed frustration over the number of adjournments, and

felt as though the other party could use adjournments to stall the process; some professionals also pointed to this as a problem. To them, this was not in the best interests of children.

With regard to court procedures specifically, self-represented litigants were generally positive about their experience, particularly with regard to the support and information they received from Family Justice Services' staff, Family Court Counsellors, and Duty Counsel. A large majority of self-represented litigants felt prepared for what they experienced in Docket Court, pointing to the likelihood that the supports available to them are enabling a more efficient process; this is particularly positive given the number of self-represented litigants proceeding on family matters since the implementation of the *FLA*. However, given most of the self-represented litigants interviewed for the evaluation proceeded in Provincial Court, the experiences of those proceeding in Court of Queen's Bench remain relatively unknown.

Though the findings regarding the effectiveness and efficiency of *FLA* procedure are mixed, results from analyses of Provincial Court processing time data suggest that overall, the implementation of the *FLA* has resulted in a more efficient system, as the average time from the opening of a file to final order has steadily decreased.

7.2.2 Substantive Areas of the *Family Law Act*

The evaluation also examined the substantive changes to family law introduced by the *Family Law Act*. The legislative review and interviews with professionals contributed to this body of knowledge. The substantive changes introduced by the *FLA* intended to consolidate and modernize family law in Alberta, adopt a child-centred perspective to ensure the best interests of children in matters of separation, and reduce the financial and emotional costs to children and families to the greatest extent possible. The evaluation examined six main substantive areas of family law to determine whether the *FLA* was an improvement over the previous legislation. These included: best interests; guardianship; parenting orders; contact orders; child support; and spousal/adult interdependent partner (AIP) support.

Results from both the legislative review and the survey of professionals are clearly positive with regard to the consolidation of family law in Alberta. A majority of professionals felt this was clearly needed, with the legislative review pointing to the important difference that simplifying the law has made to Albertans. Overall, professionals were more positive about the substantive changes introduced by the *FLA* than the procedural changes.

With regard to best interests, the legislative review observed that although best interests were considered under the previous legislation, the *FLA* codified the best interests test, and in doing so, made more explicit the factors that must be considered and the contexts they must be considered in. Importantly, the *FLA* stipulated family violence as a factor that must be considered when determining the best interests of the child, making Alberta the first jurisdiction in Canada to do so. Professionals agreed that the *FLA*'s consideration of best interests serves to protect children, but also added that these issues have always been of paramount concern. Professionals recognized the

benefit of explicitly listing best interests factors, but also stressed that certain factors need to be considered over others on a case-by-case basis. Overall, best interests considerations in the *FLA* have been a positive change.

Guardianship and parenting orders were also considered an important substantive area in the evaluation, given that the concepts of “parenting time” and “contact” replaced the concepts of “custody” and “access,” the intent being to reduce the adversarial, “win-lose” nature of the previous regime. The *FLA* restructured the former regime that defaulted guardianship to the mother, stipulating that the mother and father are considered guardians unless they fall within the noted exceptions. The *FLA* also enumerates all the powers, responsibilities, and entitlements of guardianship, which constitutes a simplification of the previous legislation. Overall, professionals were positive when asked about the *FLA*’s consideration of and provisions for guardianship, agreeing that it balances the interests of all parties involved, is easy to understand and apply, and assists the court in making guardianship and parenting orders because it is clear on what role a guardian is to take in a child’s life. However, when considering the equal powers of guardians, some professionals felt that the term “joint guardianship” would be a simpler term to understand; some also suggested the need for clarification.

With regard to orders between guardians, the *FLA* adopted the concept of “parenting time” to replace “custody and access,” resulting in a functional descriptive approach to parenting arrangements. The *FLA* established statutory presumptions for shared guardianship powers. Those guardians who cannot agree on how to exercise their powers, responsibilities, and entitlements of guardianship may apply for a parenting order that allocates parenting time, and guardianship powers and responsibilities. According to the professionals surveyed, though many expressed that the change in language was not necessarily an improvement (nor the problem), the provisions themselves provide for a flexible approach that is easy to understand and apply in practice. Most professionals agreed that this approach minimizes financial and emotional costs to families.

Accompanying the regime shift was the replacement of “access” with the concept of “contact.” Under the *FLA*, “contact” applies to *non-guardians* who wish to have time with a child, including (but not limited to) grandparents, non-guardian parents, or persons standing in the place of a parent. Perhaps the biggest impact of this change was to grandparents, who in some cases have to seek leave of the court prior to filing an application for contact unless certain conditions are met: the guardians are the parents of the child and the guardians are living separate and apart or one of the guardians has died; and the grandparents’ contact with the child has been interrupted by the separation of the guardians or the death of a guardian. Professionals expressed that self-represented litigants may have difficulty understanding what conditions must be met for an application for contact to proceed.

The final substantive areas explored by the evaluation were child support and spousal support. According to the legislative review, the *FLA* addressed the uncertainty regarding child support explicit in the previous legislation by clearly defining the parameters of child support obligations, including who constitutes a child for the purposes of support, who is obligated to pay, the circumstances under which an order

can be made, and guidelines for determining the amount. The *FLA* also eliminated any distinction between the children of married and unmarried parents in relation to support. The obligation to support under the *FLA* is presumptive, in that parents automatically have an obligation to support their children in the event of a separation. Though the review was generally positive about the changes made by the *FLA*, one gap that was identified was that the *FLA* does not address the needs of vulnerable adult children. The opinions of professionals reflected this concern more generally, expressing that provisions for support of adult children need to be more clearly defined. Further, though professionals felt that provisions for child support clearly define the role of parents and the definition of “child,” determining the payor’s appropriate level of income continues to be in dispute.

With regard to spousal support, the *FLA* simplified the previous legislation by replacing the terms “alimony,” “maintenance,” and “support” with a single concept of “support.” The *FLA* also extended the right to support to adult interdependent partners. According to the legislative review, this not only simplified the law but separated entitlement to support from the establishment of fault, assigning concrete factors for making an order for spousal or adult interdependent partner support. The *FLA* also made the establishment of support presumptive, providing that every spouse or adult interdependent partner is obligated to support the other, provided the need of one spouse or partner for support and the ability of the other spouse or partner to pay the support. Professionals generally agreed that the *FLA*’s provisions for spousal/adult interdependent partner support makes clear who may apply for an order and the conditions that must be met.

Overall, the evaluation suggests that the substantive changes to the *FLA* were fair, effective, and protected the best interests of children and families. Professionals also felt that the change in language reflects current thinking about children and families experiencing family breakdown, though the language is still relatively unfamiliar and open to interpretation at times. Many expressed that the concepts of “custody” and “access” are still considered relevant, which was also apparent in the interviews with self-represented litigants, who often continued to use the old concepts. Professionals also worried that the language may be difficult to understand for self-represented litigants; however, interviews with self-represented litigants suggested that this was not necessarily the case.

7.2.3 Conclusion and Recommendations

CRILF’s evaluation of Alberta’s *Family Law Act* suggests that, overall, the implementation of the legislation has been of great benefit to Albertans. The consolidation of the previous legislation has simplified family law in Alberta, making it more accessible for professionals and self-represented litigants alike. The procedural changes introduced with the legislation have improved the overall efficiency of the family law process, making it easier for self-represented litigants to proceed under the *FLA*, though opinions differ among professionals and self-represented litigants over the simplicity of the Claim and Response process. The introduction of services and supports and new forms of alternative dispute resolution, as well as the continued use of those which existed previous to the introduction of the *FLA*, has been of great benefit

to improving the efficiency of the application process and outcomes for cases. Substantively, the *FLA* has made great strides in protecting the best interests of children and families, modernizing family law in Alberta and addressing important issues such as family violence.

Despite the overall improvements made by the implementation of the *Family Law Act*, a number of procedural and substantive recommendations emerged from the evaluation. These recommendations are summarized below:

Procedural Recommendations

- Results of the caseload and outcomes analysis, self-represented litigant interviews, and survey of professionals suggested the need for more services and supports for self-represented litigants and greater availability of alternative dispute resolution programs, particularly in areas other than Calgary and Edmonton. As the number of *FLA* applications, particularly by self-represented litigants, continues to increase, so does the need for related programs and services.
- The caseload analysis and survey of professionals also suggested an increased need for human resources in the courts, particularly given the increasing number of applications and the number of forms that are required to be processed.
- Professionals and self-represented litigants pointed to the need to reduce the number of adjournments, stating that prolonging the process is not in the best interests of children.
- Professionals suggested the need to address issues of overlapping jurisdictions between Provincial Court and Court of Queen's Bench.
- Professionals suggested that the number of mandatory forms be reduced, and that the use of the forms be optional.
- Professionals suggested that the form-driven process be changed so that forms provide more meaningful information to parties.
- Professionals suggested that forms be less restrictive and redundant.
- Self-represented litigants suggested the need for specific guidelines that outline court proceedings and associated processes, and more accessible services and information.
- Self-represented litigants also identified a desire for more choice in the use of alternative dispute resolution programs.

Substantive Recommendations

- The legislative review suggested that the case law is unclear regarding the application of the “fitness” test versus the “best interests” test in the context of the *FLA*. This might be addressed by adding a provision to the *FLA* that clarifies the circumstances under which the fitness test applies in contrast to the best interests test.
- The legislative review observed that the *FLA* states that the court shall take into consideration *only* the best interests of the child in all proceedings under Part 2 (s.18(1)); however, the guardianship and contact provisions under Part 2 direct the court to consider additional factors (s. 23(3), s. 35(4), s. 35(5)) other than the best interests of the child. Clarification of the inconsistency within the *FLA* regarding “sole consideration” of the best interests of the child is necessary.
- The survey of professionals suggested that clarification of guardianship provisions is necessary.
- The legislative review and survey of professionals suggested that clarification is needed regarding support of adult children. Professionals suggested that the needs of adult children and the responsibilities of parties be more clearly defined. The legislative review specifically identified a gap in support provisions for vulnerable adult children with special needs. The review suggested that two options be considered: (1) whether the scope of the child support provision should be broadened to include dependent adult children to a specified or unspecified age; or (2) whether a general support provision, discretionary or not, should be adopted providing for the support of dependent adults.

APPENDIX A

SURVEY OF PROFESSIONALS PACKAGE

The Canadian Research Institute for Law and the Family (CRILF), funded by the Alberta Law Foundation and partnering with Alberta Justice, is conducting an evaluation of Alberta's Family Law Act. Introduced on October 1, 2005, the Family Law Act replaced a number of pieces of legislation in an effort to modernize, rationalize and consolidate Alberta family law. The new legislation intended to address a number of procedural and substantive problems with family law in Alberta. It streamlined court procedures, ensuring that Provincial Court and Court of Queen's Bench share the ability to hear most matters under the Act and follow the same application forms and procedures. Further, it supported a non-adversarial approach to resolving family conflict in the best interests of children and families. CRILF's evaluation of Alberta's Family Law Act will examine whether these procedural and substantive changes are fair, effective, and efficient.

Attached is a brief survey concerning Alberta's Family Law Act. The purpose of this survey is to obtain information from professionals who have direct experience with the Act regarding its effectiveness, efficiency, and accessibility. We hope that your insight will help in identifying the strengths and challenges of the Act.

We would very much appreciate if you could take the time to complete the survey. If you are interested in participating in this project, please save the attached Word file (*FLA Evaluation Survey*) to your computer. The survey is designed to be completed in Word. The completed survey file can then be saved and emailed back to crilf@ucalgary.ca. If for some reason you cannot complete the survey electronically, please feel free to print a hard copy, complete it (using additional pages if necessary), and fax it back to CRILF at (403) 289-4887 or toll-free at 1-877-220-5114. We ask that the survey be returned no later than Friday, September 26th, 2008.

This survey is being conducted in accordance with the Freedom of Information and Protection of Privacy Act. Responses will only be presented in aggregate form, and individual respondents will not be identified. If you have any questions regarding the project, please do not hesitate to contact us.

Thank you very much for your assistance with this project.

Sincerely,

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EVALUATION OF ALBERTA'S *FAMILY LAW ACT* PERCEPTIONS OF PROFESSIONALS SURVEY 2008

The Canadian Research Institute for Law and the Family (CRILF), funded by the Alberta Law Foundation and partnering with Alberta Justice, is conducting an evaluation of Alberta's *Family Law Act*. Introduced on October 1, 2005, the *Family Law Act* replaced a number of pieces of legislation in an effort to modernize, rationalize and consolidate Alberta family law. The new legislation intended to address a number of procedural and substantive problems with family law in Alberta. It streamlined court procedures, ensuring that Provincial Court and Court of Queen's Bench share the ability to hear most matters under the *Act* and follow the same application forms and procedures. Further, it supported a non-adversarial approach to resolving family conflict in the best interests of children and families. CRILF's evaluation of Alberta's *Family Law Act* will examine whether these procedural and substantive changes are fair, effective, and efficient.

Attached is a brief survey concerning Alberta's *Family Law Act*. The purpose of this survey is to obtain information from professionals who have direct experience with the *Act* regarding its effectiveness, efficiency, and accessibility. We hope that your insight will help in identifying the strengths and challenges of the *Act*.

We would very much appreciate if you could take the time to complete the survey. Once you have completed the survey, please seal it in the enclosed self-addressed envelope provided and return it to CRILF. If you would prefer to complete the survey electronically, please send your request to CRILF (crilf@ucalgary.ca) and the survey will be emailed to you. We ask that the survey be returned no later than October 31, 2008.

This survey is being conducted in accordance with the *Freedom of Information and Protection of Privacy Act*. Responses will only be presented in aggregate form, and individual respondents will not be identified. If you have any questions regarding the project, please do not hesitate to contact us.

Thank you very much for your assistance with this project.

Sincerely,

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**EVALUATION OF ALBERTA'S FAMILY LAW ACT
SURVEY OF PROFESSIONALS**

Thank you for taking the time to complete this survey about your views and experiences with Alberta's Family Law Act (FLA). Please note that the information you provide in this questionnaire will only be presented in aggregate form, and individual respondents will not be identified. If you have general comments or concerns to express about the Act, space is provided at the end of the survey.

Background Information

1. Where do you do most of your work?
 Calgary Red Deer Other (specify):
 Edmonton Medicine Hat _____
 Lethbridge Grande Prairie

2. What is your profession?
 Lawyer
 Judge/Justice
 Family Court Counsellor
 Caseflow Coordinator
 Dispute Resolution/Child Support Resolution Officer
 Duty Counsel
 Mediator
 Court Administration
 Psychologist/Psychiatrist/Social Worker
 Other, please specify: _____

3. In which court do you work?
 Provincial Court Court of Queen's Bench Both

4. How long have you been working in the area of family law?
 Less than one year
 1-3 years
 3-5 years
 More than five years

5. Are you familiar with Alberta's *Family Law Act* and/or its associated processes and procedures?
 Yes (**continue to #6**)
 No - **THANK YOU FOR YOUR TIME. PLEASE SAVE THE FILE TO YOUR COMPUTER AND EMAIL IT TO crilf@ucalgary.ca.**

Knowledge of Previous Legislation

6. Did you have professional experience with provincial family law legislation in Alberta prior to the implementation of the *FLA*?
 Yes
 No (**proceed to #11**)

7. In your experience, have efforts to improve processes and procedures under the *FLA* been successful?
 Yes
 No

Why or why not? _____

8. How has the implementation of the *FLA* affected your workload?

- Increased
 Stayed the same
 Decreased

9. Do the procedural changes introduced with the *FLA* better serve self-represented litigants than those that existed previous to the introduction of the new legislation?

- Yes
 No

Why or why not? _____

10. Do the substantive changes introduced by the *FLA* better serve self-represented litigants than previous provincial family law legislation in Alberta?

- Yes
 No

Why or why not? _____

The Provincial Family Law System

One goal of the *Family Law Act* was to create a simple and efficient system where family law matters are settled quickly, effectively, and in non-adversarial ways. The following section asks for your opinions and perceptions of processes and procedures under the *FLA*.

11. In your experience, have you ever been aware of situations where confusion or delay has arisen because of the overlapping jurisdictions of Provincial Court and the Court of Queen's Bench?

- Yes
 No

If yes, please explain. _____

12. In your experience, is the *FLA* Claim form easy to use?

- Yes
 No

Why or why not? _____

13. In your experience, is the *FLA* Response form easy to use?

- Yes
 No

Why or why not? _____

14. In your experience, does the use of standardized statements provide for an efficient Claim and Response process for self-represented litigants?

- Yes
 No

Why or why not? _____

15. In your experience, does the use of standardized statements provide for an efficient Claim and Response processes for represented litigants?

- Yes
 No

Why or why not? _____

16. Do you believe that there is enough time allotted for the response process to be completed effectively?

- Yes
 No

Why or why not? _____

17. In your opinion, are the following programs and services effective in improving the efficiency of the family law system under the *FLA*?

	Not familiar with program/service	Yes	No	Why/ Why not?
Parenting After Separation Seminar	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Focus on Communication in Separation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Family Justice Service/ Family Law Information Centre	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Caseflow Conferencing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Family Court Counsellors	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Judicial Dispute Resolution	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Brief Conflict Intervention	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Duty Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Civil Practice Note 1: "Case Management"	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Family Law Practice Note 7: "Use of Independent Parenting Experts"	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Family Law Practice Note 9: "Dispute Resolution Officers or Child Support Resolution Officers"	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____

18. In your opinion, is the number of non-court dispute resolution programs and/or services available in your community sufficient to support the previously mentioned goals of the *FLA*?

- Yes
 No

If no, what types of programs and/or services are needed? _____

Substantive Areas of the *Family Law Act*

A number of substantive changes were made to provincial family law with the implementation of the *FLA*. The following section asks about your perceptions of substantive areas of the *FLA*.

Section 18(2) of the *FLA* introduced a number of factors the court shall consider in determining what is in the best interests of the child. These include:

Ensure the greatest possible protection of the child's physical, psychological, and emotional safety.

Consider the child's physical, psychological, and emotional needs, including the child's need for stability, taking into consideration the child's age and stage of development.

Consider the history of care for the child.

Consider the child's cultural, linguistic, religious, and spiritual upbringing and heritage.

Consider the child's views and preferences, to the extent that it is appropriate to ascertain them.

Consider any plans proposed for child's care and upbringing.

Consider any family violence, including its impact on the safety, general well-being, ability of parent to provide care, etc.

Consider the nature, strength, and stability of the relationship between the child and significant persons in the child's life.

Consider the ability and willingness of each guardian to care for and meet the needs of the child, and to communicate and co-operate on issues affecting the child.

Consider the child's current guardians, and the benefit of developing and maintaining those relationships.

Consider the ability and willingness of each guardian to exercise powers, responsibilities, and entitlements of guardianship.

Consider any civil or criminal proceedings that are relevant to the safety or well-being of the child.

19. Do you agree that consideration of these factors in the *FLA* protects the best interests of children?

- Yes
 No

Why or why not? _____

20. Do you believe that emphasis should be placed on some best interest factors over others?

- Yes
 No

Why or why not? _____

21. Are there any additional factors that you believe should be considered in determining what is in the best interests of children? Please explain. _____

22. Do you believe that outlining specific best interests factors for consideration in the legislation is more beneficial than a broadly defined consideration of "best interests?"

- Yes
 No

Why or why not? _____

23. The *FLA* attempted to place a higher obligation on the court to ensure the child's physical, psychological, and emotional safety. Do you believe that the *FLA* affords children better protection than does other legislation (i.e., *Divorce Act*)?

- Yes
 No

Why or why not? _____

24. With regard to Parenting Orders under the *FLA*, for each of the following please indicate the response that most closely corresponds to your perspective:

	Strongly Agree	Agree	Disagree	Strongly Disagree
Parenting Orders provide flexibility for families regarding parenting time.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parenting Orders provide flexibility for families regarding parenting responsibilities.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parenting Orders build parenting systems that minimize financial costs to families.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parenting Orders build parenting systems that minimize emotional costs to families.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Provisions for Parenting Orders are easy to understand and apply.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

25. The *FLA* introduced a number of Child Support provisions to make clear the obligations of parents and the rights of children.

(a) Do the provisions for Child Support under the *FLA* clearly state the obligations of parents and the rights of children?

- Yes
 No

Why or why not? _____

(b) Do the *FLA* provisions make determination of Child Support easy?

- Yes
 No

Why or why not? _____

- (c) Are provisions for Child Support for children aged 18-22, when they are pursuing full-time education and contributing to their own education, easy to understand and apply?

- Yes
 No

Why or why not? _____

26. The goal of the *FLA* with regard to guardianship was to balance the interests of everyone involved in the guardianship of children. For each of the following, please indicate the response that most closely corresponds to your perspective:

Strongly Agree Agree Disagree Strongly Disagree

The *FLA* (s. 20) does a good job of balancing the interests of mothers, fathers, and children, particularly when the parents do not live together in a family unit.

The *FLA* (s.20 (2)) provides that when mothers and fathers live together in one of a number of types of relationships (married, cohabited for 12 months, adult interdependent partnership), both parents are the guardians of the child. This subsection is easy to understand and apply.

The *FLA* (s.20 (3)) provides that when mothers and fathers do not live together in one of the specified relationships, guardianship is determined by usual residence with the child. This section is easy to understand and apply.

27. The *FLA* outlines provisions for Contact Orders so that non-guardians may apply for contact with a child.

- (a) Does the *FLA* make clear who may apply for a Contact Order?

- Yes
 No

Why or why not? _____

- (b) Does the *FLA* make clear the conditions that must be met for Contact Orders to be considered by the court?

- Yes
 No

Why or why not? _____

(c) In your experience, are the provisions for Contact Orders under the *FLA* easy to understand and apply?

- Yes
 No

Why or why not? _____

28. Does the *FLA* (s.21) provide a clear enough statement that, unless there is a court order to the contrary, guardians have equal powers?

- Yes
 No

If no, would a statement establishing guardians as “joint guardians” be easier to understand?

- Yes
 No

Please explain. _____

29. Does the list of powers of guardianship in the *FLA* (s. 21(6)) assist the court in making flexible and appropriate guardianship orders under the guardianship provisions, and parenting orders under section 32?

- Yes
 No

Why or why not?

30. The *FLA* introduced a number of Spousal or Adult Interdependent Partner Support provisions to make clear the support obligations of spouses and adult interdependent partners.

(a) Does the *FLA* make clear who may apply for a Spousal or Adult Interdependent Partner Support Order?

- Yes
 No

Why or why not? _____

(b) Does the *FLA* make clear the conditions that must be met for a Spousal or Adult Interdependent Support Order to be considered by the court?

- Yes
 No

Why or why not? _____

(c) Does the *FLA* make clear the objectives of a Spousal or Adult Interdependent Partner Support Order?

- Yes
 No

Why or why not? _____

Language of the *Family Law Act*

One of the goals of the *FLA* was to make language simpler and easier for Albertans to understand. The following section asks about your perspective on the language of the *Family Law Act*.

31. Do you believe that the language of the *Family Law Act* appropriately reflects current thinking about children and families experiencing family breakdown?

Yes

No

Why or why not? _____

32. Is the language of the *Family Law Act* clear?

Yes

No

Why or why not? _____

33. Is the language of the *Family Law Act* easy to understand?

Yes

No

Why or why not? _____

34. Does the language of the *Family Law Act* facilitate collaboration?

Yes

No

Why or why not? _____

35. The terms “custody” and “access” were not used in the *Family Law Act*.

- (a) Do you believe that replacing this terminology has improved provincial family law legislation in Alberta?

Yes

No

Why or why not? _____

- (b) In your opinion, has this change in terminology been effective in reducing the adversarial nature of provincial family law legislation in Alberta?

Yes

No

Why or why not? _____

Overall Experience(s)

For questions 36-40, on a scale of 1 to 10, with 1 being the lowest and 10 being the highest possible rating:

36. How would you rate the fairness of the *Family Law Act* for families? _____
37. How would you rate the accessibility of the *Family Law Act* processes for self-represented litigants in Court of Queen's Bench? _____
38. How would you rate the accessibility of the *Family Law Act* processes for self-represented litigants in Provincial Court? _____
39. How would you rate the efficiency of the processes and procedures associated with the *Family Law Act* for professionals? _____
40. How would you rate the efficiency of the processes and procedures associated with the *Family Law Act* for self-represented litigants? _____
41. Is there anything you would change about the processes or procedures under the *Family Law Act* that would make it easier for individuals in your profession?
- Yes
 No

If yes, what would you change? _____

42. Is there anything you would change about the processes or procedures under the *Family Law Act* that would make it easier for self-represented litigants?
- Yes
 No

If yes, what would you change? _____

43. Are there any substantive areas of the *Family Law Act* where you feel change is necessary?
- Yes
 No

If yes, what changes would you suggest? _____

44. Do you have any further comments or concerns about the *Family Law Act*? _____

Thank you for taking the time to complete this survey.

Please save the file to your computer, and then attach it to your email to crilf@ucalgary.ca.

APPENDIX B

SELF-REPRESENTED LITIGANTS PACKAGE



CANADIAN RESEARCH INSTITUTE FOR LAW AND THE FAMILY

One Executive Place, Suite 510, 1816 Crowchild Trail NW, Calgary, Alberta, Canada T2M 3Y7
Telephone: (403) 216-0340 Fax: (403) 289-4887 email: crilf@ucalgary.ca www.ucalgary.ca/~crilf

Dear Sir/Madame:

The Canadian Research Institute for Law and the Family (CRILF) is conducting an evaluation of Alberta's *Family Law Act*, the legislation that deals with matters related to separation. Historically, family law matters have been complex in Alberta. The new Act was introduced on October 1, 2005. It is designed to make the process easier, and to resolve family conflict in the best interests of children and families.

The purpose of the evaluation is to determine the impact of the new Act, and to evaluate whether these changes have been fair, effective, and efficient. As a self-represented individual who has used the *Family Law Act*, **your opinions and suggestions are very important**. Thus, we are asking for your involvement in this study by participating in a **telephone interview**. The interview should take approximately **15-20 minutes**. Your participation is **completely voluntary** and you are free to withdraw from the research project at any time. Your participation will be kept **strictly confidential and any information you provide will be anonymous**.

Thank you for your time and consideration and we look forward to your involvement in this project. If you have any questions or concerns about this study, please telephone CRILF (403-216-0340 in Calgary; or toll-free 1-888-881-4273).

IF YOU AGREE TO PARTICIPATE:

Please **complete the attached contact information form, place it in the envelope provided, and return the envelope sealed to the individual/agency from which you obtained this information**. You will be contacted in the near future by a CRILF researcher to schedule the interview. Please note that in order to participate, you must be 18 years of age or older.

Sincerely,

Joseph P. Hornick, Ph.D.
Executive Director



CANADIAN RESEARCH INSTITUTE FOR LAW AND THE FAMILY

One Executive Place, Suite 510, 1816 Crowchild Trail NW, Calgary, Alberta, Canada T2M 3Y7
Telephone: (403) 216-0340 Fax: (403) 289-4887 email: crilf@ucalgary.ca www.ucalgary.ca/~crilf

An Evaluation of Alberta's *Family Law Act*

Telephone Interview Participant Contact Sheet

Name: (*please print*) _____

Contact number: (_____) _____

Best time to contact to schedule the interview: _____

APPENDIX C

SELF-REPRESENTED LITIGANT INTERVIEW PROTOCOL

**EVALUATION OF ALBERTA'S FAMILY LAW ACT
SELF REPRESENTED LITIGANTS TELEPHONE INTERVIEW SCHEDULE**

Introduction

Hello, may I please speak to _____?

If not available, ask when would be an appropriate time to call again.

My name is _____. I am a _____ at the Canadian Research Institute for Law and the Family in Calgary. I received the contact information form you completed for the study we are conducting on the *Family Law Act*. I understand that you are willing to participate in an interview about your experiences as a self-represented individual (an individual without legal representation).

The interview will take approximately 15-20 minutes. Do you have time right now to do the interview or would you like to schedule the interview for another time?

If yes, proceed.

I will give you a bit more detail about the project, and then we will get started.

Project Overview

The Canadian Research Institute for Law and the Family has been funded by the Alberta Law Foundation to evaluate Alberta's *Family Law Act*, which is the provincial legislation dealing with separation matters. The *Act* was introduced in 2005 with the intention of simplifying family law, improving accessibility for those without legal representation, and resolving family conflict in the best interest of children and families.

In order to understand the impact of the new *Act*, we are interviewing individuals like you, who have accessed the family law system without legal representation. I will be asking you questions about your experiences with the family law process, and your thoughts on whether or not it was effective for you.

Consent

Your participation in the interview is completely voluntary. You may refuse to respond to any of the questions and may withdraw from the interview at any point in time. All of the information will be collected and dealt with in accordance with the Freedom of Information and Protection of Privacy Act (FOIP). While all information will remain anonymous, we request that you consent to the possible use of direct quotes without attributing them to you.

Do you agree to participate? Yes Direct quotes

If yes, proceed.

DEMOGRAPHIC INFORMATION

- (1) Gender
 Male
 Female
- (2) In what year were you born? _____
- (3) Where do you live (town/city)? _____
- (4) Which of the following employment categories best describes you?
- Employed (full-time or part-time)
 - Temporarily unemployed
 - Self-employed
 - Retired
 - Homemaker
 - Maternity leave
 - Student (full-time or part-time)
 - Other (please specify) _____
- (5) Which of the following best describes your current marital status?
- Single
 - Married
 - Divorced
 - Separated
 - Common Law
 - Adult Interdependent Partner
 - Widowed
 - Other (please specify) _____
- (6) Do you have children?
 No (**proceed to #9**)
 Yes
- (7) How many children do you have? _____
- (8) What is/are the child(ren)'s living arrangements? _____

FAMILY JUSTICE SERVICES

- (9) Did you complete an intake with Family Justice Services?
 No (**proceed to #10**)
 Yes

- (a) How did you learn about Family Justice Services? _____
- (b) Did your contact with Family Justice Services improve your understanding of the court procedures involved with your case and the options available to you?
- No
 Yes
 Somewhat
- Why or why not? _____

FAMILY LAW INFORMATION CENTRES

- (10) Did you access a Family Law Information Centre?
- No (**proceed to #11**)
 Yes
- (a) How did you learn about the Family Law Information Centre? _____
- (b) Did your contact with the Family Law Information Centre improve your understanding of the court procedures involved with your case and the options available to you?
- No
 Yes
 Somewhat
- Why or why not? _____

PAS/FOCIS

- (11) Did you attend a Parenting After Separation (PAS) seminar?
- No (**proceed to #12**)
 Yes
- (a) Was the information you received helpful?
- No
 Yes
- Why or why not? _____
- (12) Did you attend a Focus on Communication In Separation (FOCIS) course?
- No (**proceed to #13**)
 Yes
 Not aware of course

(a) Was the information you received helpful?

- No
 Yes

Why or why not? _____

MEDIATION

(13) At any point in the process, did you attend mediation?

- No (**proceed to #14**)
 Yes

If yes, did you attend private mediation or was it offered through Family Justice Services?

- Private Mediation (please specify) _____
 Family Justice Services (please specify) _____
 Do not know

(a) Did you reach an agreement after mediation?

- No
 Yes (**proceed to #14**)

If no, did mediation help you to narrow the issues?

- No
 Yes

Why or why not? _____

(14) Did you meet with a Dispute Resolution Officer (Calgary)/Child Support Resolution Officer (Edmonton) prior to attending court?

- No (**proceed to #15**)
 Yes

(a) Did you find meeting with the Dispute Resolution Officer (Calgary) /Child Support Resolution Officer (Edmonton) helpful?

- No
 Yes

Why or why not? _____

(b) Did you reach an agreement after meeting with the Dispute Resolution Officer (Calgary) /Child Support Resolution Officer (Edmonton)?

- No
 Yes (**proceed to #15**)

If no, did meeting with the Dispute Resolution Officer (Calgary) /Child Support Resolution Officer (Edmonton) help you narrow the issues?

- No
 Yes (**proceed to #15**)

Why or why not? _____

ACCESSING INFORMATION ON THE FAMILY LAW ACT

(15) Did you access information materials on the *Family Law Act* or the procedures involved (i.e. brochures, pamphlets, internet, in-person, telephone)?

- No (**proceed to #16**)
 Yes

(a) What type of materials did you access? _____

(b) Where did you access these materials? _____

(c) Did you find the language and terminology in these materials easy to understand?

- No
 Yes
 Somewhat

If no, why not? _____

(d) Did these materials help you to understand the *Family Law Act* and related procedures?

- No
 Yes
 Somewhat

If no, why not? _____

(16) Were you required to “complete” any forms during the process?

- No (**proceed to #17**)
 Yes

(a) Can you please specify which forms? _____

(b) Were the instructions for completing the forms easy to understand?

- No
 Yes

If no, why not? _____

(c) Were the forms easy to complete?

- No
 Yes

If no, why not? _____

(d) Did you require assistance to understand and effectively complete the forms?

- No
 Yes
 Somewhat

If yes, who helped you? _____

RESPONSE PROCESS

(17) In what city/town was the case dealt with?

- Calgary
 Edmonton
 Other _____

(18) Were you the applicant or respondent in your case [explain terms if necessary]?

- Applicant (**proceed to #19**)
 Respondent (**proceed to #24**)
 Both
 Do Not Know

Applicant Only

(19) Did you "file" Claim and Statement forms at the Courthouse?

- No (**proceed to #27**)
 Yes

(a) Where did you obtain the Claim and Statement forms? _____

(b) Were the forms difficult to find?

- No
 Yes

If yes, why? _____

(20) Did you require any assistance with completing the Claim and Statement forms?

- No (**proceed to #20a**)
 Yes (**proceed to #20b**)
 Somewhat

(a) **If no**, did you have enough “information” to complete the forms on your own without difficulty?

- No
 Yes

If no, what did you find difficult? _____

(b) **If yes**, who helped you? _____

(21) Did you have any difficulty “filing” your Claim and Statement forms?

- No
 Yes

If yes, what type of difficulty? _____

(22) Did the respondent file a Response to your application?

- No (**proceed to #27**)
 Yes

(23) Did the respondent file additional Statements?

- No (**proceed to #27**)
 Yes

(a) Did you have a reasonable amount of time to respond to the Statements (5 business days)?

- No
 Yes

If no, why not? _____

(b) Did you have enough information to respond to the Statements on your own without difficulty?

- No
 Yes

If no, what did you find difficult? _____

Respondent Only

(24) Did you “file” a Response to the applicant’s application at the Courthouse?

- No (**proceed to #27**)
 Yes

(a) Did you find there was enough time provided to respond (10 days)?

- No
 Yes

If no, why not? _____

(b) Were you provided with all the necessary forms by the applicant?

- No
 Yes

If no, where did you obtain the Response and Reply Statement forms?

(c) Were you required to provide financial information?

- No (**proceed to #25**)
 Yes

(d) Did you find there was enough time to gather the financial information required by the application (30 days)?

- No
 Yes

If no, why not? _____

(25) Did you require any assistance with completing the Response and Reply Statement forms?

- No (**proceed to #25a**)
 Yes (**proceed to #25b**)

(a) **If no**, did you have enough “information” to complete the forms on your own without difficulty?

- No
 Yes

If no, what did you find difficult? _____

(b) **If yes**, who helped you? _____

- (26) Did you have any difficulty filing your Response and Reply Statement?
 No (**proceed to #27**)
 Yes

If yes, what type of difficulty? _____

COURT

- (27) Were you assigned a court date?
 No (**proceed to #46**)
 Yes (if specified) _____

- (28) Did you appear for your court date?
 No
 Yes

If no, why not? _____

- (29) In what level of court did your application proceed?
 Provincial Court (**proceed to #30**)
 Court of Queen's Bench (**proceed to #39**)
 Both (**proceed to #30; complete both PC and QB sections**)

PROVINCIAL COURT

- (30) Upon arriving for your court appearance, were you greeted by Family Justice Services' staff?
 No (**proceed to #31**)
 Yes

If yes, did you find this person helpful?

- No
 Yes
 Somewhat

Why or why not? _____

- (31) Did you meet with a Family Court Counsellor?
 No (**proceed to #32**)
 Yes

- (a) Was the other party to the application present for this discussion?
 No

- Yes
- Sometimes

(b) Did your discussion with the Family Court Counsellor help to better identify some of the issues concerning your application?

- No
- Yes

Why or why not (how)? _____

(32) Did you participate in a Caseflow Conference (Calgary / Edmonton)?

- No (**proceed to #33**)
- Yes

(a) Was the Family Court Counsellor present at the Caseflow Conference?

- No (**proceed to #32b**)
- Yes
- Do Not Know

If yes, did you find the presence of the Family Court Counsellor helpful?

- No
- Yes
- Somewhat

Why or why not? _____

(b) Did the Caseflow Coordinator help you to understand the issues regarding your application?

- No
- Yes

Why or why not? _____

(c) Were you able to reach a Consent Agreement in the Caseflow Conference?

- No
- Yes (**proceed to #33**)

If no agreement,

Did you reach an interim order/procedural agreement (i.e., Parenting After Separation; Mediation; Judicial Dispute Resolution; Focus on Children in Separation; Brief Conflict Intervention)?

- No
- Yes

(33) Were you required to attend docket court [explain if required]?

- No (**proceed to #35**)
 Yes

- (a) Did you feel prepared for what you experienced in docket court?
 No
 Yes

Why or why not? _____

- (b) Did you receive support from Family Duty Counsel prior to appearing in docket court?
 No (**proceed to #33c**)
 Yes

If yes, did you find the duty counsel's support helpful?

- No
 Yes

Why or why not? _____

- (c) Did you receive support from a Family Court Counsellor when you appeared in court?
 No (**proceed to #34**)
 Yes

If yes, did you find the Family Court Counsellor's support helpful?

- No
 Yes

Why or why not? _____

- (34) In Provincial Court, how many times did you appear in Docket Court? _____

If more than once,

- (a) Why did you have to appear in Docket Court _____ times? _____

- (b) Did you continue to represent yourself at these additional appearances?
 No
 Yes

Why or why not? _____

- (35) In Provincial Court, did your case proceed to a trial?
 No (**if attended QB proceed to #39; otherwise, proceed to #46**)
 Yes

(36) In Provincial Court, did you receive any support/information to prepare you for trial?

- No
 Yes

If yes, what type of support/information? _____

(37) In Provincial Court, did you feel prepared for what you experienced at trial?

- No
 Yes

If no, why not? _____

(38) In Provincial Court, how many times did you appear for trial? _____

If more than once,

(a) Why did you have to appear at trial _____ times? _____

(b) Did you continue to represent yourself in those appearances?

- No
 Yes

If no, why not? _____

COURT OF QUEEN'S BENCH

(39) Was there Duty Counsel present to assist you?

- No (**proceed to #40**)
 Yes

If yes, did you find the Duty Counsel helpful in understanding the process?

- No
 Yes

Why or why not? _____

(40) Did you feel prepared for what you experienced in Court of Queen's Bench Chambers?

- No
 Yes (**proceed to #41**)

Why or why not? _____

(41) Was your matter adjourned in Court of Queen's Bench Chambers?

- No
 Yes

If yes,

(a) How many times did you appear in Court of Queen's Bench Chambers?

(b) Why did you have to appear _____ times in Court of Queen's Bench Chambers? _____

(c) Did you continue to represent yourself at these additional appearances?

- No
 Yes

Why or why not? _____

(42) In Court of Queen's Bench, did your case proceed to a hearing?

- No (**proceed to #46**)
 Yes

(43) In Court of Queen's Bench, how many times did you appear at a hearing?

If more than once,

(a) Why did you have to appear _____ times at a Court of Queen's Bench hearing? _____

(b) Did you continue to represent yourself at these additional appearances?

- No (**proceed to #46**)
 Yes

Why or why not? _____

(44) In Court of Queen's Bench, did you receive any support/information to prepare you for the hearing(s)?

- No
 Yes

If yes, what type of support/information? _____

(45) In Court of Queen's Bench, did you feel prepared for what you experienced at the hearing(s)?

- No

Yes

If no, why not? _____

OVERALL EXPERIENCE

On a scale of 1 to 10, with 1 being the lowest and 10 being the highest possible rating:

- (46) How would you rate the “accessibility” of the *Family Law Act* processes for self-represented individuals? _____
- (47) How would you rate the “fairness” of the *Family Law Act* processes for self-represented individuals? _____
- (48) How would you rate the “efficiency” of the processes and procedures associated with the *Family Law Act* for self-represented individuals? _____
- (49) How would you rate your overall experience with the *Family Law Act* (i.e. how the *Family Law Act* has dealt with your particular issue(s))? _____
- (50) Do you feel as though the *Family Law Act* met your family’s needs?
 No
 Yes
 Somewhat

Why or why not? _____

- (51) Approximately how long has it been since you started the process? _____
- (a) Has your matter been resolved?
 No
 Yes
 Somewhat

Why or why not? _____

- (52) Is there anything you would change about the processes or procedures that would make it easier for individuals who are self-represented? _____

Thank you for taking the time to speak to me today.