



W PROVINCIAL ADVISORY COUNCIL
ON THE STATUS OF
WOMEN
NEWFOUNDLAND & LABRADOR

*Family Justice Services in
Newfoundland and Labrador:
At what cost to women and children?*

April, 2008

The Provincial Advisory Council on the Status of Women was established in 1980 by the Government of Newfoundland and Labrador. It was created to advise Government on issues affecting the status of women as well as raise awareness of women's equality issues within the general public. The Women's Policy Office, Executive Council, is responsible for the implementation of the *Status of Women Advisory Council Act*.

The Advisory Council gratefully acknowledges the contribution made by many women to the development of this commentary on Family Justice Services in Newfoundland and Labrador.

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Family Justice Services in Newfoundland and Labrador: At What Cost to Women and Children?

Introduction

On March 1, 2007, a fundamental shift was made in how family law issues are resolved in Newfoundland and Labrador with the introduction of Family Justice Services (FJS) to all regions of our Province. Each and every parent or person who requires help to resolve conflicts related to custody, access and support is affected. An alternate dispute resolution process is now the primary tool for dealing with these issues and court is the alternative.

“The mandate of these sites is to deliver comprehensive family law services outside of the traditional court setting with support to children and families dealing with family law issues through a multi-disciplinary team approach,” said the Minister of Justice in a media release on June 12, 2007. The services are the product of a cooperative effort of the Departments of Justice, Health and Community Services, and Human Resources, Labour and Employment. Funding is provided by the Poverty Reduction Strategy.

The Provincial Advisory Council on the Status of Women agrees with increasing support services when there is a breakdown in the family or parental relationship. An increase in the number of counsellors dedicated to assisting parents is welcome. And certainly, the Advisory Council has heard some positive reports about the alternate dispute resolution option.

However, the Advisory Council has growing concerns about FJS as it concludes its first year of operation¹. Problems with policy and delivery of the service have been reported and many questions have arisen. Some of these relate to the qualifications and training of those conducting the mediation and whether they are trained to assess for violence and power imbalance.

Lack of public information about the service is also troubling. Individuals going to court are told they have to go to FJS. Is it clear the dispute resolution service is not mandatory? Who does a woman have to convince if she wants her application heard in court? Services for those going to court have been reduced. Increasingly, requests for information, assistance and intervention are being made to Women’s Centres and Shelters across the Province.

¹This commentary has relied on observations made by women in the Province and makes no claim to be a thorough review of the program. The lack of public information, scarcity of community involvement and inconsistency in delivery of the service makes that task difficult at this time.

Women suffer most if family law services are inadequate and inappropriate. In the census metropolitan area of St. John's, 28.4 per cent of families are headed by single parents and 83.2 per cent of these lone-parent families are headed by women (2006 census, Statistics Canada²). In 2001, 18,935 women were lone parents in Newfoundland and Labrador.

The time is right to raise these concerns as the Provincial Government takes steps to place greater reliance on alternatives to court in other areas which affect women. Current initiatives include alternate measures for adults in the criminal justice system, family violence treatment courts and mediation in child protection matters.

It is critical the safety of women participating in FJS and other proposed programs are ensured. It is imperative that a gender-based analysis informs the development of the legislation, policy and practice of these programs. It is also essential to recognize that women are a diverse group. Attention to ethnicity, class, race, age, disability and whether they live in urban or rural settings is necessary.

Cost savings cannot be the primary goal for introducing alternate dispute resolution.

This commentary outlines some of the concerns reported about Family Justice Services since March 1, 2007. We hope these insights will be of assistance to FJS and similar programs as they are advanced.

Public Awareness

Despite the significant and widespread impact of these changes to family law in the Province, there has been very little information distributed and virtually no education of the general public. While a handful of information sessions have been conducted in some centres, no electronic or published information is available.

We understand the service is evolving but surely making information available to the public should have been the first priority.

Recommendations:

- Ensure resources are available to inform the public about Family Justice Services, especially the child-focussed counselling service.
- Ensure user-friendly access to FJS in each region.

² Please note that this figure is based on the census metropolitan area as determined by Statistics Canada which is not the same as the boundary of the city of St. John's as we know it.

Community Involvement

To the best of our knowledge, there was no public consultation prior to the inception of FJS. Women's equality groups were not involved in the planning and design of this service. As a result, Government did not have the benefit of their valuable information and advice.

Many women seek the services of women's equality groups for information, assistance and support when faced with difficulties regarding their parenting arrangement, marriage or common law relationship. This is especially true in regions where Legal Aid does not maintain an office. Staff from Women's Centres and Shelters have a strong connection to women in our communities. They have valuable advice to offer regarding the substance and delivery of services because of their experience as advocates for women in dealing with government and other agencies.

Regional Implementation Committees

Although FJS Regional Implementation Committees include community representatives, they have expressed frustration with their function and operation. Some have lost confidence that Government has any interest in their participation.

These are some of the reasons:

- Infrequent meetings – we understand some have met very little and no more than twice.
- Representatives from women's equality groups are not notified about dates of meetings.
- In two of the four regions, women's equality representatives have not been replaced when the original appointee was not able to continue involvement. As an example, in Central Region, we understand no effort has been made to replace a committee member, who moved out of the Province in August, 2007.
- Minutes of meetings are not circulated which raises the questions: Are minutes kept? Why aren't they circulated?
- Questions asked are not answered.
- Materials promised are not provided.

Committees do not operate in an advisory capacity and again, valuable insight is lost.

Provincial Committees

We understand there are two Provincial Committees – one advisory and the other operational with responsibility for day-to-day management of the service. Neither Committee has representation from women’s equality groups.

Recommendations:

- Ensure representatives from women’s equality groups participate on the Regional Implementation Committee.
- Enlarge the role of the Regional Implementation Committees to include an advisory capacity and ensure opportunities for meaningful contribution by members.
- Ensure representation from women’s equality groups on the Provincial Advisory Committee and provide an opportunity to contribute to the development of policy.

Coercive/Mandatory Participation

As of March 1, 2007, all court applicants are automatically referred to FJS. Assessment for suitability for alternate dispute resolution and, if applicable, parent education is mandatory. A court application will not proceed until these steps are completed.

Recent legislative amendments³ and FJS policy decisions⁴ strongly encourage resolution of matters through the alternate dispute resolution process. Some Judges appear to have high expectations for cases to be concluded by FJS. This contributes to a perception there is no choice. In fact, a 2004 Evaluation⁵ of the pilot FJS in Corner Brook found that many clients did not realize it was not mandatory.

The message that participation is not mandatory must be effectively delivered.

Estimates of significant savings in court time (30-75%) as well as reduction in Legal Aid workloads were reported after FJS was introduced in Corner Brook

³ Examples include restrictions on applications for interim court orders and filing of consent orders without court appearances.

⁴ Elimination of services to the general public by the support application social workers – see discussion below.

⁵ Family, Children and Youth Section, Department of Justice Canada (2004-FJCY-8E) – available on the Department of Justice website.

(2004 Evaluation, see footnote 5). Many have expressed fears that alternate dispute resolution processes will be adopted by the justice system for cost-saving reasons rather than enhancement of services.

While the Provincial Advisory Council on the Status of Women agrees with the reduction of court wait times and increasing the availability of Legal Aid resources, we encourage caution about downloading family law clients from court to FJS for these reasons. If appropriate policy is not developed and resources are not provided to FJS, a serious disservice to women in our Province will result.

Recommendations:

- Ensure women know they have the right to refuse the alternate dispute resolution option and that courts remain available to resolve their custody, access and support conflicts.
- Provide resources to both FJS and Legal Aid to ensure support for women who choose to take their matter to court.

Mediator Qualifications

In 2001, a pilot Family Justice Service's program was implemented in Corner Brook. The evaluation prepared by IHRD and presented in 2004 (see footnote 5) indicated the program was well received by judges, lawyers, clients and the community.

When commenting on mediator qualifications, the report called for reflection on the role of the dispute resolution professionals as well as a commitment to develop clearly defined standards (p. 53).

Have the standards been clearly defined? Are they similar to Family Mediation Canada certification standards? This Canadian organization offers three different family mediator designations: Family Relations, Family Financial and Comprehensive Family. The prerequisites for the first level include at least 80 hours of basic conflict resolution and mediation theory education and skills training including intercultural training. At least 100 hours of further related education and training is required.

It is important to note there is no regulatory governing body for this profession in our Province. The administration of FJS is responsible for setting and maintaining a high level of competence in relation to their mediators. We understand there are

a variety of professionals filling the FJS positions including lawyers, support application social workers and others.

Has training been provided by FJS? Is it accurate that some have received none or as little as four days training?

What ongoing support and professional development is provided to the FJS mediators?

Recommendations:

- Ensure clearly defined standards and qualifications are set and maintained for mediator positions.
- Provide ongoing support and professional development for mediators.

Violence against Women, Power Imbalance

One of the first FJS cases brought to the attention of the Advisory Council involved a woman leaving a relationship with a history of violence. Her situation raised both significant safety and power imbalance concerns. She had a restraining order against her husband, but the mediator did not become aware of this until several mediation sessions had been completed. Alternate dispute resolution was not appropriate and was not successful. The case highlighted the need for vigilance in relation to these issues.

The 2004 Evaluation report commented on this need:

“The issue of power imbalances and violence against women needs to be examined closely in the current model being implemented in Western Region, in terms of beliefs, policy and practice ... the program needs to ensure that its staff has undergone formal training on power imbalances and violence issues in separation and divorce. The program also needs to make certain its policies and practices are in keeping with current knowledge.” (p. 54)

How many hours of training on these issues have the FJS mediators received? What standards have been adopted? By way of comparison, Family Mediation Canada requires at least 35 hours of training on the family dynamics of separation and divorce and at least 21 hours of training including instruction on power imbalances and the dynamics and effects of family abuse on family members.

In terms of screening aids, we understand the FJS intake application includes questions regarding violence and power imbalance and the Dove screening tool was provided to the mediators. However, training was not completed in relation to the latter. In addition, some are critical of the Dove tool as a means of assessment.

We wonder how many of the workers are using these tools. How is this monitored?

How could a woman with a restraining order against her husband not be detected? Why was she assessed as an appropriate candidate for alternate dispute resolution?

Recommendations:

- Ensure mandatory staff training related to issues of abuse, violence and power imbalance in intimate relationships.
- Ensure mandatory staff training in relation to the specific screening tools utilized by the program.
- Ensure mandatory assessment of all cases for abuse, violence and power imbalance.
- Ensure files are monitored to confirm completion of assessment for abuse, violence and power imbalance in intimate relationships.

Personal Support during the Mediation Process

Women are denied the presence of a support person during the mediation sessions unless her partner/husband agrees. FJS justifies this policy because of concerns for confidentiality and power imbalance.

We suggest that there will be some situations where it is not reasonable to expect women to take part in the sessions without personal support. Are properly trained mediators not able to assess when a request for the presence of a third party is based on a need for support versus intimidation or control?

Recommendation:

- Where necessary, ensure presence of third parties as personal support during the mediation process.

Provide Full Services for those Seeking Child Support

Prior to March 1, 2007, the Support Applications Social Worker Program provided assistance to clients of Department of Human Resources, Labour and Employment (HRLE) pursuing child support. In addition, many of these social workers assisted the general public with their applications all the way through the court process. FJS incorporated the Support Applications Social Worker Program and now, assistance for members of the general public is no longer available. That means, if the case has to go to court, the mother is on her own unless she is a client of HRLE.

We assume assistance for HRLE clients is maintained as the Government claws back each dollar received as support and not because of concern for those children.

Now that the Support Application Social Worker Program is not available, where can women turn for services? Legal Aid does not assist with cases where only support is being pursued unless the other side has a lawyer. Legal Aid states they have not been funded to provide counsel in all support cases since it is the view of Government that the service has already been provided. But no one is providing the service for those who cannot afford to hire a private lawyer. To make matters worse, it is not economically worthwhile for private lawyers to take on these cases in some communities. So, even with resources, there is no one to hire!

As a result of this cut-back, at least one Women's Centre is now receiving increased requests for assistance with court applications. In another region, a local lawyer is voluntarily conducting a workshop to show women how to complete their court applications and outline what to expect with the court process because of the absence of family legal services in their community.

Family Justice Services is funded by the Poverty Reduction Strategy. The reduction of services to pursue child support is hardly consistent with the goals of the PRS and cannot be justified.

Recommendation:

- Provide full support services, including assistance in court for all persons seeking child support.

Legal Advice and Cooperation between FJS and Legal Advisors

The Advisory Council has serious concerns about the provision of independent legal advice and FJS. In at least one region, we have heard FJS leaves a client's lawyer out of the loop after initial notification. FJS does not share information or provide copies of the agreements to clients' lawyers. Sometimes, a settlement has been reached but the lawyer is not notified.

We have heard at least one report of a Legal Aid lawyer who refused to provide legal advice regarding an agreement. Some Legal Aid lawyers appear to consider FJS a substitute for their legal services.

We have also heard significant legal rights, such as spousal support, are being mediated. Division of matrimonial property is linked to spousal support and negotiating one without the other is not fair to either party. Needless to say, the combination of untrained mediators and absence of independent legal advice is a lawsuit waiting to happen.

The Advisory Council emphasizes the need for independent legal advice for women who are bargaining their own and children's rights.

Recommendations:

- Ensure, not merely encourage, the provision of independent legal advice prior to finalizing agreements.
- Provide resources for adequate legal services for clients of FJS.

Registration of Agreements

Enforcement of agreements reached through an alternate dispute resolution process will see less delays if the agreement is registered in Court. Of more significance, a court order will have greater legal effect than an unregistered agreement. As an example, police will not take action against a father kidnapping a child if the only proof of the mother's custody right is an unregistered, written agreement.

In some circumstances, registration of an agreement facilitated by an FJS dispute resolution process is left to the client's initiative. FJS does not necessarily complete this step in the process. It is not reasonable to expect the general public to navigate the court system to convert an agreement to a consent court order or to meet the requirements of a domestic contract.

The Advisory Council recommends mandatory registration with an option to opt-out. FJS staff should be responsible for the registration process.

Recommendations:

- Ensure mandatory registration of all agreements in court with the option to opt out – similar to mandatory registration of support orders with the support enforcement agency with an option to opt out.
- Ensure FJS staff complete registration of agreements at court.

Maintain Child Support Payments during the Mediation Process

When the FJS dispute resolution process is initiated, some fathers have stopped making child support payments until the process is complete.

Of course, the children have not stopped eating just because mediation is in process.

Recommendation:

- Ensure child support payments are maintained during the time required to reach a final resolution.

Court Over-ride of FJS Assessment

We understand the courts are sending people back to FJS after FJS has assessed the case to be inappropriate for their services. If the courts do not demonstrate respect for FJS, how will trust and integrity in FJS be maintained?

Recommendations:

- Track the incidence of cases and delays experienced because court did not accept the eligibility assessment by FJS.
- Provide the Judiciary in the Province with education about the appropriate use of mediation and other dispute resolution processes.

Splitting the Issues

There are reports FJS or court has encouraged final resolution of custody and access arrangements before financial disclosure has been provided. Such a practice may result in inappropriate support amounts and significant delays in payments.

Recommendation:

- Ensure financial disclosure is provided before custody and access are finalized.

Resources and Facilities

Accessibility

We have heard one office was inaccessible during this past year. Others do not offer an appropriate setting for a mediation session – they are either too small or open onto a well-used public area.

It is essential all offices are physically accessible and accommodate people with disabilities. Cultural sensitivity must be ensured and diverse needs must be met – translation services, materials for those with intellectual disabilities, to name only a few.

Location and Environment of Mediation Sessions

Some women have found shuttle mediation/conciliation ineffective – that is, when separated geographically, the mediator may talk to the parties separately and deliver settlement positions back and forth until agreement is reached.

In other cases, the father/partner can afford to travel to the FJS office and the woman cannot. He has personal contact with the mediator whereas she has to communicate by phone. Some women have found this difficult, and it has jeopardized their trust in the process.

We understand video conferencing in the dispute resolution process is contemplated. What were the results of the pilot conducted by Legal Aid using this technology to provide legal advice? It is critical additional care is exercised when it comes to assessment for violence and power imbalance if this technology is used.

While the Advisory Council recognizes the suitability and efficiency of these type of options in some circumstances (i.e., husbands/fathers working in other provinces), we emphasize the need for sensitivity in relation to power imbalance issues.

Recommendations:

- Provide accessible facilities and a full range of accommodation for diverse needs.
- Ensure women know they have the right to refuse participation in dispute resolution sessions, if reasonable arrangements for conduct of the sessions are not provided.

Wait Times

We understand significant backlogs and delays exist in at least two regions in the Province. In one example there was a delay of over 30 days from the time of filing a court application to the time of referral to FJS. We understand the target time for referrals to FJS is two days. By comparison to the court process, the respondent would have 30 days from service to file a response. Some of the benefits of FJS are obviously lost by significant delays.

Are backlogs in the FJS process creating more delays than is experienced with the court process?

Should the restrictions on applications for interim orders be removed?

Conclusion

The Provincial Advisory Council on the Status of Women understands Government intended to make improvements to services in custody, access and support matters with the expansion of Family Justice Services. However, we fear the opposite is occurring.

To truly improve these services, we urge Government to proceed with a commitment to:

- Include women's equality groups in an advisory capacity.
- Use a gender inclusive analysis in the development of policy and practice.
- Be sensitive to the context of abusive and violent relationships and power imbalance.
- Provide adequate resourcing to the inter-disciplinary agencies involved.
- Promote high standards of service.

Without commitment to these principles, cost savings to the family justice system may occur at the expense of women's safety and children's well-being.

Finally, the Advisory Council remains available to provide advice regarding the evaluation of Family Justice Services scheduled to proceed in 2008.

Appendix 1: Summary of Recommendations

1. Ensure resources are available to inform the public about Family Justice Services, especially the child-focussed counselling service.
2. Ensure user-friendly access to FJS in each region.
3. Ensure representatives from women's equality groups participate on the Regional Implementation Committees.
4. Enlarge the role of the Regional Implementation Committees to include an advisory capacity and ensure opportunities for meaningful contribution by members.
5. Ensure representation from women's equality groups on the Provincial Advisory Committee and provide an opportunity to contribute to the development of policy.
6. Ensure women know they have the right to refuse the alternate dispute resolution option and that courts remain available to resolve their custody, access and support conflicts.
7. Provide resources to both FJS and Legal Aid to ensure support for women who choose to take their matter to court.
8. Ensure clearly defined standards and qualifications are set and maintained for mediator positions.
9. Provide ongoing support and professional development for mediators.
10. Ensure mandatory staff training related to issues of abuse, violence and power imbalance in intimate relationships.
11. Ensure mandatory staff training in relation to the specific screening tools utilized by the program.
12. Ensure mandatory assessment of all cases for abuse, violence and power imbalance.
13. Ensure files are monitored to confirm completion of assessment for abuse, violence, and power imbalance in intimate relationships.
14. Where necessary, ensure presence of third parties as personal support during the mediation process.

15. Provide full support services, including assistance in court for all persons seeking child support.
16. Ensure, not merely encourage, the provision of independent legal advice prior to finalizing agreements.
17. Provide resources for adequate legal services for clients of FJS.
18. Ensure mandatory registration of all agreements in court with the option to opt out – similar to mandatory registration of support orders with the support enforcement agency with an option to opt out.
19. Ensure FJS staff complete registration of agreements at court.
20. Ensure child support payments are maintained during the time required to reach a final resolution.
21. Track the incidence of cases and delays experienced because Court did not accept the eligibility assessment by FJS.
22. Provide the Judiciary in the Province with education about the appropriate use of mediation and other dispute resolution processes.
23. Ensure financial disclosure is provided before custody and access are finalized.
24. Provide accessible facilities and a full range of accommodation for diverse needs.
25. Ensure women know they have the right to refuse participation in dispute resolution sessions, if reasonable arrangements for conduct of the sessions are not provided.



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