Report of the Access to Family Justice Task Force

Presented to the Minister of Justice and Consumer Affairs
The Honourable Thomas J. Burke, Q.C.
January 23, 2009

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THE COURT OF QUEEN'S BENCH
OF NEW BRUNSWICK

LA COUR DU BANC DE LA REINE
DU NOUVEAU-BRUNSWICK

January 23, 2009

The Hon. Thomas J. Burke, Q.C.
Attorney General
Minister of Justice
P.O. Box 6000,
Fredericton, N.B.
E3B

Dear Mr. Attorney General:

We are pleased to submit for your consideration our report on Access to Family Justice.

After consulting with many participants inside and outside the Family Court system, we discovered that the Court is in serious need of reform, particularly as it relates to the adversarial system. In many other common law jurisdictions, the adversarial model to resolve family disputes has been replaced with a dispute resolution mechanism that emphasizes timeliness, accessibility, efficiency and a streamlined process.

Our principal recommendations emerge from a consideration that solutions must be proportionate to the problem. The "one size fits all" model no longer satisfies the needs of our ever growing number of people who find themselves in the Family Court.

Although our report points in the general direction that the Court should go, the task of implementing the recommendations is enormous and will require the dedication and hard work of an implementation committee to plan and oversee the changes that are necessary. We strongly feel that the implementation process should begin now.

We take this opportunity to acknowledge and thank the many people who gave us their time and experience in our effort to grasp a true picture of the workings of the Family Court. Their contribution was invaluable to the formulation of our recommendations.

Finally, we would like to thank you and the Deputy Minister, as well as the members of your staff for your trust and support throughout this last year.

We look forward to your considered response to our recommendations.

Yours truly,

Hon. Raymond J. Guerette
Chairman, Task Force on Access to
Family Justice

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Enc.

TABLE OF CONTENTS

TERMS OF REFERENCE – ACCESS TO FAMILY JUSTICE TASK FORCE

Background

Backlogs and delays within the courts for private family law matters are far in excess of standards. These delays compromise our ability to deliver true access to family justice. The federal Minister of Justice, the Honourable Robert Nicholson, Q.C., recently introduced legislation that would amend the *Judges Act* to authorize the appointment of potentially three new judges to the Court of Queen's Bench, Family Division – one each in Saint John, Fredericton and Moncton. While new appointments will help decrease the backlogs in family court, there is still a need to consider other options to reduce delays.

The Government of New Brunswick has committed to take action to improve access to family justice through the establishment of this Task Force.

Objectives and Principles

The Task Force shall undertake a review of the family court system, including the legislation, regulations and Rules of Court applicable thereto, and make recommendations to the Government of New Brunswick that will lead to:

- more timely access to justice in resolving family law disputes
- expanded use of alternatives to family courts to resolve family law issues
- increased access to legal information and legal assistance in family law matters, especially for the poor, single parents and First Nations people.

The recommendations of the Task Force shall align with other provincial and federal government priorities and initiatives in family matters.

The Task Force report shall include a thorough analysis of the financial implications of the recommendations and a detailed costing of the model(s) proposed.

Mandate

1. *Simplified Court Procedures*

   The Task Force shall review and develop a proposal(s) for consideration by the judiciary, the bar and the government, for simplifying rules and procedures for matters before the Court of Queen's Bench, Family Division. The objective is to achieve procedures that encourage more timely and equitable dispute resolution and a process that clients can understand.

2. *Alternative Dispute Resolution Processes*

   The Task Force shall review and develop a proposal(s) for consideration by the judiciary, the bar and the government to improve alternative dispute-resolution processes for resolving family law disputes and making them more user-friendly and accessible.

   The Task Force shall make recommendations, including detailed estimates of projected annual costs for the Government of New Brunswick, regarding:

   a. the expansion of the Child Support Variation Service project from Saint John to all judicial districts, or the replacement of this program with a province-wide administrative decision-making body empowered to vary family support orders
   b. a means of expeditiously providing for parents and newly separated spouses interim child support orders, based on the Child Support Guidelines, pending a full court hearing, and
   c. a means for administrative decision-making for simple applications for the division of marital property.

3. *Legal information*

   The Task Force shall bring recommendations to government on enhancing public information and education on family law matters, including procedures and processes.

4. *Financial and other impacts:*

   All recommendations shall be accompanied by an assessment of the financial and human resource impacts for their implementation, as well an assessment of their potential impact on other government policies and programs.

Methodology

The Task Force, with staff support, shall gather data and consider relevant information such as best practices and approaches in other jurisdictions.

The Task Force shall consult with stakeholders in facilitated meetings to obtain input on concerns related to access to justice in family law disputes. These meetings shall take place over a one-to-two-day period.

Membership

Chair

Mr. Justice Raymond Guerette, Campbellton

Members

Michelle Boudreau-Dumas, Campbellton
Sheila J. Cameron, Moncton
Jennifer Donovan, Fredericton
Mary-Eileen Flanagan, Saint John
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EXECUTIVE SUMMARY

On February 7, 2008, the Minister of Justice, the Honourable T. J. Burke, announced the formation of a task force under the title of "Access to Family Justice". Its mandate was to recommend ways to improve access to the Family Court and generally to make recommendations to improve service to the public.

Although we appreciated the opportunity, and indeed the confidence placed in us by the government to make recommendations for reform, we had few resources to do the research and analysis, which would have been helpful to us. Nevertheless, we are confident that our recommendations are based on years of experience and are the right choices to make as initial steps to reform.

At its first meeting, the members of the Task Force determined that the mandate was broad enough to launch a complete reform of the Family Court, something we all felt was necessary in order to overcome the current disarray – if not crisis – in the Court.

For some time, now – perhaps going back 15 years – the Court has steadily deteriorated in giving appropriate and expeditious service to the public. This situation has arisen from the interplay of many factors, including the rise of unrepresented litigants (almost 50 per cent of litigants do not have a lawyer); an increase in the number and complexity of child-protection hearings; and the increasing tendency in some courts to intensify perceived procedural requirements.

In the last few years, especially, the lack of money, resources and attention has resulted in reduced service to the public. This situation has arisen from inordinate delays in obtaining a hearing date; far too numerous adjournments; the inability to provide expeditious and proportionate resolution to relatively minor problems; and the failure to keep up with progressive changes in other jurisdictions.

It has been a slow but steady decline to the point where public meetings have been held to decry the situation. Reports from these meetings concluded that "the Family Court is broken". Others, inside the court system, have advised that the Family Court "is in crisis".

To obtain a correct picture of the situation, the Task Force decided that its first priority would be to visit all eight judicial districts and speak with the court administrators, mediators, family law practitioners and social workers. This tour took place in March and April, 2008. We also invited written submissions from the public and interested parties.

Touring the Judicial Districts

When we visited the eight judicial districts, we were greeted with what appeared to be great anticipation – almost like being grabbed by the lapels, and all saying pretty much the same

thing: "You've got to do something"; "The Family Court is dysfunctional"; "Everybody is frustrated with the delays"; "Child protection proceedings are out of control".

We were astounded by the reception we received and were not prepared for what we heard.

We were told that in most judicial districts, it took anywhere from four to six months to obtain a court date for a motion for interim relief. In an effort to speed up child-protection hearings, ordinary cases were routinely bumped to make room for protection cases.

Regular trials could take years to come to court due to a variety of reasons; mostly adjournments and lack of case management practices.

A persistent problem arose from changes in circumstances, particularly loss of employment for payers attempting to vary their support orders. Unable to obtain Legal Aid, they were referred to the court social workers, who were tasked with the responsibility of helping them prepare their notices of motion and supporting affidavits. These people were not familiar with court proceedings and often stumbled in the procedural requirements. Adjournments and delays contributed to mounting arrears of support.

We were told that some trials, including custody cases, were routinely adjourned because they ran out of their scheduled time. They were adjourned to another date months away, sometimes to three different hearing dates spread out over as long as two years.

In far too many instances, it has become an unfortunate fact that procedure has been elevated above resolution. There appears to be a lack of sympathetic understanding of the emotional distress caused by numerous adjournments and intense procedural requirements. Some lawyers told us they will never appear in Family Court again.

The Court's social workers (also commonly referred to as mediators) have indicated that they spend less than 20 per cent of their time mediating. The rest of the time, they must screen for Legal Aid and help those trying to vary their support orders. We could not help but notice that some long-time Court social workers displayed what can only be described as quiet resignation after years of unsuccessful efforts to expand their primary role as mediators.

It was, however, the child-protection social workers who made the biggest impression on us. They made up the largest group to come and speak to the Task Force. It is clear that they are all in deep distress. Changes in procedural requirements initiated by certain courts have impacted them to the point of where many no longer want to go to court.

They related that the best interests of the child are now secondary to excessive procedural demands. They were distressed by the lack of respect accorded to them in the court, particularly the attitude that they are adversaries instead of protectors of children. They related the frustrations of numerous adjournments over what they (and Crown prosecutors) considered to

be frivolous arguments. Some cases took years to go through the court system, while the child was in a foster home awaiting his or her fate.

Time, they said, was an eternity for a child. The lack of resolution was a cruel and unnecessary imposition on them.

One aspect particularly raised their scorn: the requirement, in some courts, that all previous social workers and support workers on a particular file prepare separate affidavits in preparation for trial. This has meant an explosion of additional work for them – so much so that the government has had to hire 20 “legal administrative assistants” to assist them. Last year, the cost of these assistants was $900,000.

Some social workers broke down and cried as they related some of their personal experiences before the court. The delays and frustrations have clearly taken a heavy toll on them. Many told us they no longer wanted to go to court.

Finally, we were all told by a variety of court workers and lawyers that the Family Court was losing the respect and confidence of the public. Some litigants, they said, regularly thumb their noses at the Court by refusing to obey orders, pay their support or otherwise skirt their responsibilities without serious consequences.

Admittedly, the tour left the members of the Task Force with deep concerns over the operation of the Family Court.

Findings and Observations

In many respects, the information gathered by the Task Force confirmed what we already knew. The extent of the disarray, however, was a surprise.

Our findings are reflected in the following chapters of our report, but some general observations may be helpful.
As related earlier, substantial changes in the practice of family law have overwhelmed the Family Court. It has not adjusted positively to these changes, and indeed the lack of direction has led to the formation of eight separate and independent judicial districts, each with its own forms and practices with hardly any consistency among them. A set of Family Court practice rules is urgently required. As well, a subset of particular rules is needed for child protection cases.

Our system is still basically a one-size-fits-all system requiring a complicated set of documents to obtain a remedy. Procedures are not tailored to fit the size of the problem. Proportionality is missing.

Another issue which did not escape notice is that, under our adversarial process, all matters go to the judge. There is no case management to try and resolve cases early in their inception – and no control on the progress through the system. Consequently, all cases inevitably make

their way to trial. Many cases are settled at the courtroom door, leading to wasted judicial time. As one staff member described it, “We have full dockets and empty courtrooms.”

The proposition that the longer a case stays in the judicial system, the more it costs, is generally accepted as true. Those costs, in our view, are borne principally by the government – and they are increasing every year. Child protection prosecutors, Domestic Legal Aid family solicitors, duty counsel and ad hoc Domestic Legal Aid solicitors for respondents and children are paid for by the government. Add to that the services rendered by the support staff in all the judicial districts, and it becomes evident that the costs can be substantial.

The less time a case spends in the judicial system, the less expense there is for the government and litigants.

When it comes to child protection cases, the Task Force is firmly of the opinion that the restoration of consistency in court proceedings should be the first priority of the government. To this end, the Task Force is prepared to provide justice officials with some suggestions which would bring quick relief to social workers and simplify proceedings. Better yet, a meeting with the Crown prosecutors to obtain their suggestions would probably be more expedient and effective.

Court Management

Overall, we find there are no clear management structure, no performance measurements and no benchmarks to guide the Court in its operations. Problems are allowed to grow with seemingly no attempts to restrain their effect. New Brunswick has the executive model of court administration, which means the Department of Justice and Consumer Affairs in Fredericton makes the decision – and ostensibly manages the courts. The responsibility for day-to-day processing of cases, however, rests largely on the shoulders of the judges. There is a gap here.

The judges cannot be held accountable for the problems in the Family Court if they do not have some responsibility for its administration. Some sort of joint partnership model will have to be established if authority and responsibility are to work in harmony. Structures are needed within which both parties can exchange views, make decisions and set policy for the administration of the Court.

In order to ensure that the unified Family Courts are unified in practice as well as in name, the Task Force recommends reconsideration of the court administration recommendations found in the 2006 Canadian Judicial Council report entitled *Alternative Models of Court Administration* (http://www.cjc-ccm.gc.ca/cmslib/general/news_pub_other_Alternative_en.pdf) and in 2007 by M. Comeau and M. Bray in *An Alternative Model for Court Administration in New Brunswick*. Effective maximization of limited resources is unlikely in the current administrative context.

The Task Force recommends the creation of a new administrative structure to enable judicial input into policies affecting the administration of the Court.

Self-represented Litigants

We are rapidly approaching a stage (if we are not there already) where only the rich or the very poor are able to access the court with legal representation.

The growing number of unrepresented litigants is testimony to this development. We are now seeing the phenomenon where an increasing number of unrepresented litigants do not want a lawyer. They feel – perhaps with some justification – that the remedy they are seeking calls for simple and straightforward consideration by the Court. For example, cases involving a denial of access, or the variation of a support order following the loss of employment, should not entail a complicated, lengthy and expensive legal procedure – and certainly not one that will take months to resolve.

Faced with this situation, what course should the government take? In our view, the choice is clear. If the Family Court is not opened up to making itself more user friendly, we will have to deal with an ever-growing clientele with no legal representation clogging up the system with delays occasioned by their not having all their documents, and the adjournments that are sure to follow in those circumstances.

The New Paradigm

The adversarial system has been the hallmark of our courts ever since the Province of New Brunswick was founded. It is an excellent model to test evidence through cross examination in order to arrive at the truth.

It is effective in criminal and civil cases, but it is the worst model to resolve family law cases. The reason for this is that the adversarial system pits the parties against one another – and this invariably leads to a review of past grievances.

In family law cases, concentrating on the past only encourages litigants to emotionally and aggressively dwell on past wrongs, slinging accusations and insults at one another in a blame (fault) game that is counter-productive, disrespectful and harmful to themselves and to their children.

We are of the opinion that the present Family Court system is needlessly adversarial, frustratingly slow and much too expensive.

We should, instead, create a model that encourages parties to look to the future and concentrate on putting the interests of their children foremost in their arrangements.

Our proposal calls for a new paradigm, one which aims to assist separating couples in arranging their affairs in a respectful process that helps them go through their breakup with dignity, respect and a focus on a positive outlook for themselves and their children. It should encourage them to focus on the future. In simple terms, we are recommending that the adversarial model – in its general application – be severely restricted. In its place, we are proposing a new paradigm

– commonly referred to as the “triage system” – where all cases entering the judicial system first appear before a master of the court to determine what resources and immediate remedies are required at that early stage. The parties are then referred to mediation, case management or a resource that is most appropriate to assist them. It is a model based on flexibility and accommodation.

When the parties enter the judicial system, it would be with a standard set of forms identifying them and giving personal information, as well as their request for relief accompanied by the support documents they need... but with no accompanying affidavit. That will come later if they have to go to court. By then, if they have had some assistance or mediation, the issues may be limited to a few unresolved questions. (The process for child protection cases will be different.)

This is also the stage where a master can make an interim order where it is appropriate. The masters, who will have quasi-judicial powers, may grant these interim orders in certain cases. They can also make helpful comments to the litigants about the merits of their case.

Where the master will be most helpful is in case management. The master will govern the pace of litigation as it makes its way to trial. This includes jurisdiction to make procedural orders as they are required.

In simple terms, we are recommending a system that utilizes dispute resolution approaches as early as possible in the majority of cases, reserving the adversarial model for cases that need to be fast-tracked to judicial hearing, i.e. cases involving parent or child safety and welfare concerns, urgency (such as child abduction) and/or non-routine questions of law, evidence or legal process.

The great advantage of this system is that there are no inflammatory affidavits to read as they enter the judicial system. Furthermore, someone takes control of the case at the early stage to assist the parties in resolving their dispute. Mediators would be present in court on “triage days” and would take referred clients to their offices immediately to either set a meeting date or to try and resolve the issues then and there.

We have reviewed the role of “masters” of the Court in other jurisdictions such as Australia, Ontario and British Columbia, and concluded that their role is crucial in expediting and resolving many cases.

It is anticipated that Family Court masters would be appointed and would have quasi-judicial powers. Potential responsibilities could include:

- Acting as liaison between the Family Court and related Court and community services to iron out institutional and systemic difficulties affecting Court process.
- Helping the parties identify and clarify claims, positions and interests.
- Ensuring, when appropriate, that cases are assessed for the presence and, when necessary, type of domestic violence and child abuse.

- Granting procedural orders and directions to ensure that Family Court clients are directed to the appropriate process or service.
- Making pre-trial disclosure directions and orders.
- Granting, pursuant to new legislation, interim orders, particularly child support orders, subject to Court of Queen's Bench review.
- Granting, pursuant to new legislation, routine variations of child and other support orders.
- Granting, pursuant to new legislation and new Court processes, other interim orders on consent of the parties.
- Offering – with consent of the parties – settlement, co-mediation or arbitration services.
- Offering non-binding opinions on the merits of cases.
- Assisting Court of Queen's Bench judges with case management.
- Conducting trial management conferences in collaboration with the applicable Court of Queen's Bench, Family Division justice or justices.
- Monitoring and governing the pace of litigation prior to trial, including the making of procedural orders when such orders are required.
- Monitoring, when appropriate, compliance with Court orders.

Psychological Reports

Psychologists frequently appear in Family Court as "experts" and produce assessments for consideration. They are disappointed that their role as healers has been transformed into supporters of one side or the other.

They would prefer to be appointed by the Court and submit their recommendations directly to the judge. In other words, they would be the "witness of the court." They believe their involvement can lead to early solutions that will protect and enhance the welfare of the child.

The Task Force has met with representatives of the New Brunswick Association of Psychologists. A working group has been set up to study the role they could play in the new court setup. They will also study the feasibility of establishing criteria for ordering psychological assessments. Ontario has adopted such criteria after receiving a commissioned report entitled "Report on Court Ordered Assessments in Child Welfare Proceedings in Ontario: Review and Recommendations for Reform (submitted October 17, 2007)." The report was authored by Professor Nicholas Bala and Professor Alan Leschied.

The working group has only recently been established. Hopefully, their recommendations will lead to a more meaningful and remedial role in resolving issues of custody and visitation.

Implementation Committee

With its limited resources, the Task Force was unable to follow up on all of its ideas with thorough research. Each area of expertise requires a great deal of study. This was beyond the resources accorded to us. Consequently, we have concentrated on giving advice to government on the general direction that a new Family Court should take.

To pursue our recommendations, it will be necessary to empower an implementation committee to continue the task of reform. That committee should be composed of the members of the Task Force (those who wish to remain), plus representatives from the regional directors, Crown prosecutors, Domestic Legal Aid solicitors, enforcement officers, mediators and department officials.

The committee should also have a project manager to keep the reform process going and on track. The process may take two-to-three years to fully implement the recommendations. That committee will be responsible for overseeing the formulations of Family Court rules of procedure and for following up on work done by various working groups.

The Family Justice Advisory Committee

Following the implementation of the recommendations, the Task Force recommends a rules and advisory committee as a continuing link between the judiciary and the members of the bar and the Department of Justice and Consumer Affairs. This committee, which could be named the "Family Justice Advisory Committee", would serve to advise the government on practice rules, amendments to the Family Court rules, as well as advise government on various policy matters affecting the Family Court. One of its principal responsibilities will be to ensure that practice and procedures are standardized throughout the province.

The committee should be chaired by a judge of the Family Court, preferably with responsibility for overseeing the Family Court. Some provinces, such as Nova Scotia, have two associate chief justices with special responsibilities. We recommend the government request the federal government to appoint as least one associate chief justice to be assigned as a Family Court co-ordinator.

The cost

It is anticipated that the triage system will result in increased expediency, reduced Court time and costs, and will result in savings in connection with Legal Aid, psychological and other expert reports, the cost of legal administrative assistants, and the use of ad hoc legal services to handle overloads.

The Task Force has, on a preliminary basis, assessed the financial situation. It has concluded that the extra costs of hiring masters and the few full-time Legal Aid lawyers (as recommended later in the report) will be matched by reduced costs elsewhere. New Brunswick can ill afford to continue to bear the social, legal and economic costs of a Family Court system that is no longer able to respond to the needs of New Brunswick families.

Recommended Qualifications for Family Court Masters

The Task Force is of the view that masters (who should be appointed, not hired) should:

- have at least 10 years of family law practice experience

- be able to do triage work competently
- have a predisposition and, if possible, training and/or practical experience in non-adversarial family law dispute resolution.

The Task Force believes that there are numerous candidates in the province who would be able to meet these qualifications.

Masters should be appointed on the basis of a recommendation by the Associate Chief Justice of the Family Division, the Law Society of New Brunswick and the Department of Justice and Consumer Affairs.

Conclusion

As a final word on this broad overview of our report, we wish to thank all who made their views known to us either verbally or through written submissions. We are grateful for their input because – in the final analysis – they are the ones who prompted this reform project.
A special word of thanks goes to Madam Justice Jennifer McKinnon and to Master Robert Beaudoin of the Ottawa Family Court project. They came to Fredericton to brief us on a pilot project in Ottawa that they are running based on the same model we are recommending in our report. It was their presentation that convinced us to make the recommendation we are making in this report.

CHAPTER 1: CHILD PROTECTION

"...the law no longer regards children as property. Yet in our attitudes and in our practices, we all too often place the interests of the parents ahead of the interests of the child, which amounts to the same thing for practical purposes."

The Right Honourable Chief Justice Beverley McLachlin, Supreme Court of Canada, in a speech to the Muriel McQueen Fergusson Foundation, 2007

Problems identified:

- Delay
- Social worker burnout
- Excessive disclosure and extensive witnesses

A. Delay

At present, contested child protection cases must be determined by the Court of Queen's Bench of New Brunswick, Family Division ("Family Court"). The focus in resolving the issues in child protection cases must be about finding appropriate solutions in a timely fashion and on the rights of children in the care of the Province of New Brunswick ("children in care"). Where applicable, children in care need meaningful and timely access to and support from mental health professionals. Children are our most vulnerable members of society and there is a duty upon each of us to ensure they are protected and have stable and secure lives.

B. Services

The Court offers a dispute resolution model that is frequently adversarial, as well as too formal and expensive, with litigants having to wait a long time for a determination of the issues. The number of child protection cases on the Court docket is significant with new cases being added to the docket daily. Court wait times for these litigants – as well as all other litigants – have increased dramatically, thus placing our Court system under a great deal of pressure. Wait times for judges to render decisions on child protection cases have also increased dramatically, resulting in children's lives being placed on hold and in limbo.

Custody cases involving New Brunswick children who are not in the care of the Province are being trumped by children in care, as the latter group has priority with respect to scheduling of court time.

C. Resources

Child protection cases are becoming more complex with the number of referrals increasing significantly. Families are experiencing a multitude of problems, including domestic violence, alcohol and drug dependencies, and mental health issues. Social workers are burdened with having to perform excessive legal and administrative duties in child protection cases which take

valuable time away from their ability to provide families with clinical therapeutic interventions. Largely as a result of this burden, the Department of Social Development is having great difficulty retaining child protection social workers, as many suffer from exhaustion and burnout and are frustrated with the Court process, leading them to exit this field early.

D. Trial Procedure in Family Court

The Task Force believes that urgent attention must be paid to the process of hearing child protection cases in the Court system.

1. Disclosure of Information

The reference to "such other persons" in New Brunswick's current *Family Services Act* has caused many problems in the Court, including adjournments to allow service of documents to be effected on grandparents and potential fathers of the child or children in care, even though such potential fathers may not have had any contact with the child or children in care. Striving to ensure that "such other persons" have been served with pertinent documents in child protection cases has also resulted in confidential and sensitive information being readily accessible to the public, including over the Internet, which has resulted in breaches of parties' privacy rights.

Some jurisdictions are requiring extensive disclosure of information and documentation on all interested persons, and the scope of "such other persons" has broadened greatly. The requirement of excessive disclosure has resulted in delays, an increase in costs, as well as unnecessary work. In turn, these problems have resulted in many Court inefficiencies in the resolution of child protection cases.

The filing of multiple affidavits by numerous witnesses to satisfy the burden of proof is out of control.

2. Multitude of Witnesses

Many judges are also requiring a multitude of witnesses to be present at hearings of child protection cases. For example, to protect against the risk of hearsay evidence, some jurisdictions have developed the practice that every social worker who has ever been involved with a family in a child protection case must testify in court. Instead, one social worker could testify regarding the Department of Social Development's involvement with the family.

There is already a shortage of child protection social workers in this province. While they sit in court waiting to testify, they cannot deliver services to families in need.

3. Standard of Proof

Child protection matters are civil disputes, not Provincial Court criminal proceedings. A Provincial Court criminal proceeding would require "proof beyond a reasonable doubt". The standard of proof in civil matters is a "balance of probabilities", which is a lower standard of proof than that required in a Provincial Court criminal proceeding. However, it appears that the burden of proof in child protection matters appears to be moving toward that of the criminal standard of proof, requiring more witnesses and more evidence in order for the Minister to order the guardianship of the children.

4. Legal Representation for All

In addition to the requirement of a multitude of witnesses at hearings of child protection cases, there is a trend toward ordering government-funded legal representation for children of all ages and other "interested" persons. This requirement has resulted in several lawyers being in attendance at hearings of child protection cases, which is also very costly. Requiring each party to be represented by legal counsel has created inordinate delays and has complicated the Court's ability to resolve child protection cases in an efficient, effective and timely manner. Numerous adjournments are a common problem in child protection cases as a result of the requirement of each party having to be represented by legal counsel. For example, legal representation of infant children is frequently being ordered as a matter of course.

5. Procedure and Rules of Court

In child protection cases in recent years, there has developed a slavish devotion to procedure and the Rules of Court. The focus in child protection cases has moved away from finding an acceptable solution in a timely fashion to an intense procedural exercise. While the removal of children from their parents' care is a dramatic and final event that requires scrutiny, the rights of children in care to receive a timely resolution of such issues are being overridden by the procedural rights of parents. Grandparents and fathers who have played no role in the upbringing of the child in care are often woven into the proceedings, causing further delay. These delays are detrimental to the proper and healthy psychological development of the child in care. For every six-month period that passes without the final placement of a child, that child may need years of therapy and remedial services to recover from the detrimental effects of having to live in limbo.

At present, there is no readily accessible alternative to the dispute resolution model offered by the Court in child protection cases, which has also resulted in inefficiencies in resolving disputes in child protection cases in a cost-effective and timely fashion.

6. Psychological Assessments

There is a significant reliance on the use of psychological assessments and reports in child protection cases, which has resulted in inordinate delays due to granted requests for adjournments, cost implications and the time needed to secure qualified evaluators to perform the assessments and prepare reports for filing with the Court. Psychological assessments and the filing of reports thereafter appear to be ordered as a matter of course in child protection cases. Such a blanket application of ordering psychological assessments and the filing of reports thereafter in child protection cases is costly and delays a full adjudication in a timely fashion. Furthermore, the disadvantages of waiting for the psychological assessment to be performed often outweigh the advantages of having the information and results available for use by the Court.

E. Child Development

Due to the inordinate delays in having the issues in child protection cases determined in a timely fashion, children in care are becoming attached to their foster parents or not attaching to their foster parents at all in the fear that they will have to leave them in any event and, perhaps, temporarily reside in another foster home. For most children in care, their healthy development is being hindered and, sometimes, made impossible due to the delays to which the Court is susceptible in determining child protection cases.

Many children in care are developing attachment or other psychological disorders, again largely due to the excessive amount of time that they are in temporary foster care. These disorders often go untreated for a long period of time or not treated at all. The costs of housing children in care who have significant disorders are dramatically high as, often, such children cannot be managed and cared for in foster homes.

Goals:

- Child-focused and expedient outcomes
- Increased use of consensual dispute resolution
- Order and consistency throughout the judicial districts
- Clear and simple process and procedure

Recommendations:

1. Endorse the Department of Social Development's new model for resolution of child protection matters.
2. Create a separate court docket for child protection matters.
3. Create a separate Rules of Court for child protection matters.
4. Create benchmarks for process timelines.
5. Reduce the number of non-parent parties represented in child protection matters.
6. Implement legislative changes to:
    a. define "such other persons"
    b. add a section on evidentiary requirements to the *Family Services Act*.

7. Implement settlement conferences as a pre-cursor to trial.

1. New Department of Social Development Model

The Task Force is aware of – and has been briefed on – the current work of the Department of Social Development to reform the child protection system.

The Department of Social Development has designed a mediation/multiple response model as the preferred dispute resolution model in child protection cases and intends to implement this new model completely over the next four years. It is hoped that this new model will reduce reliance on the Court as a dispute resolution model of the issues in child protection cases and will provide services/support to prevent child abuse or neglect at the outset.

The Department of Social Development recognizes that the problems in the delivery of child protection services are not only resource-based, but primarily systemic. It is also hoped that this new model will achieve the following:

- ensure better outcomes for children in need of protection
- better meet the needs of families
- offer child protection social workers the opportunity to maximize their knowledge and skills by intervening therapeutically with families in need
- reduce the frequency of proceedings being started in the Court
- ensure that families throughout New Brunswick receive the same quality and consistency of service delivery.

The stated goal of the Department of Social Development in implementing this new model is to reduce by 70 per cent the number of child protection cases requiring a trial. Another goal is to enable child protection social workers to perform clinical interventions, as they have been trained to do, instead of expending precious time and energy performing legal case management and administrative work. The Department of Social Development hopes that the court process, as a dispute resolution model in child protection cases, will become a last resort.

2. Separate Docket for Child Protection Matters

The process of managing child protection cases needs to be streamlined in an effort to reduce the demand on the Court and court time generally. The Task Force recommends that a separate court docket be created for child protection cases. By having a separate court docket for child protection cases, the chances of those cases continuing to interfere with the timely resolution of non-child protection Family Court cases will be reduced.

3. Revision of Rules of Court

The Task Force recommends that we revise our Rules of Court with a focus on dealing specifically with the unique challenges present in child protection cases, particularly the issues of hearsay and disclosure, as well as on simplicity and clarity.

Currently, child protection cases enter the judicial system by filing Form 73AA with no date for the first appearance indicated. Obtaining a date for the first appearance and any interim relief requires filing of a separate motion – with affidavits – often a duplication of the affidavits filed with Form 73AA. The Task Force believes this adds to the delay in reaching a final resolution of the case in a timely manner. The Task Force strongly recommends that there be an immediate return to the use of Form 73A with one affidavit from the social worker in charge of the file and without the need for a separate notice of motion to obtain an interim order where necessary. In effect, the Task Force is recommending a return to the previous simplified procedure for processing child protection cases.

The Minister's evidence at trial should be presented in one affidavit only, with the deponent being the social worker in charge of the file, and with his or her evidence being adopted by the Department. The one affidavit would be subject to cross-examination, and the other social workers associated with the particular case could be called as witnesses to ensure fairness.

4. Process Timelines

There must be benchmarks for the hearing and disposing of child protection cases.

The Task Force recommends the adoption of the timelines used in the Ottawa pilot project as follows:

- Five (5) days for a first hearing if a child has been removed from the care of their parents and placed into the care of the Minister
- 30 days for service of the notice of application wherein the Minister is requesting guardianship of the child
- 35 days for a temporary care and custody hearing
- 80 days for settlement conference
- 120 days for complete disposition of the matter.

There needs to be consistency of procedures with the simplification of forms, documents and the Rules of Court. Although the process of resolving issues in child protection cases must be appropriate and case-sensitive, it must also be clear, expeditious and fair.

5. Resources

Reduce expenses and waste of resources by not funding legal representation for all persons, including infant children, involved in child protection cases. (See Chapter 2.)

6. Legislative Change

Legislative change is needed by clarifying the reference to “such other persons” from our current *Family Services Act*. Furthermore, an evidentiary section should be added to Parts III and IV of our *Family Services Act*. Legislative changes are necessary to reduce the excessive disclosure demands and requirements for a multitude of affidavits and witnesses at trial and to promote consistency across the province.

7. Settlement Conferences

Settlement conferences could be more useful in resolving the issues in child protection cases at an earlier stage than is being seen with the application of pre-trial conferences.

Settlement conferences, held at the outset, could assist the parties with recognizing the important issues early, thereby maintaining control over the situation with a focus on achieving a timely resolution and re-establishing order and stability in the affected child's life. Our system should offer parties the option of participating in settlement conferences in addition to the alternative dispute resolution models offered by the Department's new model. Having a wide array of alternative dispute resolution models to choose from allows parties to pick a model that best fits their particular situation. This could potentially increase the rates of success in achieving timely resolutions.

Collaborative law or other interest-based dispute resolution models should be implemented in resolving the issues in child protection cases – and judges should be trained in interest-based negotiation.

CHAPTER 2: REPRESENTATION OF CHILDREN

Problems identified:

- Delay
- Effectiveness
- Expense

Goal:

- The need to protect children and place them in suitable homes as quickly as possible in order to foster their development.

Section 6(4) of the *Family Services Act* states:

> *"...the child has the right to be heard either on his own behalf or through his parent or another responsible spokesman."*

It is the Task Force's conclusion that this section has taken on a "life of its own" in child protection hearings. It has almost become the rule, rather than the exception, that the child's "right to be heard..." means the child must have a lawyer. Not only must the child have a lawyer, but also the presiding judge must appoint the child a lawyer – and in virtually every case, that lawyer will be a lawyer appointed by the Attorney General and paid at the Domestic Legal Aid rates.

In its travels to the various judicial districts, the Task Force heard representations from diverse stakeholders. The representation of children by lawyers in child protection matters was not a benefit to the children and contributed to the clogging of the system.

Unfortunately, a culture has evolved wherein the lawyer for the Minister of Social Development is not recognized within the courtroom as the representative of the child. It appears to the Task Force that the adversarial legal rights of the Minister, the parents and other claimants to the child are trumping the rights of the child that the Minister is required by the *Family Services Act* to protect.

The preamble to the *Act* provides the direction to the Minister:

> "Whereas it is acknowledged that when it is necessary to remove children from the care and supervision of their parents they should be provided for, as nearly as possible, as if they were under the care and protection of wise and conscientious parents;"

and in the definition section:

> "best interests of the child" means the best interests of the child under the circumstances taking into consideration

> (e) the merits of any plan proposed by the Minister under which he would be caring for the child, in comparison with the merits of the child returning to or remaining with his parents;

The present adversarial procedure and the delays experienced in child protection matters prevent the Minister from effectively carrying out his statutory obligations. The child, the subject of the proceeding, appears to get lost in the shuffle.

There are those within the system who would argue that every child who is the subject of a Minister's guardianship application needs to have a lawyer. This is turning the *Act* upside down. The Minister only intervenes when, in his/her opinion, due to cogent evidence brought to his/her attention, a child is in need of protection. Where the Minister's intervention takes the form of the more drastic protection, a guardianship application as opposed to a supervisory or custody order, it is because the evidence available to him/her is that the child's best interests require it.

The Minister has the statutory authority to seek, in the appropriate circumstances, a guardianship order from the moment of birth to the child attaining the age of majority. In most instances, it is the youngest children for whom the Minister seeks guardianship.

There have been numerous cases where courts have appointed lawyers for newborns as well as youngsters under the age of 12. What is the point to this? It is the exact opposite of what is expected to occur in private cases. Lawyers constantly admonish their clients to keep the children out of the contest. The "For the Sake of the Children" course, which is all but mandated in private cases, is the tutorial on the subject. As early as 1978, the Manitoba Court of Appeal in J. v. J. (1978), 4 R.F.L. stated:

> *"We do not think it would be sound to give illustrations of those rare cases when separate representation might be useful. The question should be resolved by a trial judge in the exercise of his discretion. We demur, however, from the suggestion that such separate representation should be a matter of course because we are of the view that it is not desirable, in the usual case, to involve children in choosing between parents who might exert pressure on them in making a difficult and traumatic selection of one against the other."*

And so it should be in the greatest majority of child protections cases. The question that needs to be asked is: "What is the benefit to a particular child in the ordinary guardianship case to have a legal representative?" It is our belief that in 19 out of 20 cases, the answer is "nil".

It may be of assistance to outline the participation of the child's lawyer in the ordinary of guardianship cases:

1. A lawyer is appointed by the Court to represent a child. When we say "a lawyer", that is exactly what we mean – not a lawyer with any required level of experience or specialized training.

2. The lawyer receives disclosure from the Minister's lawyer, sometimes by the banker's box.
3. The lawyer reviews all the disclosure.
4. It is seldom that the lawyer can even talk to the child due to the age of the child or the content of the disclosure. How does a lawyer – or why should a lawyer – discuss with a child the fact that his or her mother is a drug addict who supports her habit by prostitution? Most children, if asked, will want to stay with their parents no matter how bad the neglect or abuse.
5. In the event the matter goes to a hearing, the children's lawyer can, by definition, do virtually nothing. They certainly cannot call their client to testify. Any witness they would want to call has already been called by either the Minister or the respondents.
6. Generally the child's lawyer just listens to the testimony, takes notes and – at the conclusion of the testimony after the Minister and the respondents have made their summations – states to the Court their position on behalf of the child. Almost without exception, the children's lawyer supports the Minister's position.

Justice Wooder, who in K.J.E , refused to appoint counsel for the children said:

> *"It may well be that another case, with different facts, will give rise to the arguments that the children's wishes are not being heard, or are not being taken into consideration by the Minister and that the Minister's statutory obligations are not being met. Perhaps the argument might then legitimately be made that, in the procedural and factual context of such a case, a court should comment specifically on how that child's right to be heard should be assured and how his or her wishes should be considered."*

It has to be the rare case in which the Court should appoint counsel for a child. Mindful of Section 6 of the *Family Services Act* (quoted above), the Task Force recommends that counsel for children be appointed only in situations where there is a risk that the child's views will be otherwise presented to the Court. The legislation needs to be amended in this regard.

The Task Force noted an additional problem with appointing children's lawyers: scheduling. It is a legal axiom that the more lawyers involved in a case, the more difficult the scheduling and the longer the trial. We need to remember that child protection matters involve the Minister having a statutory duty to act in the best interest of the children within strict time constraints which are in place to reintegrate children into an appropriate family setting as quickly as possible.

In the fiscal year 2007-2008, $400,000 was paid by the Province of New Brunswick to lawyers hired to represent children.

Section 6(4) does not mandate that a child have a lawyer in order to be heard. Too little use is being made of the last three words of the section: "... another responsible spokesman." The Task Force recommends that, generally, a child can be heard most effectively through a staff court psychologist or social worker. A staff court psychologist could, in addition, do much of the assessment work that is currently being farmed out to private clinicians.

Recommendations:

8. In the very rare case where a child requires legal representation, it shall be provided by the Child and Youth Advocate
9. The *Family Services Act* requires amendment to clearly define when it is appropriate to appoint legal representation for a child.

8. Child and Youth Advocate

Even with staff court psychologists in place, there will be those very rare cases where a child will need representation and there is only one office that can represent that child, that of the Child and Youth Advocate. The Child and Youth Advocate is the best way to have a trained person represent the interests of children in the two or three cases a year where such representation is truly warranted.

9. Family Services Act

Continuing with the present system of lawyers representing children in child protection matters is not an option. It is not only cost-prohibitive but totally ineffective. Instead of promoting the best interest of the children, it perpetuates their psychological and emotional abuse by lengthy delays, leaving them in a state of legal limbo. This state of legal limbo far too often prevents them from being adopted early in their lives. Every day that passes while a child in care waits for a legal resolution to their status detracts from their ability to bond with an adoptive parent. The focus needs to be on resolving the legal status of these children as quickly as possible.

CHAPTER 3: CHILD AND SPOUSAL SUPPORT

Problems identified:

- Delay
  - A cumbersome, inflexible system that causes undue delay before resolution
  - Failure by the parties to provide required information leads to unnecessary adjournments
  - Systemic issue of lengthy waits for a hearing date because the system is cumbersome and inflexible
  - Increase of public and private expense due to non-compliant parties
- Variations
  - Lack of administrative mechanism to provide simple recalculation and variations
  - Lack of termination mechanisms
- Self-represented litigants
  - Inability to effectively access the system
  - Unfamiliarity with the system creates further backlogs in the Court
- Expense

A. Delay

Child and spousal support issues are key elements in the majority of Family Court files. The present unified Family Court system is unable to deal with the establishment of interim support or the variation or termination of support in a timely manner. Our system is unnecessarily technical, slow and cumbersome. Systemic delays caused by the general backlog in our courts create serious hardship for New Brunswick families and contributes to the frustration of parties seeking redress from the Court. It is not uncommon for parties to wait at least three-to-seven months for an interim order to commence support. Too often, while these parties await their hearing, they must rely upon income assistance programs (Department of Social Development). This public expenditure is rarely recovered by the Department.

There is currently no system in place to ensure that parties have all information and documentation necessary to adjudicate their support issues once the parties have finally arrived before a judge. The absence of documentation generally results in adjournments creating further delay and hardship. This often means that the party requiring support must go to the back of the line yet again. Such delays are not always compensated by an award of costs. All delays are costly, both financially and emotionally, to parties in distress.

B. Variations

Although great strides have been made recently in the enforcement mechanisms available through the Court, there are impediments to the enforcement of some orders due to a lack of clarity in drafting. Even minor changes in income require the parties to return to the Court for simple variations in the quantum of child support. This is particularly so with respect to the

special or extraordinary expenses available under Section 7 of the Child Support Guidelines – for example, the out-of-pocket costs for childcare, health insurance premiums or post-secondary education expenses. Although the parties expect – and the legislation permits – annual adjustments of child support, the Court's administrative enforcement staff has no ability to incorporate changes and vary the order. This must be done by a judge.

Existing mediation services are attached to the Court and can assist parties in consensually varying their support obligations. The Task Force notes that these mediators are not lawyers and, although they have mediation skills, they are not able to provide legal advice or opinions on legal issues relating to support. Further, the current Family Court mediators have additional tasks assigned to them which significantly reduce the time available to them for mediation. See Chapter 7.

The Child Support Guidelines are legislated under the federal *Divorce Act* and the New Brunswick *Family Services Act*. Although not legislated, new Spousal Support Advisory Guidelines (SSAG) have been generated which are being referenced in the Family Court. The SSAG require calculations usually facilitated by computer software to arrive at ranges for spousal support in the event that entitlement to such support has been demonstrated. This software is expensive, can be complicated to use and is not available to all – nor is any simple recalculation service available in New Brunswick for child support.

Most child support orders and many spousal support orders, once established, continue indefinitely pending a change in the circumstances of the parties or a child. In situations where a child or spouse ceases to be entitled to support, pursuant to the *Divorce Act* or the *Family Services Act*, the payer must bring a motion before the court to terminate support. Situations can exist where payers are unable to locate the recipient of support paid through the Court in order to serve a motion for the termination or variation of that support.

C. Self-represented Litigants

There is an increasing number of self-represented litigants in the province due, in part, to the rising cost of legal fees to negotiate our complicated system. There were no statistics made available to the Task Force on the percentages of litigants who are self-represented, however, it is the opinion of the members of this Task Force, based on our own experience and submissions received throughout the province, that the number is approaching 40 per cent.

In the event that an expedited system can be created for the establishment and variation of support orders, self-represented litigants would be better served. Our Rules of Court and the forms contained in those rules are very technical and completely impede a self-represented litigant from gaining access to justice. Due to their lack of knowledge, the self-represented litigants generally require additional time in court even to process fairly simple matters. It is not uncommon for a party who has retained counsel to incur additional costs due to delays and improper proceedings occasioned by a self-represented opponent.

D. Expense

The complication of our current litigation procedures as required by the Rules of Court and attendant forms creates excessive expense for New Brunswick families and ads to the agitation of the parties involved. This increased frustration often is reflected in collateral issues such as access to children, further prolonging the resolution of family disputes.

Goals:

- A lean and fair system providing:
  - reduction of conflict
  - significant public information and education
  - triage system of case management
  - a system for simple variations and recalculations
  - reduction in cost.

Recommendations:

10. Provide public information and mandatory education regarding child and spousal support.
11. Revise Rules 72 and 73 and the Family Court forms.
12. Create standard forms of orders to provide greater consistency.
13. Implement the new paradigm to provide a lean and fair system.
14. Implement a child/spousal support recalculation service.
15. Provide consensual dispute resolution options as alternatives to litigation in support matters.
16. Implement “Status of the Child” reports for child support files.

10. Public Information

The Task Force views as essential the enhancement of public information and education through easily accessible means. Several other provinces have utilized the Internet to great advantage.

It is recommended that a Family Legal Information Centre (FLIC) (see Chapter 8) be established to provide brief video presentations on parenting and support. A FLIC kiosk located in each Court building could also allow for easy access to Child Support Guidelines tables and Spousal Support Advisory Guidelines calculators. It is recommended that, except in the case of emergencies, parties not be entitled to proceed to court without proof of participation in mandatory parent information in the case of custody and access disputes and mandatory support information in the case of support issues.

11. Rule Revision

The Task Force recognizes the complications which have evolved over many years in various revisions and additions to New Brunswick’s Rules of Court as well as the implementation of the

Child Support Guidelines. This has created much confusion and some inconsistencies, particularly for Rules 72 and 73. The application of various other rules for procedure in litigation can be impractical in Family Division matters.

Clearly, rule revision must be conducted for the unified Family Court system, particularly, Rules 72 and 73 together with a complete overhaul of forms utilized in our courts. It is necessary to ensure that these forms are user-friendly, clear and easily accessible. Simplified forms using check boxes would be preferable to set out the bare claims of the parties. It is strongly recommended that only one form for motions be required. The existing Form 72U has been roundly criticized by bar and bench and should be discarded.

To clarify issues for ongoing enforcement through the Court, it is further recommended that a mandatory party identification sheet be filed with each pleading and that parties be required to update that information periodically for so long as child or spousal support is required to be paid.

12. Standard Form Orders

Once an order has been delivered orally by the judge, it is the responsibility of the lawyer to draft that order. This often entails delays and disputes as to wording and frequently requires that a transcript of the proceeding be ordered. A standard form order should be used to assist in the making and variation of orders. In this way, there will be no delay while counsel who are involved dispute the wording used by the judge – and there may well be an improvement in the enforcement of support orders by providing clear wording.

13. New Paradigm

The new paradigm (see Chapter 8) envisioned by the Task Force is a user-friendly system that mandates the use of consensual dispute resolution processes before entry into the litigation forum.

In the model recommended by the Task Force, the use of “masters” to accomplish streamlining and case management is of central importance in order to download certain administrative duties of the Court, case conferencing and certain substantive issues.

14. Recalculation Service

A recalculation service could be offered through our court system. S.25.1 of the *Divorce Act* allows for the federal Minister of Justice to enter into agreements with the provinces regarding child support in order to allow the Court to assist in determining the amount of child support required and to periodically recalculate the appropriate amount of child support based upon the Guidelines. Upon recalculation, the new child support amount would become effective following notification of the parties unless an application is made by a party to have the recalculation reviewed. That review would be by the Court.

To date, recalculation services are in place in Prince Edward Island, Newfoundland and Labrador, and Manitoba. We recommend that the existing enforcement officers be used for recalculations.

These recalculation services do not provide for:

- orders with respect to arrears
- situations where there is an issue of imputed income
- S.7 expenses (special or extraordinary expenses in addition to the table amounts for support)
- support where shared custody exists.

In each of these cases, there is a requirement for the exercise of judicial discretion. Although amendment of the *Family Services Act* might allow for these to be included in a recalculation system, the *Divorce Act* does not allow for this at present. Nonetheless, mediation or case conferencing could deal with such discretionary issues on a consensual basis.

In circumstances where termination of the child or spousal support order is sought and the moving party has been unable to locate the recipient of support, a confidentiality issue exists for the enforcement officers. It is recommended that steps be taken to allow for the enforcement officers to provide notice to the recipient (where their address is known) that such a motion is being made as a form of substituted service. Enforcement officers could also be provided the ability (when ordered by the Court) to freeze such support orders pending response from the recipient.

15. Consensual Dispute Resolution

The Task Force recommends that a strong emphasis be placed on promoting methods of consensual dispute resolution. These would include mediation and collaborative family law – a form of mediation in which each of the parties has a collaboratively trained lawyer to assist them in pursuing “interest-based” negotiations as opposed to the current system which is a “rights-based” form of adjudication.

16. Status of the Child Reports

The problem of child support orders continuing indefinitely has been raised with the Task Force. It is recommended that initial orders contain a requirement that the recipient of support must file a Status of the Child report upon each child reaching the age of 19 to confirm whether or not the child remains entitled to support. In the event that the report identifies circumstances that may require termination of the support order, the payer would be entitled to bring a motion for termination based upon the report. If the recipient fails to file the required report within the time allotted, child support would no longer be payable pending a motion by the recipient to establish a continuing entitlement to child support.

CHAPTER 4: CUSTODY AND ACCESS

Problems identified:

- Delay
  - Excess of process is creating systemic delays
- Enforcement
  - Unaddressed frustration causes escalation of hostility
- Lack of support for high conflict families
  - Creates problems where there are no contact orders between the parents
  - Creates and allows for unimpeded action by alienating parents
  - There is a lack of support for the enforcement of orders
- Systemic conflict is inherent in the adversarial structure
- The proliferation of self-represented litigants is not being accommodated by the system

A. Delay

There are few issues in the practice of family law that are more emotionally charged than those relating to the custody of and access to children. Long-lasting damage to children can be created by the extreme delays experienced in New Brunswick in obtaining resolution of interim and ongoing custody and access issues. Although the advent of the Child Support Guidelines has helped to reduce acrimony over the quantum of child support, that acrimony remains in issues related to custody and access.

Enforcement and variation of access orders suffers the same fate by delaying adjudication for, in some cases, years. Even where an order is provided by the Court for the apprehension of a child in a civil matter, the Task Force has been advised of significant enforcement problems, particularly outside municipalities.

There is a lengthy wait for many parents in obtaining orders from the Court to re-establish contact with their children. This creates understandable frustration. In some cases, such frustration can lead to inappropriate actions by a parent who is unable to obtain a judicial resolution to the problem. Justice delayed is indeed justice denied. This is generally truer in custody and access issues than in any other area of law.

Delays in allowing for access issues to be addressed and orders for access to be enforced have led to high levels of frustration, loss of relationships between children and parents and ensuing emotional and psychological damage to children.

B. High Conflict

Our system contains little in the way of support mechanisms for the small number of “high-conflict” families who monopolize far more than their share of court time. Without ready access to the Court, many families become “high conflict” by virtue of the frustrating lack of resolution.

In many situations where a “no contact” order between the parents may exist, this poses a significant impediment to the exercise of access even in cases where no danger to the child has been identified.

Practising family law lawyers have often seen situations where children have been influenced intentionally or unintentionally by one parent against the other. This is frequently present in subtle forms where unguarded comments or behaviour in the presence of children can influence them to some degree. In other cases, however, much more serious forms of alienation can result in children completely cutting off contact with a parent with whom they previously had a good relationship. This may be a child’s defensive reaction to hostility or, in some cases, this is the result of active persuasion by an alienating parent. Regardless, the long-term effects can be devastating and can impair the behavioural development of children.

In situations where alienating behaviours may exist, by the time a motion to address the access problem finally arrives at Court for adjudication, the damage to parental relationships and/or the child may have reached a level that will prevent any effective judicial remedy.

Clearly, our system must be capable of rapid response to high-conflict families in order to avoid the disasters that result from entrenched litigation without effective access to the Court. The existing unified Family Court system is adversarial in nature thereby guaranteeing conflict rather than providing a forum for timely, co-operative resolution.

C. Systemic Conflict

We are all well aware of the serious damage done to children when exposed to conflict. We are also well aware of the extreme conflict created by our existing Family Court system. Our procedural framework was designed as an adversarial one primarily for commercial cases and personal injury actions. The current system promotes polarization of positions and lacks the flexibility and rapid response needed for the resolution of family matters.

The formality and complexity of our system guarantees protracted proceedings and high costs. Our current system tends to entrench hostility and conflict. In no way does our current system promote the objective of fostering a co-operative relationship between parents who must continue to jointly raise their children long after they have had their day (or, in our current model, years) in court. Inflammatory affidavits are generally attached to applications and motions setting the scene for high-conflict results.

D. Self-represented Litigants

In New Brunswick, as well as other provinces, the Court is now seeing large numbers of self-represented litigants who, being unfamiliar with the process, create further delays.

E. Grandparents and Other Interested Persons

The Task Force received a submission from the New Brunswick chapter of the GRAND Society (Grandparents Requesting Access and Dignity) requesting inclusion in cases involving their grandchildren.

The Task Force reviewed their concerns. We found that a child's relationship with their grandparents is already highlighted in the definition of "best interests of the child" in Section 1 of the *Family Services Act* as important in determining custody of and access to children as follows:

> *"best interests of the child" means the best interests of the child under the circumstances taking into consideration...*
>
> > *(d) the love, affection and ties that exist between the child and each person to whom the child's custody is entrusted, each person to whom access to the child is granted and, where appropriate, each sibling of the child and, where appropriate, each grandparent of the child;*

In addition, grandparents may apply for standing as they qualify as an "any person" allowed to become a party to a custody or access dispute, pursuant to Section 129 as follows:

> *129(2) Upon application the court may order that either or both parents, or any person, either alone or jointly with another, shall have custody of a child, subject to such terms and conditions as the court determines, such order to be made on the basis of the best interests of the child; and the court may at any time vary or discharge the order.*
>
> *129(3) Upon application the court may order that either parent or any person shall have access to a child, whether or not an order for custody has been made with respect to the child, subject to such terms and conditions as the court determines, such order to be made on the basis of the best interests of the child; and the court may at any time vary or discharge the order.*

Goals:

- A lean and fair system providing:
  - Better information for the public
  - Timely solutions, especially in high conflict cases
  - Reduction of conflict

Recommendations:

17. Provide public information and mandatory education regarding custody and access.
18. Implement a triage system of case management.
19. Expand and enhance the role of court social workers.
20. Provide consensual dispute resolution options for custody matters as alternatives to

litigation.
21. Empower deputy sheriffs to enforce court orders.
22. Replace affidavits with a claim for relief in custody matters.
23. Revise Rule 72, Rule 73 and the Family Court forms.

17. Parent Information

The Task Force recommends that there be mandatory parent information available and required for any party prior to a matter being heard. This can be as simple as a video-based program available at the court through the Family Legal Information Centre. (FLIC - see Chapter 8: The New Paradigm)

The existing program For the Sake of the Children should be continued and should be mandatory for parties prior to attendance in Court. A party without a certificate of completion cannot be heard in Court unless granted leave of the Court. Registration for this program could be accomplished through the FLIC kiosk, online or by telephone. The Task Force recommends additional parent information on an issue such as co-operative parenting and divorce be made available province-wide.

18. Triage

In order to properly identify and stream the matters coming before the Court, it is recommended that a revised Court system incorporate the use of a Court official at the outset to assist in case management through a triage program. The official would ensure that parties are directed to the mandatory parent and support information through the FLIC. Masters would then take control of case management by directing parties to various forms of consensual dispute resolution, where appropriate, or through other branches of the system, where necessary.

Masters will have the authority to mandate mediation. This will allow for issues to be dealt with earlier and streamlined to identify those matters requiring immediate attention. It would also ensure that cases are court-ready by the time they reach a hearing.

19. Court Social Workers

An enhanced role for the court social workers is envisioned regarding custody and access issues. The Task Force suggests that the jurisdiction of the social worker be limited to the custody and access issues where their training can be of greatest value to the parties. This would be particularly helpful with respect to scheduling changes for access, the negotiation of vacation times, etc. In addition, there would be a role for the social workers and court psychologist in providing “voice of the child” reports. The cost in litigating small changes, albeit extremely important to the parties, is often excessive and frequently occurs too late to be of assistance to the parties.

Other jurisdictions, such as British Columbia, have incorporated parenting co-ordinators as ongoing monitors of parenting disputes in high-conflict cases. Specific training in this role is now

being offered and it is recommended that, after appropriate training, this is a role that could be assigned to the Court social workers in appropriate cases. We envision that the parenting co-ordinator, whether the Court social worker or a private trained individual, would maintain ongoing contact with both parents and circumvent problems before these reach unmanageable proportions. The parenting co-ordinator would have ready access to the judge in order to obtain expedited rulings where necessary.

20. Consensual Dispute Resolution

The existing model of access to family justice primarily revolves around a polarized litigation system in which each party attempts to cast blame on the other in an effort to "win" the day. It has long been recognized that there are no winners in the Family Court system and that the damage done by virtue of the adversarial nature of this system is often irreparable.

It is recommended that consensual dispute resolution options be presented to parties at the outset, some of which would be offered through the Court and some privately. Forms of mediation, including collaborative family law, are proving to be an effective tool which generally allow for a less costly and less acrimonious resolution of disputes. This has the added benefit of enhancing the parties' problem-solving skills in order to avoid future forays into the Court.

Similarly, we recommend the introduction of binding settlement conferences which are currently utilized in Nova Scotia as a form of mediation/arbitration.
The court model proposed by the Task Force includes a heavy reliance on case conferencing as a method of dealing with procedural issues and matters requiring brief appearances by the parties. It is felt that many minor access disputes could be directed to a case conference quickly as a settlement method.

21. Enforcement of Orders

Enforcement of the Court's orders is problematic. There have been problems in the past in having police officers enforce orders from a judge directing peace officers to locate and apprehend a child. It is recommended that deputy sheriffs be used in this capacity if so directed by the Court. In that way, the order would be made directing the deputy sheriff to locate and apprehend the child.

22. Affidavits

At present, motions and applications are required to be supported by affidavits from the parties or others. These affidavits supply the evidence required by the Court to determine the issues in question. It is recommended that applications not require the attachment of an affidavit. In our current system, applications generally proceed on viva voce evidence and it is submitted that an affidavit in support of the application is not necessary.

It is recommended that a “claim for relief” be created as an originating process in Family Court. The petition for divorce will remain as the second originating process and the third process would be the Minister’s notice of application.

It is further recommended that the traditional affidavit in support of a motion only be filed and served after exploration of dispute resolution processes (mediation and case conferencing). Only the claim for interim relief would be served initially followed by efforts to resolve the issues consensually. This would avoid situations where the affidavit itself prevents settlement by inflaming the parties into an escalating battle. In the event that a consensual resolution is not reached, the affidavits would then be served prior to the hearing.

23. Rule Reform

As discussed in Chapters 3 and 10, a revision of the Rules of Court and forms will assist all concerned, in particular, the self represented parties.

CHAPTER 5: DOMESTIC LEGAL AID

The Domestic Legal Aid program was implemented in 1993 by the Department of Justice. The family solicitors were contract lawyers with the government. The Court Social Workers assisted the lawyers in preparing the court documents and referring the files to the family solicitor. In 2005, the family solicitors became employees of the New Brunswick Legal Aid Services Commission. However, the file intake continues to be done by the court social workers.

Problems identified:

- Delay in accessing services and Court
- Flawed eligibility criteria
- Resources not allocated in the most efficient manner
- Various limited services

A. Delay

- Getting an appointment with the court social worker to determine eligibility
- Getting an appointment with the family solicitor
- Getting a court date

The totality of these delays can be 12-18 months. Often these clients are recipients of income assistance while they wait.

B. Flawed Eligibility Criteria

There are presently diverse eligibility criteria for various services under the present Domestic Legal Aid program: clients alleging to be victims of abuse are eligible for certain services; clients receiving (or who would otherwise be entitled to) support for themselves and/or their children qualify for other services while payers of support and some custodial parents in child protection cases qualify for a Domestic Legal Aid certificate in certain circumstances.

We are of the view that the present eligibility criteria are flawed, discriminatory and therefore unacceptable. Some people, who should be receiving services from the New Brunswick Legal Aid Services Commission because they cannot afford a lawyer do not have access to the present program while others, who can afford to hire private counsel, do not have to. We also agree with the authors of the report “If There Were Legal Aid in New Brunswick... A Review of Legal Aid Services in New Brunswick” (The Review Panel), when they point out that the present abuse criteria may lead to unfounded claims of abuse, discourage some people from applying for Legal Aid and might even have a stigmatizing effect. The present system is difficult to administer and increases delays. We are of the opinion that, in some cases, the present criteria lead to an abuse of the system.

C. Resources Not Allocated in the Most Efficient Manner

The Task Force believes resources are not allocated in the most efficient manner. There are not enough staff and/or contractual lawyers, and certificates are not being allocated effectively. The staff family solicitors offer services to clients who were found to be victims of abuse, represent the Minister of Social Development in support applications (for their clients who receive income assistance benefits), represent the Director of Support Enforcement in enforcement proceedings, in addition to providing services to other clients who qualify under the Domestic Legal Aid program notwithstanding their financial means.

Certificates are also being allocated to private lawyers to provide services to parents in child protection cases and to payers of support who qualify under the program. These clients are subjected to financial criteria and the lawyers are paid on a limited hourly basis.

Private lawyers are also paid by the Department of the Attorney General when they are Court-appointed to represent children and other claimants in child protection cases. They are sourced through the New Brunswick Legal Aid Services Commission and their accounts are taxed by NBLASC under the afore-mentioned terms. This structure is an impediment to any form of settlement.

D. Various Limited Services

Various limited services are being offered under the present Domestic Legal Aid program. The family solicitors presently represent clients (found to be victims of abuse) for the issues of custody, access, child and spousal support and very limited services under the *Marital Property Act*. No services are available for the division of assets of unmarried persons.

The family solicitors also represent clients for the issue of support only (for themselves and/or their children) if mediation failed, including defending an application or a motion brought by the payer. Therefore, some clients, who should normally qualify for services under a Legal Aid program because they cannot afford to pay for a lawyer do not and have to retain private counsel while others do not have any other choice but to represent themselves. Moreover, certain clients need to have two lawyers representing them to deal with all the issues pertaining to their separation because of the limitation of services offered under the program.

Some payers of support qualify for duty counsel services. If they were found to no longer be able to pay the ordered amount of support, they are entitled to a limited certificate if they meet financial criteria. Some parents also qualify for duty counsel services and a limited certificate in child protections matters.

The Task Force is of the view that some services should no longer be offered by the New Brunswick Legal Aid Services Commission staff lawyers (represent the Minister of Social Development in support applications and the Director of Support Enforcement in enforcement proceedings).

Goals:

- Timely access to justice for those in need of legal representation who cannot afford to pay for private counsel
- New Brunswick Legal Aid Services Commission clients should receive optimal services in the most efficient manner at the lowest cost possible

Recommendations:

24. Adopt higher threshold financial criteria for determining eligibility for Domestic Legal Aid, as recommended by the Review Panel.
25. Intake of clients should be done by Domestic Legal Aid lawyers who assist in the choice of process for dispute resolution.
26. Allow access to Domestic Legal Aid services for all components of a family law file.
27. Transfer support enforcement legal work to the Attorney General's office.
28. Provide more Domestic Legal Aid staff and/or contractual lawyers.

24. Eligibility

The Task Force agrees with The Review Panel that higher threshold financial criteria with a sliding scale should be adopted. The financial contribution of the client would thus take into consideration his or her financial means. Furthermore, the extent of the contribution would depend on the services being offered and the complexity of the case. Therefore, the more time the lawyer spends on the case, the more money the client would have to disburse. This, we feel, would also be an incentive for the client to settle a case out of court.

With the recommendations of the Task Force with respect to eligibility criteria and the new paradigm (see Chapter 8), we are of the view that this will decrease the delay in accessing services under the Domestic Legal Aid program and getting to court.

25. Intake of Clients and Process Choice

In addition to the financial criteria, there should be a pre-evaluation of the case needs performed at New Brunswick Legal Aid Services Commission by a lawyer. This person would determine, with the client, if the case is most suitable for mediation, negotiation, the collaborative law process or at last instance, litigation. This would thus promote early dispute resolution.

26. Increased Access to Services

No limits should be imposed to the services being offered by the New Brunswick Legal Aid Services Commission to clients dealing with separation issues. The result would be a better and complete service to the clients. The Task Force is of the view that this will not necessarily be more expensive. For example, in complex property cases which are not presently covered under the Domestic Legal Aid program, a contribution from the proceeds of the sale of a property settlement could be put in place.

27. Transfer of Support Enforcement Files

Lawyers from the Department of the Attorney General (family Crown prosecutors) – and not New Brunswick Legal Aid Services Commission staff lawyers – should be representing government (Minister of Social Development and Director of Support Enforcement in support and enforcement cases) and offering services to government officials (legal advice to Department of Social Development employees and Court social workers). This would result in the New Brunswick Legal Aid Services Commission being fully independent from the provincial government.

28. Resources

We believe there needs to be more staff lawyers and/or contractual lawyers at the New Brunswick Legal Aid Services Commission. These people would be hired to offer duty counsel services, represent payers and parents in child protection matters, as well as the other party when both parents qualify for Legal Aid services. These staff lawyers will become specialists in their field, thus providing even better services to the client.

As specialized staff and/or contractual lawyers would be representing parents in child protection cases, they could be involved in the case and offer services to the client well before the case is heard. For example, the lawyer could offer services to the client at the family group conferencing or mediation processes presently being developed by the Minister of Social Development.

Also, the Task Force is of the view that criteria should be instituted to determine who would qualify for Court-appointed counsel paid for by the Attorney General in child protection matters (for example, the applicant should be able to demonstrate a continued relationship with the child).

CHAPTER 6: PSYCHOLOGICAL REPORTS

Section 8 of the *Family Services Act* of New Brunswick states:

> *In any proceeding under this Act that affects a child, the court may, where it determines that it would be in the best interests of the child to do so, require that the child, a parent or any other person living with the child or in such a close relationship with the child as to be in a position to influence the nature of the care and control exercised with respect to the child, undergo a psychiatric, psychological, social, physical or any other examination or evaluation specified by the court, prior to or during the hearing, and in the event of the refusal or failure by any person to participate in an examination or evaluation, or to consent to the examination or evaluation of a child under his care, the court may draw such inferences as appear to the court to be warranted under the circumstances.*

Over the years, these reports are more frequently being requested by counsel and more frequently being ordered by the Court. The intention is a good one, to obtain better information about the parenting abilities of both parties, however there are many difficulties with this process.

The Task Force has identified various issues with the use of psychological and parenting capacity assessment reports.

Problems identified:

- Delay
- Dwindling pool of capable professionals
- Consistency of quality of reports
- Cost of professional services is high

A. Delay

After a Court order for a parenting capacity report, the delay in having the report completed by a private professional can be six to 12 months from the date of the order. Children in high-conflict files cannot wait this long for their matter to progress. If there is a further delay from the date of the report to the date of the hearing, the report may be attacked as outdated and useless.

In child protection files, it is even more urgent that these assessments be done quickly. These children should not be held in limbo for lengthy periods of time while the Court waits for the psychological assessment to be completed.

B. Dwindling Pool of Capable Professionals

Lawyers report concerns over the scarcity of professionals willing to do the work required by the Court orders. The College of Psychologists reports concerns over the number of complaints filed by litigants against psychologists who perform custody evaluations. This type of complaint

triggers the disciplinary process of the College. The psychologist is then required to hire a lawyer to dispute the complaint. This is resulting in psychologists refusing to become involved in the legal system.

Provincially, there are few psychologists willing to prepare assessments for the Court. Amongst this group, there is no consistency in their process. The type of report will vary from professional to professional and from jurisdiction to jurisdiction, as will their underlying methodology.

The professional is in private practice. He or she is contacted by one of the lawyers on the file and then usually retained with the consent of the other lawyer. The choice of professional is based solely on the ability of the lawyer to know of the professionals available and to contact them.

C. Consistency of Quality of Reports

Additionally, because the legislation does not limit the field to psychologists, social workers and other types of therapists have been used to do such assessments. This creates further confusion for lawyers and judges who are unclear in the differences between the mental health professionals.

The Court and the professional do not always speak the same “language”. There are a variety of tools and a variety of types of assessments that a mental health professional can do. Without understanding the rationale of those various tools or types of assessments, judges may order a full custody/access assessment when a lesser type of procedure/assessment would have been enough.

D. Cost

Through the current Court-ordered Evaluations Support Program (C-OESP), the Province of New Brunswick is now assisting families in paying the costs of these reports. However, the cost of most full assessments is $3,000-$8,000 per file, and the C-OESP program will fund only a portion of it.

In 2007, C-OESP budgeted $70,000 for assessments, but paid out $90,000.

In 2007, New Brunswick Legal Aid Services Commission paid $148,000 for assessments.

It is unknown what the Department of Social Development paid for custody and access reports in 2007.

Goals:

- Consistency in the ordering and preparation of reports
- Standardize cost based on type of service required, paid by client on a sliding scale according to income

Recommendations:

29. A staff psychologist should be attached to the Court to prepare custody and access assessments.
30. Create a standard request form for psychological assessments.

29. Staff Psychologists

Psychologists are currently used in three distinct areas:

- Private matters with funding from C-OESP
- Child protection matters (fully funded by the Department of Social Development)
- Legal Aid files (fully funded by Legal Aid)

There should be a staff psychologist in the courthouse who will ensure that the reports are timely and that the preparation or presentation of them is consistent. These professionals will be the expert of the Court, not either party. Services from this office may be used for mediation as well as courtroom work. Mediators could access the psychologist for problem files and the Court can order the psychologist to prepare reports for the Court.

Currently this work is done privately and partially funded by the federal C-OESP program. In 2007, $90,000 of C-OESP funds were spent in the province. The remaining costs were funded personally by Family Court clients. We recommend that clients still pay for these services in the same fashion as previously, but now the private funds will come into the judicial system.

The Task Force was intrigued by the Minnesota model which seems to deliver an appropriate service by a staff psychologist working co-operatively with a mediator in producing a short report (no more than two pages) within 30 days of the Court order. The parties and their lawyers then meet with the psychologist and mediator to receive the results of the assessment. It is believed that this process leads to settlement rates in excess of 75 per cent.

The Task Force recommends the hiring of five qualified clinical psychologists to serve the eight judicial districts. We believe that the current funds spent by the three separate departments – plus the private funds of clients – will make this change cost-neutral.

30. Creation of a Standard Form for Requesting Assessments

A working group of the College of Psychologists should create a check-box list of items to provide the terms of reference to the psychologist and the required format of the final report to be completed for the Court.

CHAPTER 7: EXPANDED ACCESS TO DISPUTE RESOLUTION PROCESSES

> *A 98-per-cent settlement rate and the increasing use of negotiation, mediation and collaboration in resolving lawsuits have dramatically altered the role of the lawyer. The traditional concept of the lawyer as "rights warrior" no longer satisfies client expectations, which centre on value for money and practical problem-solving rather than on expensive legal argument and arcane procedures.*
>
> Julie MacFarlane, The New Lawyer - How Settlement is Transforming the Practice of Law (UBC Press, 2008)

If Dr. MacFarlane is correct, it is inconceivable that the vast majority of time, effort and resources in the Court remain focused on an adversarial system.

Problems identified:

- Matters that could be resolved using interest-based negotiation continue to be directed to the Court.
- The legal system and legal professionals are largely out of touch with the contemporary services and support that family law clients require.
- There are currently no alternate forms of dispute resolution offered in child protection matters.
- Family Court mediators are not properly supported or properly employed in the present system and the quality of mediation services suffers.
- Wait times for mediation services are too long.
- Collaborative family law (CFL) is not being offered as a service of Domestic Legal Aid.

A. Interest-based Negotiation

The Task Force meetings and research confirmed what the members all believed to be true. There are too many family matters being directed to the adversarial Court system that could and should be resolved earlier using other forms of dispute resolution. While it is true that the private family law bar is resolving the vast majority of its matters, this absolutely could be done earlier and would result in better outcomes for the families.

Mediation and collaborative process are more appropriate ways to address the multitude of issues that face a family in crisis. Education is required in the early stages of a lawyer's career about the lawyer's professional obligation to assist in resolving disputes. There should also be better continuing education for lawyers and judges so that dispute resolution skills and tools are available to all clients so as to result in earlier and better settlements of family disputes.

B. Child Protection Matters

The Task Force finds that it is recognized and accepted by all of the disciplines who serve the child protection clientele that the adversarial method of resolving family law issues is destructive, expensive and far too slow to respond to the time-sensitive issues involved. Child

protection matters have not had the benefit of alternate forms of dispute resolution. There is, however, a new model being implemented later this year (see Chapter 8). It is the sincere hope of the Task Force that this new model will be successful in moving some matters away from the litigation process and also in teaching vulnerable families in our province how to resolve disputes in an interest-based way.

The Task Force recommends that the Department of Social Development expend resources to investigate and consider how the Collaborative Process could be woven into their new model.

C. Family Court Mediation

As the Task Force met with participants and stakeholders in the Family Court system throughout the province, we were repeatedly advised of inefficiencies, waste and poorly used Court resources. One of the most objectionable was the way the Court system uses its mediators, also known as court social workers.

Court social worker positions were established in 1983. The first cadre of mediators joined the unified Family Court at its inception. They are social workers by profession. In the 25 years that these positions have existed, there has been shockingly little continuing education made available to them.

Instead, the Court social workers have evolved into being the intake workers for the Domestic Legal Aid system. They also reported to the Task Force that they are spending a significant amount of their time negotiating variations to child support orders. Many of the situations recounted to the members of the Task Force revealed that the social workers have essentially been asked to practise law.

Finally, the Family Court mediators have no administrative support, which results in them doing the tasks of a receptionist and secretary. As a result, they are doing precious little actual mediation. The Task Force is concerned that all of these factors diminish the quantity of mediation being done, not to mention the quality.

Goal:

- A fair and lean system providing access to the most dispute resolution processes appropriate to each family.

Recommendations:

31. Educate legal professionals at every stage of their careers in interest-based negotiation.
32. Introduce collaborative family law into the new model for child protection matters.
33. Implement changes to Domestic Legal Aid to permit mediators more time to mediate.
34. Invest in administrative support, professional development and continuing education for mediators.

31. Interest-based Negotiation

Education is required in the early stages of a lawyer's career about the lawyer's professional obligation to assist in resolving disputes. There should also be better continuing education for lawyers and judges so that dispute resolution skills and tools are available to all clients so as to result in earlier and better settlements of family disputes.

32. Collaborative Process

Collaborative Process is a relatively new process for resolving disputes which has had great success in family law disputes, where it is referred to as "CFL". It is a form of interest-based negotiation, like mediation, which has as its core the fact that the parties mediate with the guidance of their lawyers. A contract is signed at the commencement of the process which states that all four participants to the CFL process will participate in good faith and that in the event that the process breaks down both clients must start all over again with new lawyers. There is, therefore, inherent in the process a high degree of motivation to settle their differences.

The important distinctive feature between mediation and CFL is that mediation is conducted by a neutral profession who does not provide legal advice to either party. In CFL, the parties' lawyers have the responsibility to conduct the interest-based process to explore the parties' individual interests and options. Where children are involved, parenting education is a mandatory requirement of the process and is specifically promised in the terms of the contract that has been adopted and used by the private bar in CFL.

The family has the option of bringing in collateral specialists whose advice and recommendations are valuable to the family as they analyze their options. Financial specialists and child specialists have been employed by the private bar using this process. There are more than 100 lawyers in New Brunswick (from both official language groups) trained in Collaborative Process. Private lawyers continue to expand their use of collaborative files but Domestic Legal Aid does not. The reason given by Domestic Legal Aid is that if the Collaborative Process breaks down, there is no other Domestic Legal Aid lawyer to take over the file as a litigation matter. It is the opinion of the members of the Task Force that this issue can be overcome with the use of a "Chinese wall" or contracting services out to the private bar. (A Chinese wall is a barrier that separates two or more groups, usually as a means of restricting the flow of information.)

It is unacceptable that the most vulnerable and disenfranchised socio-economic group in our province basically only has access to the most expensive, time-consuming and destructive form of dispute resolution.

The Task Force recommends that New Brunswick Legal Aid Services Commission expend resources to investigate and consider how the Collaborative Process could be woven into the Legal Aid model.

33. Domestic Legal Aid Intake

The Task Force recommends that the changes to the criteria for Domestic Legal Aid as described in Chapter 5 be acted upon immediately. This will free up time for mediators to dedicate to mediation and reduce the unacceptable wait times.

Further recommendations with respect to Domestic Legal Aid include that the intake interviews for Domestic Legal Aid be completed by the Legal Aid lawyers who will then decide what form of dispute resolution is most appropriate for a particular family, i.e. mediation, collaborative process, negotiation or litigation.

34. Administrative Support and Continuing Education of Mediators

Additionally, the Task Force recommends that continuing education, professional development and a province-wide promotion of the mediation services available needs to happen in order to retain the experienced mediators we have and to rehabilitate the morale of these professionals.

Lastly, the Task Force recommends that administrative support staff be hired in each judicial district and dedicated to the mediators.

CHAPTER 8: THE NEW PARADIGM

In recommending a new structure for the Family Court, the Task Force did so with the following goals in mind:

- To increase the efficiencies of all Court matters that touch the lives of children, especially those in child protection.
- To identify those families who would benefit from professionals who could assist them to settle their issues.
- To identify high-conflict parties early and move them to trial expeditiously, while giving them access to justice through case conferencing while they wait for their court date.

The Task Force recommends that the Province of New Brunswick adopt the following model which is based on the current Ottawa Family Court pilot project.

A. Masters

Masters should have at least 10 years of practical family law experience and be capable of doing triage work competently. The masters should be appointed based on the unanimous recommendation of the Associate Chief Justice of the Family Division, the Law Society of New Brunswick and the Department of Justice and Consumer Affairs.

These masters will play a key role in the new paradigm. They will be responsible for the efficient flow of cases through the judicial system.

B. Stage 1

The client will access the Court system through one of the following avenues:

- a private lawyer
- Domestic Legal Aid
- self-representation

If they are self-represented, they will visit the Family Law Information Centre (FLIC) located in the courthouse. The Centre will be fully automated. The client will use a talking touch screen to access what they require. They will print the forms needed from a dispensing machine for a printing fee. The same forms will be available online.

C. Stage 2

The party will file an originating process and an application for triage together with a copy of their last year's income tax return. They will be assigned a date for the triage process and will serve the opposing party with this document. The respondent will complete their response and file and serve it. The documents will be an information page. There will be no affidavit evidence at this stage.

D. Stage 3

Both parties will attend at the triage session. If they have a lawyer, the lawyer will also attend. This session will be presented with 15-20 cases at the same time and is scheduled for one-half day. The opening presenter will provide information on:

- The effects of separation and conflict on children. A short video similar to For the Sake of the Children will be shown. Clients will be advised that any of them who intend to file for motions or a trial involving children will be required to complete the For the Sake of the Children course prior to receiving a court date.
- The basic principles of support and division of property.
- The various methods of dispute resolution – mediation, collaboration, arbitration, negotiation and litigation.

E. Stage 4

After the 30-minute presentation, clients will be asked to self-identify:

- *Resolved:* Those couples who have resolved their issues will meet with a master to finalize their order and sign it with the Master.
- *Mediation:* Those couples who believe they can make progress in mediation will be moved to another area and wait to see a mediator. They will each spend 15-20 minutes with the mediator to ensure that they can continue in this process and then will book their sessions with the mediator. Mediation will be paid for on a sliding scale dependent upon their annual income.
- *Case conference:* Those remaining couples will have a case conference with a master or a judge who will attempt to assist them in reaching a settlement. If one is reached, they will wait until the order is prepared and they will sign it. If not reached, the master will give them further direction on a method of dispute resolution that the master feels is suitable for their case. The master will identify high-conflict cases at this stage.

F. Stage 5

Clients who are not successful in resolution at Stage 4 will continue through the system in two streams: mediation and case conferencing.

Mediation: Will be voluntary. Clients will continue in it to completion or switch into the court stream if it fails.

Court stream: In this stream, clients will have access to justice in two distinct ways:

- Motions: Clients have the opportunity to file a motion and be heard as needed on substantive issues, such as interim relief.
- Case conferences: Procedural issues will be handled by case conferences upon the request of either party. The judge or master who heard their triage meeting will continue to assist them by way of case conference. Case conferences are informal meetings. They are mostly for procedural issues and have the responsibility to ensure that the file is court-ready. A judge or master may order costs against any

party who does not follow the procedural rules. Substantive issues such as immediate changes to access and enforcement of access may also be resolved at this stage.

G. Stage 6

Clients who are in the court stream will have a settlement conference before their trial dates are set.

At the settlement conference stage, the parties may choose one of two routes:

- Classic settlement conference: The same as is currently in place under Rule 50, with two modifications:
    a. Settlement conferences will occur early in the life of a court file – within two or three months of the initial filing of the originating process.
    b. The applicant's settlement brief will be due 30 days prior to the settlement conference and provided to the respondent, with the respondent's brief due 10 days later (20 days before the conference).
- Binding settlement conference with a judge of their mutual choice. The decision of this judge is final and is not open to appeal.

H. Stage 7

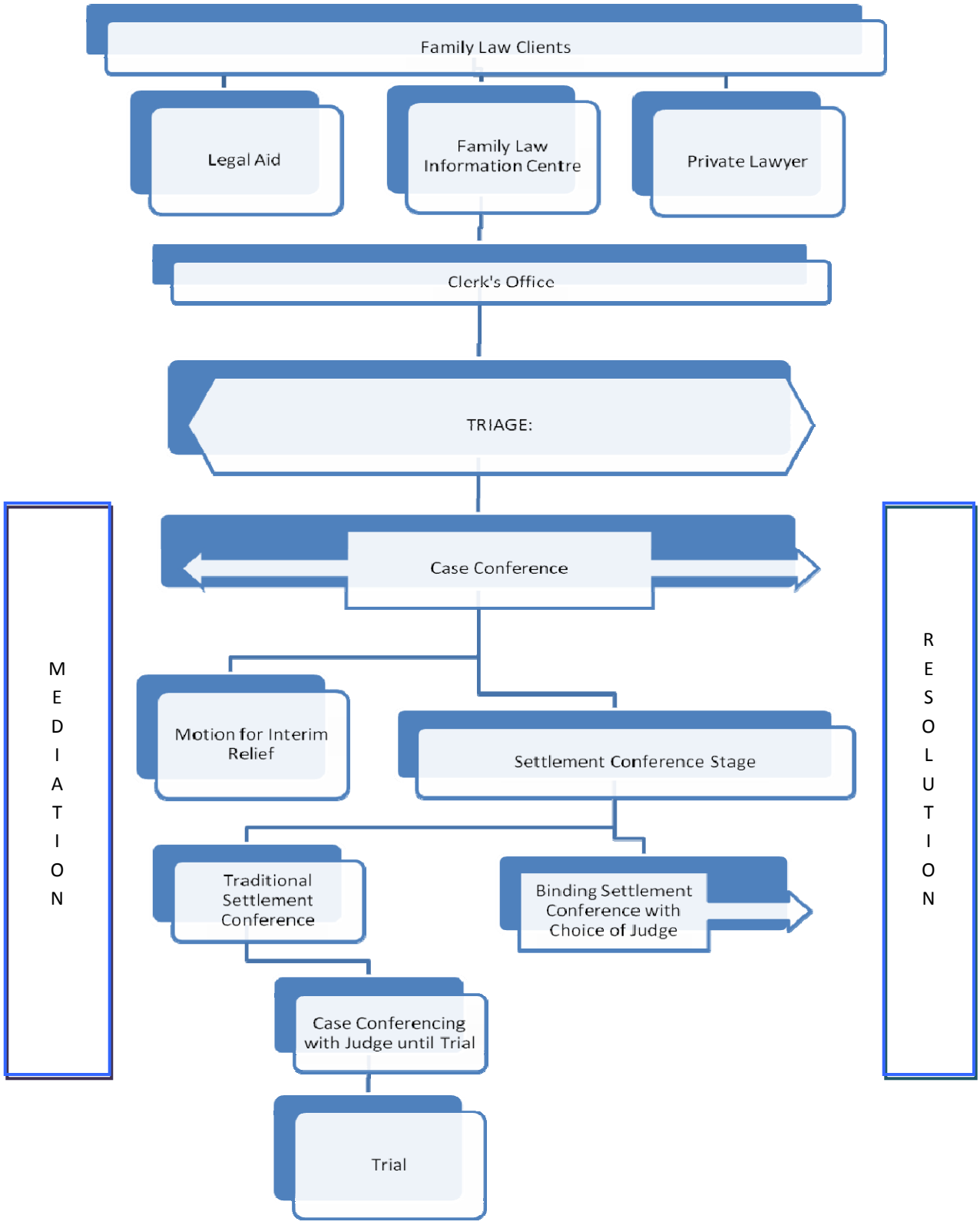
For those files that continue to be unresolved, a trial will be held. The trial will not be in front of the judge used in the case conference or settlement conference.

I. Need for a Family Law Information Centre (FLIC)

The self-represented litigant needs our assistance, as does the judge, in the area of the gathering and presentation of the required information. To this end, Family Law Information Centres (FLIC) in the courthouse will benefit everyone in the system.

Ontario has a FLIC in most of the courthouses where family law courts sit. We would do well to imitate them rather than attempting to redesign the wheel. In most family law court facilities, there is a room which could be easily adapted into a technological information centre that includes a step-by-step touch screen to provide an information video on court procedures and required forms, a frequently-asked-questions icon, examples of forms, and simple rules of procedure court etiquette. As well, there should be a vending machine to produce a set of forms which are user-friendly. (Suggested cost per set of forms: $20.) The Ontario forms work very well as they are – for the most part – tick boxes and short answers. The forms, which commence the proceeding, do not require affidavits or specific statute citation. These forms are all that are required to get the self-represented litigant before a judge or other judicial officer in a timely manner.

The rooms would not require personnel for monitoring as they would be located next to the commissionaire or sheriff stations. The content would come from a central computer. Currently, the counter staff in most Family Court offices are not only shorthanded but spend an inordinate part of the day answering questions or having to explain forms to self-represented litigants.


Family Law Clients
Legal Aid
Family Law Information Centre
Private Lawyer
Clerk's Office
TRIAGE:
MEDIATION
Case Conference
RESOLUTION
Motion for Interim Relief
Settlement Conference Stage
Traditional Settlement Conference
Binding Settlement Conference with Choice of Judge
Case Conferencing with Judge until Trial
Trial

CHAPTER 9: LEGAL EDUCATION

The role of the advocate/lawyer has traditionally and historically been that of gladiator and spokesperson for the litigant. The lawyer's role is to advance a position/claim in a vigorous way. At the same time, dispute resolution and society have evolved in such a way that the advocate's clients are really looking to lawyers to support, coach and guide them along a dispute-resolution process. They want and need to participate in resolving their conflict in a meaningful way. Nowhere is this truer or more important than in family law matters.

The reality of the lawyer's role as educator, facilitator and coach, must be presented to young lawyers at the earliest possible opportunity. Law students must be schooled in the benefits and skills of interest-based negotiation. The reality is that less than two per cent of all civil disputes result in a trial, yet the majority of our formal law school training is spent dissecting and perfecting the procedures before our courts (especially the court of appeal). There are few if any mandatory courses at the law schools that focus on interest-based negotiation skills. This is a mistake.

Law schools and bar admission courses in New Brunswick must respond to the reality of what society is requiring of modern lawyers. Young lawyers must be equipped to speak the language of interest-based negotiation while continuing to be experts with respect to the law – the purpose being to assist clients/families in putting their options into context rather than bashing away at one another with their respective positions and the jurisprudence that appears to support that position.

Similarly, the practicing bar must wake up to the fact that most of society rejects the notion that they need to fight and be positional to resolve disputes. Most clients want to use a process to resolve their issues and nowhere is this more true than in family law matters. There is naturally a small segment of the population that will never be able to agree on anything and will unfortunately have to resort to third-party adjudication to finalize even that smallest issue, but there are still too many matters taken to Family Court which interest-based-negotiation-trained lawyers should and must resolve much sooner than appears to be the case currently.

Finally, the judiciary is not adequately/appropriately equipped to use the settlement conference rule contained in our Rules of Court to its full potential. Continuing formal education with role play and critiques is necessary for those justices who are tasked with participating in settlement conferences. It is also incumbent upon the justices to come to these meetings prepared and to be active in the settlement process.

Recommendations:

35. Establish mandatory courses at law schools and bar admission courses in interest-based negotiation.
36. Offer continuing education for judges and lawyers in a full range of dispute resolution processes.

CHAPTER 10: RULES AND FORMS

Problems identified:

- Rules 72, 73 and 74 and the accompanying forms are not user-friendly.
- The use of affidavits polarizes parties early in the dispute-resolution process.
- Our rules only assist families using the litigation process.
- Court orders are inconsistent in form and there is often a delay in production of the written copy.

The Task Force has identified the following problems with the use of the Rules of Court and forms in New Brunswick:

A. Not Comprehensive

Only three specific rules – 72, 73 and 74 – govern proceedings in the Family Division with the directive that the remaining practice of the Division be governed by the remaining rules which were created for Trial Division.

Rules 72, 73 and 74 are not user-friendly. They are difficult to read and to understand. As well, there are a variety of additional practice requirements that are informally in place but not stated in the rules. Unrepresented litigants find them impossible to understand and young lawyers shy away from the practice of family law because the process is too difficult to discern.

Rule 72.22.1 for motions to vary and its accompanying form 72 require major overhaul. Although this form is also used for interim proceedings, this is not stated in the rule. The rule gives information about deadlines for responding and the documents required to be filed to respond – an affidavit and financial statement – but that is not on the face of the motion that is served on the respondent.

Some of the rules are difficult to adhere to and questionable as to why they exist – for example, the requirement to file an affidavit for divorce within five days of signing. Given that we are a mobile society, this requirement has petitioners sending their affidavits via courier from other provinces in order to meet the deadline. There is no obvious reason for this short period of time for filing. A joint petitioner has 14 days.

Also, the eight different judicial districts apply the rules differently.

B. Reduce and Eliminate Use of Affidavits

Currently, all motions and applications require a sworn affidavit to be attached. These documents are drafted by lawyers solely to discredit the opposing party. As a result, they amplify the conflict between the parties and therefore affect their ability to work together to resolve issues. Affidavits focus on the past instead of the future. Too often, they contain irrelevant and/or inadmissible evidence. Additionally, given that a petition for divorce does not

require an affidavit to be attached, an application should not require one either. The application should be more akin to a statement of claim style, like the petition for divorce, which provides the relief claimed and the grounds to be argued.

C. Only the Adversarial Process Is Offered by the Rules

The procedure is archaic. It is based on the adversarial model solely. Since we know that only 1.8 per cent of all contested matters conclude with a full trial, the rules should reflect this fact. There should be rules governing the basics of other types of dispute resolution models – collaborative practice, mediation and arbitration.

D. Need for Standardization and Timeliness of Court Orders.

Currently the order is prepared by one of the lawyers after an oral decision of the presiding judge. The result is that the parties have to wait to receive their paper copy of the order that they have heard the judge pronounce. This delay can cause confusion and conflict between the parties.

The current process can also result in a dispute between the lawyers as to the wording to be used in the order and orders for the same relief that are worded differently by different lawyers. As a result, the ability to understand and/or enforce the order may be compromised.

Goals:

- Create new user-friendly forms.
- Reduce the use of affidavits and streamline the contents when they are required.
- Create rules governing other forms of dispute resolution.
- Ensure that court orders are comprehensive, consistent in wording and timely.
- Impose costs consistently and fairly.
- Have a standing rules committee chaired by the Associate Chief Justice.

Recommendations:

37. Create new forms for Family Court in conjunction with the new paradigm.
38. Affidavits should be shorter and non-inflammatory and filed only after other forms of dispute resolution have been attempted.
39. Develop Rules to govern other dispute-resolution processes.
40. Adopt or create standard forms of court orders.
41. Make and enforce meaningful awards of costs.
42. Create a standing rules committee chaired by the Associate Chief Justice for Family Division.

37. Forms

New forms for Family Division need to be created in conjunction with the adoption of the new paradigm. The emphasis must be on the plain language and simplicity of the form, for use by both the legal community and self-represented individuals.

Professor Rollie Thompson of Dalhousie Law School was consulted by this Task Force. He advised us against creating a set of Family Court Rules apart from the civil rules of procedure. He encouraged us to create forms for use in Family Division that are user-friendly. We believe he is right. By creating forms that can be used by self-represented litigants, we are also assisting the lawyers who do not practise primarily in Family Court. If we can demystify and simplify the process of the Family Division, then we can focus our resources on working to fix the real problems of each family instead of numerous adjournments to remedy procedural problems.

Rules 72 through 74 will need to be re-drafted to reflect the new paradigm. Additionally, a new rule needs to be created to govern child protection procedures. They should be supported by ongoing practice memos issued by the standing advisory committee on Family Division Rules and practice and available on the website. These practice memos should be posted to a website for access by the legal community and the public.

38. Affidavits

The Task Force recommends that affidavits only be filed after the triage, in a brief format with non-inflammatory language.

The Ottawa pilot project requires the parties to attend at their first court triage appearance without filing any affidavits. They complete an information form only and advise of the type of relief they are requesting. They meet with the master to see if a consensus is possible. Only if no consensus is possible do they then file a short form of affidavit and appear on a motion. We wish to adopt this process in New Brunswick.
When motions to the Court are required, the accompanying affidavit needs to be relevant and non-inflammatory. We are not assisting families during their separation when we needlessly fuel the fire of their malcontent toward each other. It is very rare that the distant past has any relevance to the decision that the judge must make.

There should be rules on filing concise and factual affidavits and cost sanctions for inflammatory and irrelevant affidavits.

39. Rules for Other Methods of Dispute Resolution

There should be rules governing other methods of dispute resolution.

The new paradigm will be settlement-focused. Less than two per cent of all separation files end in a full trial according to the research of Dr. Julie MacFarlane of the University of British

Columbia. We need comprehensive rules that govern the other processes used by the majority. These processes are negotiation, collaborative practice, mediation and arbitration.

Each of these processes should be explained in the rules together with the basic components that must be present for such process to be valid.

40. Standardized Court Orders

We reviewed the standardized court orders currently used in Manitoba and believe a similar system should be used in New Brunswick.

This system would provide all lawyers and judges with a standard form of court orders for different aspects of a file. It would ensure that all support orders look the same so that vital information is not missing. It would eliminate the current differences in drafting style between lawyers and judges. However, it would not reduce the judge's discretion to modify or create a new type of order where necessary. It would be used as a reference tool.

Using a standard form of orders will also enable the court stenographer to create the order and provide it to both parties before they leave. If the lawyers or self-represented parties require clarification on terms of the order, they can seek it at that time instead of needing a second appearance to clarify the judge's language or the terms of a consent order.

As our new paradigm includes the introduction of masters to our Family Division, a standard form of orders would ensure that their orders are created in a similar format to the judges'.

41. Costs

Costs should follow the event – always. Currently, the matter is entirely discretionary. Consistency in this area would discourage clients from taking matters all the way to trial and encourage alternative forms of dispute resolution.

Prince Edward Island currently employs a procedure that requires the losing party to pay the costs of the winning party on a full indemnity (100 per cent) or partial indemnity (60 per cent) basis. There is a rule that sets out the hourly rate allowed to be recovered by a lawyer through this process and a list of recoverable disbursements. PEI lawyers report that this system is very effective in keeping family matters out of the courtroom and in promoting settlement through alternative dispute mechanisms.

Alternatively, costs could be assessed on a per issue basis, because we know that one party might be more successful on a custody issue and the opposing party successful on financial issues. Once ordered, costs should be enforced by the Family Support Order Service to ensure that they are paid. In addition to the award of costs on substantive rulings, costs should be ordered for non-attendance and non-compliance with the procedural rules.

Additionally, the Task Force believes that costs should be awarded in favour of Domestic Legal Aid when they represent the successful party and payable to the New Brunswick Legal Aid Services Commission.

42. Standing Rules Committee

The new system must be continuously maintained by a standing rules committee chaired by the Associate Chief Justice.

The current system of forms and rules and unwritten practice standards creates a mystery of family law. Once it is demystified, it must be maintained by a standing advisory committee on Family Division Rules and practice to ensure that it continually stays relevant.

CHAPTER 11: COURT ADMINISTRATION

As stated earlier, in New Brunswick, we essentially have eight separate and distinct Family Court systems. Wait times for everything from court mediators to court dates varies dramatically between judicial districts.

This information is not widely understood or recognized because the method of collecting information and formulating statistics is archaic. To quote one employee: “The technology is the pencil.” The stark but real truth is that there is no province-wide computerized case management system. There is no way for the Family Court administrators and Chief Justice of the Court of Queen’s Bench to identify well in advance where there is going to be a shortage of human resources and to manage these resources in a professional and effective way.

The Task Force is encouraged by the efforts of the Minister of Justice to secure the appointments of three additional Family Court judges. These resources are critical to the current system as well as to the introduction of the new paradigm.

Additionally, the Task Force strongly recommends the creation and appointment of a position of quasi-judicial master for every judicial district. This person should be a lawyer with a minimum of 10 years experience in the practice of family law as well as qualifications in mediation. Their role shall conduct case conferences, procedural orders and orders for disclosure, elective arbitration of marital property applications, uncomplicated or unopposed matters, provide interim relief under provincial legislation and ensure that all files are Court-ready.

It is imperative that the design and implementation of this system commence without delay. It is inconceivable that, in 2008, in a province of 750,000 people, we could have 18-month delays in one part of the province and empty courtrooms in another. We have too few settlement conferences happening and written decisions are routinely taking six months for judges to produce.

The amount of poorly managed resources and waste was shocking to the members of the Task Force. Reportedly, $300,000 was spent in 2007 in the Moncton judicial district for ad hoc Crown prosecutors when that jurisdiction has the most Family Court Crown prosecutors of any judicial district in the province. In the same year, Saint John spent only $38,000 even though it only has one Crown prosecutor and arguably the largest constituency of child protection clients in the province.

The Task Force was also very concerned that more than $400,000 was spent paying for lawyers for children in child protection matters, including infants, who are the subject of matters before the Court. This seemed to the members of the Task Force to be a luxury this province cannot afford and of very questionable benefit.

Too many cases get stuck in the court system for an extended period of time. Matters are entered for hearing well in advance of the trial date. Status hearings are required to encourage settlement, to ensure all parties are prepared and/or to narrow the issues.

The Family Court system needs to be run as a business by someone with business training and experience and in conjunction with an Associate Chief Justice for Family Division who has expertise in family law. The Task Force has reviewed the paper "An Alternative Model for Court Administration in New Brunswick" (September 2007) and wholly endorses its findings and recommendations for reform.

It is imperative that the Associate Chief Justice be appointed immediately in order to have that person guide the implementation committee in the next step of this process. It is also essential that a workload analysis of all employees in the Family Division be carried out. There are dramatic differences across the eight judicial districts.

It is the opinion of the Task Force that the entire Family Court system is doomed to fail in the event that we do not invest in a sufficient number of skilled and committed administrative support staff. We currently have professionals doing administrative functions and, as a result, there is no leadership and the Court chronically functions in damage-control mode.

Recommendations:

43. Immediately appoint an Associate Chief Justice for Family Court.
44. Appoint three new Family Court judges.
45. Appoint masters to each judicial district.
46. Create and implement a province-wide computerized case management system.
47. Appoint a chief financial officer to be responsible for the budget and financial management of the Court system.
48. Ensure a sufficient number of skilled administrative support staff.
49. Implement a workload assessment process for all Family Court administrative staff.
50. Implement electronic filing.

APPENDIX A: SUMMARY OF RECOMMENDATIONS

1. Endorse the Department of Social Development's new model for resolution of child protection matters.
2. Create a separate court docket for child protection matters.
3. Create a separate Rule of Court for child protection matters.
4. Create benchmarks for process timelines.
5. Reduce the number of non-parent parties represented in child protection matters.
6. Implement legislative changes to:
    a. define "all interested persons"
    b. add a section on evidentiary requirements to the *Family Services Act*.
7. Implement settlement conferences as a precursor to trial.
8. In the very rare case where a child requires legal representation, it shall be provided by the Child and Youth Advocate.
9. The *Family Services Act* requires amendment to clearly define when it is appropriate to appoint legal representation for a child.
10. Provide public information and mandatory education regarding child and spousal support.
11. Revise Rules 72 and 73 and the Family Court forms.
12. Create standard forms of orders to provide greater consistency.
13. Implement the new paradigm to provide a lean and fair system.
14. Implement a child/spousal support recalculation service.
15. Provide consensual dispute resolution options as alternatives to litigation in support matters.
16. Implement "Status of the Child" reports for child support files.
17. Provide public information and mandatory education regarding custody and access.
18. Implement a triage system of case management.
19. Expand and enhance the role of court social workers.
20. Provide consensual dispute resolution options for custody matters as alternatives to litigation.
21. Empower deputy sheriffs to enforce court orders.
22. Replace affidavits with a claim for relief in custody matters.
23. Revise Rule 72, Rule 73 and the Family Court forms.
24. Adopt higher threshold financial criteria for determining eligibility for Domestic Legal Aid, as recommended by the Review Panel.
25. Intake of clients should be done by Domestic Legal Aid lawyers who assist in the choice of process for dispute resolution.
26. Allow access to Domestic Legal Aid services for all components of a family law file.
27. Transfer support enforcement legal work to the Attorney General's office.
28. Provide more Domestic Legal Aid staff and/or contractual lawyers.
29. A staff psychologist should be attached to the Court to prepare custody and access assessments.
30. Create a standard request form for psychological assessments.
31. Educate legal professionals at every stage of their careers in interest-based negotiation.
32. Introduce collaborative family law into the new model for child protection matters.

33. Implement changes to Domestic Legal Aid to permit mediators more time to mediate.
34. Invest in administrative support, professional development and continuing education for mediators.
35. Establish mandatory courses at law schools and bar admission courses in interest-based negotiation.
36. Offer continuing education for judges and lawyers in a full range of dispute resolution processes.
37. Create new forms for Family Court in conjunction with the new paradigm.
38. Affidavits should be shorter and non-inflammatory and filed only after other forms of dispute resolution have been attempted.
39. Develop Rules to govern other dispute-resolution processes.
40. Adopt or create standard forms of court orders.
41. Make and enforce meaningful awards of costs.
42. Create a standing rules committee chaired by the Associate Chief Justice for Family Division.
43. Immediately appoint an Associate Chief Justice for Family Court.
44. Appoint three new Family Court judges.
45. Appoint masters to each judicial district.
46. Create and implement a province-wide computerized case management system.
47. Appoint a chief financial officer to be responsible for the budget and financial management of the Court system.
48. Ensure a sufficient number of skilled administrative support staff.
49. Implement a workload assessment process for all Family Court administrative staff.
50. Implement electronic filing.

APPENDIX B: CONSULTATION PARTICIPANTS

<table>
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Cindy Howie, Fredericton
Sylvia Mendes-Roux, Campbellton
Bill Morrissy, Miramichi
Ken Oliver, Woodstock</td><td>Child Protection Social Workers
Department of Social Development

Met with representatives in:
- Bathurst
- Campbellton
- Edmundston
- Fredericton
- Miramichi
- Moncton
- Saint John</td></tr>
</table>

Pierre Roussel Edmundston Vicki Wallace-Godbout, Moncton	
Joan Mix Director Child Welfare and Youth Services Department of Social Development	**Gary Love** Consultant Child Welfare and Youth Services Department of Social Development
Bernard Richard and Christian Whalen Child and Youth Advocate Office of the Child and Youth Advocate (Attended the Fredericton Canadian Bar Association (CBA) consultation session and provided a written submission.)	**Christian Whalen** Counsel Office of the Child and Youth Advocate (Attended the Fredericton CBA consultation session.)
Other	
Louise Surette Director Domestic Operations New Brunswick Legal Aid Services Commission	**Dr. Deborah Doherty and Emily Bell** Public Legal Education and Information Service of New Brunswick
Canadian Bar Association (CBA), New Brunswick Branch Met with members of the CBA in: - Bathurst - Campbellton - Edmundston - Fredericton - Miramichi - Moncton - Saint John	**College of Psychologists of New Brunswick** Luc Dubé Barbara Gibson Claudette LeBlanc, Registrar Teréz Rétfalvi
New Brunswick GRAND Society (The group provided a submission and Justice Guerette spoke with their representative on the telephone.)	**Madam Justice Jennifer MacKinnon and Master Robert Beaudoin** Family Court Branch Ontario Superior Court of Justice (Provided a presentation on the Ottawa pilot project.)
The Task Force also conducted a public consultation process. Requests for submissions were printed in the Telegraph-Journal, The Daily Gleaner, Times & Transcript and L'Acadie Nouvelle. The request for submissions was also posted on the Department of Justice and Consumer	

Affairs website.
Judges
Mr. Justice Guerette consulted with various members of the judiciary in the preparation of this report.

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