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RESEARCH REPORT

CHILD ACCESS IN CANADA: LEGAL APPROACHES AND PROGRAM SUPPORTS

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Child Access in Canada:
Legal Approaches and Program Supports

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The views expressed in this report are those of the author and do not necessarily represent the views of the Department of Justice Canada.

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INTRODUCTION

Nearly 70,000 Canadian couples divorce each year, and half of these couples have dependent children (Department of Justice Canada, 1997). Moreover, thousands of common-law couples separate each year, and significant numbers of these couples have dependent children. Post-separation or post-divorce parenting is, therefore, an everyday reality for large numbers of Canadian parents. With it often comes stress, conflict and, for a small number of couples, one or more journeys through the courts to resolve access and other disputes.

About 9 in 10 children live with their mothers after divorce or separation. Only about seven percent live with their fathers, and a very small number live with both parents equally. Although 13 percent of court orders are for shared custody, the children actually live with their mothers in most of these cases (Department of Justice Canada, 1999). The overwhelming majority of access (or contact) parents are, therefore, fathers. The average parenting agreement awarded by the court gives a parent "reasonable access", although some agreements specify the kind and nature of access.[1]

The typical Canadian post-separation parenting arrangement involves a custodial mother and a father awarded reasonable access. Only one percent of Canadian fathers are denied access after separation or divorce, in keeping with the widely held view, spelled out in subsection 16(10) of the *Divorce Act*, that a child should have as much contact with each parent as is consistent with the best interests of the child.

The problem of access enforcement has gained prominence in recent years with access parents' complaints about access denial, and growing concern about finding legal solutions to disputes over access that will genuinely serve the child's best interests. Traditional legal sanctions, such as civil contempt, seem to be rarely used, mainly because they are not seen to serve the child's best interests but also because evidence suggests that access denial is only one of a cluster of problems that beset some couples and that may best be dealt with together.

At the same time, concern is growing about the apparent failure of access parents to exercise the access they are awarded. If it is in the child's best interests to maintain contact with both parents, then clearly it is important that both parents maintain that contact for the child's sake.

This report addresses the following questions:

- What is the extent of the problem of unwarranted access denial on the part of custodial parents in Western, common-law jurisdictions?

- What is the extent of the problem of non-exercise of child access on the part of non-custodial parents in Western, common-law jurisdictions?

- What are the strengths and weaknesses of the available data on access denial and non-exercise of access?

[1] Note, no court order covers custody and access arrangements for some 40 percent of Canadian children five years after their parents have separated (Department of Justice Canada, 1999).

- What program and service models exist in Western, common-law jurisdictions to address the problem of enforcing access orders? What model or models are in use in Canada?

- Have evaluations been undertaken on the effectiveness of existing programs and services, and what were the results? Are there effective programs and services that should be given consideration in the Canadian context?

- What specific program approaches to access enforcement exist in Canada at the federal, provincial and territorial levels? What do the evaluations of these programs tell us in terms of impact and effectiveness in addressing access issues, and in terms of benefits to the legal system, the social services system, parents and children?

This report examines the problems of unwarranted access denial and failure to exercise access from three different perspectives. Chapter 1 explores the state of research on the incidence of access denial and failure to exercise access, and what the research says about the importance of ongoing contact for children. Chapter 2 sketches legislative approaches to access enforcement that have been adopted by Canadian provinces and territories, as well as the two very different jurisdictions of Australia and Michigan in the United States. Chapter 3 examines research on and evaluation of the efficacy of some programs and services being used by various jurisdictions to resolve access disputes in ways that conform to children's best interests.

Given the very short span of the project, the research consisted primarily of a scan of law and social scientific journals and of the Web sites of family law research organizations and institutions. The document review used to develop the sketches of the various provincial and territorial approaches to access enforcement was augmented by telephone calls to members of the Federal-Provincial-Territorial Family Law Committee, and limited telephone contact with program directors in some provinces. Given the time frame, not all committee members could be reached. The document review of the State of Michigan's model of access enforcement was also augmented by telephone interview with state officials in the office responsible for overseeing the county-based programs.

The content of the report is meant to be neither a comprehensive nor an exhaustive examination of the issues. However, the author hopes that it does shed light on some of these complex matters.

CHAPTER 1: DIMENSIONS OF THE PROBLEMS OF ACCESS

1.1 INCIDENCE OF UNWARRANTED ACCESS DENIAL

Although unwarranted access denial almost certainly occurs more often than the small number of court applications would indicate, few studies have documented its incidence among separated or divorced parents with children. Surveys of access parents suggest that access denial is fairly widespread (see Appendix 1 for a summary of major studies). In one U.S. study of non-custodial fathers (Arditti, 1992), one third of whom reported seeing their children more than once a week and 13 percent of whom reported seeing them less than once a month if at all, half the fathers reported that the mother "interfered with" visits.

Almost 70 percent of Canadian and British non-custodial fathers in another study believed their ex-wives discouraged paternal contact (Kruk, 1993). They believed their ex-wives did this by denying access (mentioned 25 times), not having the children ready or available, changing arrangements at the last minute, engaging in confrontation or conflict with the father at the time of the access visit, criticizing the father to the children, and/or by periodically refusing access or residential access. Half of these fathers no longer saw their children, and 90 percent of them said their ex-wives' discouragement or denial of access was one of three reasons why they had ceased having contact with their children.

Other Canadian studies of both custodial and non-custodial parents indicate a lower incidence of access denial or interference. Interviews conducted as part of a Canadian divorce study found that only 13 percent of men and 18 percent of women reported access problems of any kind during the 1980s (McCall, 1995). In an Alberta study, 70 percent of custodial parents and 64 percent of non-custodial parents reported that access was rarely denied (McCall, 1995). Another U.S. study which also interviewed both custodial and non-custodial parents found that custodial mothers "interfered with fathers' visits" at a rate of 20 to 40 percent (Kelly, 1993). One longitudinal, qualitative study of separating California couples found that access was denied in about 20 percent of cases (Wallerstein & Kelly, 1980).

There are limits to what these studies tell us about the incidence of unwarranted access denial. Parents' views on what counts as "access denial" vary. One submission to Australia's 1992 Parliamentary Joint Select Committee on family law reform, for example, argued that custodial parents deny access by alleging physical or sexual abuse by the access parent, by moving residence too far away for the non-custodial parent to visit, and by debating the interpretation of access orders when the non-custodial parent comes to visit (Family Law Council, 1998a). On the other hand, fathers in the Canadian-English study (Kruk, 1993) appeared to distinguish between the denial of access and the periodical refusal of it.

Sometimes access parents say that they are being denied access when their spouse denies them what they think is a "reasonable amount" of access (most Canadian access orders are for unspecified "reasonable access"). Spouses may have honest disagreement over what is reasonable access, although in the absence of any mechanism to adjudicate the argument, such as a court, the custodial parent acquires the de facto authority to determine what access is reasonable. How many access parents want more access than they have at present? The Alberta

study found that 37 percent of access parents wanted more time with their children, while 55 percent of custodial parents wanted their ex-partners to exercise more of the access they had (McCall, 1995). Applications for access rose dramatically in Australia in the 1990s when new family laws introduced co-parenting and eliminated the old custody and access model. It was speculated that many of the new applicants were fathers who felt they could acquire access, or more access, under the new laws (Family Law Council, 1998b).

It is even more difficult to ascertain the incidence of *unwarranted* access denial from reporting surveys of access denial. In the state of Michigan, for example, custodial parents who believe the access parent will abuse the child, or is often too drunk to take care of the child, *must* deny access or face charges themselves. To avoid conviction on access denial charges, they must then "show cause" for the access denial in court, if or when the access parent files charges. Similar problems arise in Canada (Bala et al., 1998). In these instances, the access father has been denied access—wrongfully, he will believe, if he maintains he was sober and/or a non-abuser—even though the court would likely excuse it. As will be discussed in Section 1.4, significant numbers of access enforcement cases that reach court have this kind of complexity. Determining the incidence of *unwarranted* access denial outside the courtroom, therefore, seems very difficult, since the facts of individual cases may need to be known.

The Social Science Research Literature on Access Denial

Social researchers usually study access denial as part of a cluster of post-divorce problems that plague a minority of separated or divorced couples, rather than as an isolated legal problem. One U.S. study estimated that 30 percent of divorcing American couples experience conflict for three to five years after the divorce (Ayoub et al., 1999). Two other longitudinal U.S. studies confirm this picture. One study found that 40 percent of parents at divorce reported moderate or high levels of disagreement regarding visiting or co-parenting during the previous six months. Two years later, only 20 percent reported frequent arguments and only one quarter reported minimal or no cooperation, while 60 percent reported moderate to high cooperation (Kelly, 1993). The second study found that 30 percent of divorcing and separating couples had substantial or intense legal conflict in resolving custody or visiting issues. In the second year of divorce, one third of the couples were still in conflict, half of those arguing in front of the children (Kelly, 1993). Australian studies show the same general picture: 30 percent of divorcing couples experiencing high conflict over child access, with only 10 percent of the couples still in conflict about this three years later (Funder, 1996).

Social scientific studies show that disputes over access are usually one of the "hotspots" in high conflict relationships, although most of these relationships have other kinds of disputes as well. Access may be the main problem or only one of the issues that keep the general hostility going between such couples after they separate. It may just be the most apparent issue in conflict that stems from another problem with the post-separation arrangement, such as child support or the dispersion of property.

Clearly, access denial need not occur only in cases when couples have intense conflict. However, there has been relatively little study of low conflict separations in which access continues. Access denial seems more likely to occur in cases when there is high conflict among the parents, and when they lack the will and mutual trust to sort out the difficulties that arise with the instability of the first year of separation (Hirst & Smiley, 1984).

Some studies explore custodial parents' reasons for denying access, and shed some light on how often unwarranted access denial occurs. Many of the custodial mothers in some studies did not see any value in the father's continued contact with the children. In fact, mothers often actively sabotaged the visits (Wallerstein & Kelly, 1980).[2] Mothers have also been shown to promote an emotional campaign against the non-resident parent and his ability to parent their children (Strategic Partners, 1998). Clearly, some cases of access denial are unwarranted and evidence shows that many of these are not reflected in court statistics.

Custodial parents in many studies also offered reasons for denying access that make the denial warranted in many cases. In one 1994 Canadian study, custodial parents said they denied access because they feared that the child would be kidnapped; inadequately cared for; physically or sexually abused; and questioned, bribed and alienated. They also feared the access parent's immorality; the access parent's alcohol or drug abuse; that the child would refuse to visit the access parent or would be upset by it; and that child support might not be paid (Strategic Partners, 1998). Some of these reasons, if well founded, would be grounds for denying contact in most jurisdictions, and a few might be grounds merely if the custodial parent sincerely believed them.

In its report on access enforcement and penalties in Australian courts, the Family Law Council firmly upheld the need for enforcement against parents who defied or ignored access arrangements without good reason. It was also highly critical of a minority of access parents whose anger and controlling and manipulative attitudes, in the Council's opinion, would make solutions to disagreements with their ex-spouses difficult or impossible to find (Family Law Council, 1998a).

One Australian study of custodial parents using supervised access (ordered most frequently in cases involving violence or abuse of the spouse and/or child, and other kinds of conflict) found that, before agreeing to supervised access, nearly all these mothers had tried as hard as they could to deny access, in most cases because they felt they or their children were at risk (Strategic Partners, 1998).

Of course, whether or not an access denial is unwarranted depends on the law as well. Many of the reasons given above would be sufficient to justify access denial in jurisdictions where the best interests of the child govern the awarding of access and the adjudication of access denial disputes. However, in other jurisdictions, such as Michigan where direct harm to the child is the only grounds for denying access, most of these reasons would not count in determining whether access denial was "excusable" (although judges might use their discretion in considering them).

Court Applications for Access Denial

It is very difficult to estimate what proportion of access denials (unwarranted or otherwise) are brought to court, or what proportion of those brought before the court are upheld as unwarranted.

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[2] Note also, in Hirst & Smiley (1984), most of the Australian mothers whose ex-spouses never visited were quite happy with this situation and did not think it affected their children's well-being. However, this attitude may be changing. A recent survey of Australians' attitudes about post-separation parenting found that most mothers and fathers believe both parents should remain involved if possible. Funder & Smyth (1996) report on their attitudes study in *Family Matters,* Journal of the Australian Institute of Family Studies.

What is clear is that only a small number of access parents bring access denial applications to court in Canada and elsewhere. It seems difficult to ascertain just how few do so—family courts in some provinces do not keep statistics that make isolating this kind of information easy.[3]

Australian figures, however, show there were an estimated 2,000 contested contact cases in 1997-98 in that country, out of about 3,808 contested matters (including custody and property settlement) that came before the courts (Family Law Council, 1998a).[4] That year there were about 24,000 applications for contact cases, out of about 100,000 matters brought before the court (Family Law Council, 1998a), and 51,000 divorces involving almost 52,000 children (Strategic Partners, 1998). Some 30,000 domestic violence restraining orders were issued (Strategic Partners, 1998).

Proportionately fewer applications are likely to be brought in jurisdictions where unwarranted access denial is enforced only through civil contempt provisions that are expensive and onerous to pursue. In submissions to the Australian Parliament's Joint Sub-Committee examining family law, about 12 percent of access fathers said cost of litigation was a major factor preventing them from bringing their case to court (Family Law Council, 1998b).

In summary, access denial appears to be a significant problem for a minority of parents after separation. How much of this denial is unwarranted depends on the context in which the denial takes place—and there may be considerable difference of opinion on this, depending on the facts of the case—and on the legislative framework and principles governing access arrangements and enforcement. To some extent, unwarranted access denial is a construction of the legal framework that governs the enforcement of access.

1.2 INCIDENCE OF FAILURE TO EXERCISE ACCESS

Although the incidence of unwarranted access denial is difficult to establish, there are considerable data on the incidence of the failure to exercise access. Some major studies are summarized in Appendix 1. Roughly the same patterns of access exercise emerge in these studies, despite the variations in study structure and venue. About one third of non-custodial fathers lose touch with their children completely within five years of separation, while another third stay in frequent and regular touch.

The studies vary too much for a more detailed analysis of the differences in exercise of access across countries. Studies show, for example, that access parents report making more visits than the custodial parents report occurring (Nord & Zill, 1996), so incidence varies with types of respondents. However, the broad similarity of results across various jurisdictions does suggest that formal differences in their legal systems, such as the presumption of access entrenched in

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[3] British Columbia is one such province. Interview with Debbie Chan, researcher with the Family Law Division of the provincial Attorney General.

[4] Basing its estimate on the 1,611 contested contact matters that came before the court in 1993-94, the Australia and New Zealand Association of Children's Access Services (ANZACAS) calculated that contested contact matters cost the Australian courts Aus $75 million in 1993-94. It estimated the court spent another $75 million on matters commenced in the court but settled prior to hearing (ALRC, 1995). ANZACAS changed it's name in 1996 to Australian and New Zealand Association of Children's Contact Services (ANZACCS).

many U.S. states, do not significantly determine how frequently non-custodial fathers exercise access.

There is some evidence that the amount of contact of non-custodial fathers with their children may have increased in recent years (Kelly, 1993; Nord & Zill, 1996)—more staying in touch, and more often. Experts attribute much of this to changing social trends in the involvement of fathers with their children. There does not seem to be a major increase in most fathers' involvement in care-taking responsibilities for their children where co-parenting laws have been introduced (Rhoades et al., 1999), although a larger minority of shared residence fathers in those jurisdictions do appear to have the child living with them for significant periods. More access fathers also have their children stay with them for longer periods (Rhoades et al., 1999).

Patterns of Failure to Exercise Access

There appear to be consistent patterns across different jurisdictions in how access (non-custodial) parents lose or maintain contact. The following are some examples.

Non-custodial mothers exercise access more than non-custodial fathers (Department of Justice Canada, 1999); both more mothers see their children, and more see them more often. No studies were found exploring why mothers maintain contact more.[5]

In Canada, twice as many common-law non-custodial parents as married non-custodial parents lose contact with their children at separation, but roughly the same proportion contact them at least once a week or biweekly. There are major differences across provinces: in the Maritimes, more common-law access fathers visit at least once a week than do married access fathers, whereas in British Columbia only half as many common-law access fathers visit at least once a week as do married fathers (Department of Justice Canada, 1999). In the U.S., unmarried fathers are far less likely to maintain contact with their children than married fathers (Amato & Rezac, 1994).

Non-custodial parents exercise access less and less over time after being separated (Family Law Council, 1992a; Amato & Rezac, 1994). The National Longitudinal Study of Children and Youth (NLSCY) found, for instance, that 47 percent of Canadian fathers see their children at least weekly or biweekly at the time of separation, but after five years only 31 percent of fathers saw their children that often. Some 24 percent of fathers were not in contact after five years, compared to 15 percent at the time of separation (Department of Justice Canada, 1999).

The NLSCY data show that non-custodial mothers (see Appendix 1) also decrease contact over time, indicating some general factors at work against the desire or ability of all access parents to maintain contact over time. These factors also appear to operate no matter how deeply the access parent is involved with his or her children, since both the numbers of parents maintaining close contact and number maintaining any contact decline.

Non-custodial fathers are more likely to stay in touch with older children, i.e. not toddlers and infants (Nord & Zill, 1996), and more with sons than with daughters regardless of their ages

[5] The greater frequency of mothers' contact may partially reflect different access awards among non-custodial mothers and fathers.

(Family Law Council, 1992a). Married fathers are also much more involved with sons than with daughters (Nord & Zill, 1996).

However, there is little association between whether an individual father was involved with his children before separation, and whether he maintains frequent contact with them afterwards. Some fathers who are close to their children during marriage break all contact quickly, while others become more involved after separation (Family Law Council, 1992a; Nord & Zill, 1996; Kruk, 1993; Arditti, 1992).

Parenting arrangements established within the first few weeks of separation are a good predictor of long-term parenting arrangements (Family Law Council, 1992a; Kelly, 1993). This suggests that it is crucial to access parents' ongoing involvement with their children that the best possible access arrangements be put in place at the time of separation and divorce.

Access parents are more likely to remain in touch when the access arrangements are flexible and regular (though they may also be highly specific), and more likely to lose contact over time when the arrangements are rigid (Hirst & Smiley, 1984).

The better the relationship between the spouses, the more likely the access parent is to stay involved with the children (King, 1994).

Although contact tends to diminish over time generally, access parents who pay child support are much more likely to stay in touch with their children and visit them more frequently than those who do not. The nature of the relationship between paying child support and maintaining contact is not fully clear however.[6] Separated and divorced Canadian access parents with private child support agreements are 10 times more likely to see their children regularly than parents with no private support agreements (Department of Justice Canada, 1999).[7]

Breach of Access

One form of failure to exercise access is breach of access. Access parents breach access when they violate the terms of an access order by failing to turn up on time, failing to turn up at all and not notifying the custodial parent, returning the child late, etc. The most extreme breach is abduction, when an access parent absconds with the child, usually to another jurisdiction. All the jurisdictions surveyed have legal provisions on abduction, and this issue is not discussed in this report.

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[6] For Canadian data see Department of Justice Canada, 1999, Figure 14. The high association between child support and exercise of access is also found in other jurisdictions.

[7] Whether there is a causal connection between maintaining access and paying child support, or whether both behaviours are rooted in a third factor (such as parental attachment or high cooperation among ex-spouses), is debatable. Furthermore, if there *is* a causal connection, which factor causes the other? Many researchers doubt that enforcing either access or child support has a positive effect on the other variable. This skepticism is supported by the National Longitudinal Survey of Children and Youth data (Department of Justice Canada, 1999), which suggest that access parents are much more likely to maintain close contact if their child support agreements are private and voluntary. An analysis of the U.S. National Longitudinal Study of Youth found no causal links between visitation and child support payments, and suggested that a third factor explained high levels of both (Nord & Zill, 1996).

Breach of access typically occurs when the parent has maintained some contact with the child, even if irregular. Regular and consistent breaches of well-specified access agreements (say one weekend in two with the access parent, starting Friday night at 6 p.m.) would presumably also count as failure to exercise access in the sense discussed in the section above on unwarranted access denial. Some provinces enforce some kinds of breaches of access when the access parent fails to return the child on time. Under Australia's new family law, access denial, civil contempt breach of access, and failure to exercise access are treated equally as violations of parental responsibility, although relatively few applications have yet been made under the failure to exercise provisions. On the other hand, many U.S. states, such as Michigan, do not include breaches of access and failure to exercise access as violations of parental responsibility (*Model Friend of the Court Handbook*, 1998).

In Canada, there is little evidence to indicate how often custodial parents make applications against breach of access or failure to exercise access. In Australia, however, custodial parents rarely bring breach of access/failure to exercise access applications (Family Law Council, 1998a).[8] One study of court duty lists found that all but one of the access applications was from access fathers. Yet in submissions to the Australian Family Law Council's review of access penalties and enforcement, and to the Australian Law Reform Commission's study of difficult access cases, several organizations claimed that breaches of access—not turning up, not returning the child, etc.—were a chronic problem. Submissions also claimed that many men obtain contact orders, but then have no contact with their children even after having pursued lengthy disputes in court (Australian Law Reform Commission, 1995).

There appear to be a wide variety of reasons why individual access parents' contact diminishes over time. Access denial may account for some parents' loss of contact, but high conflict between the ex-spouses, the access parents' difficulty adjusting to their new and usually diminished parental role, socio-economic factors, the children's wishes, and simply life events that take access parents and custodial family units in different directions are also clearly important.

In summary, failure to exercise access appears to be much more prevalent than access denial or unwarranted access denial. The patterns of failure to exercise access outlined earlier point to a range of reasons for its occurrence. The problems of unwarranted access denial and failure to exercise access need to be addressed equally if the primary policy objective is to promote the continued involvement of parents in their children's lives, except when that would not be in the child's best interest.

[8] However, the claims made in many submissions indicated that many custodial parents did not know they could legally bring breaches of access and failures to exercise access to court.

1.3 ACCESS AND CHILDREN'S WELL-BEING

The assumption underlying efforts to reduce unwarranted access denial and increase parents' exercise of access is that the child's best interests lie in maintaining ongoing relationships with both parents after separation or divorce. For signatories to the Hague Convention on the Rights of the Child, like Canada, it is important to encourage access parents' ongoing involvement with their children to the extent that it satisfies the child's best interests. But even in the U.S., which has not signed the convention and does not officially recognize the "best interests" principle, the legal presumption in favour of access enacted in many states is justified on the grounds that access almost always serves the child's best interests.

What does the research say? Existing studies provide no consensus, though they continue to proliferate rapidly. Still, some themes emerge from the most influential research of the last several years. Most children report wanting contact, or more contact, with their non-custodial parent than many currently have (Family Law Council, 1992a; Lamb et al., 1997). They also say consistently that loss of regular contact with one of their parents is the worst thing about their parents' divorce (Kelly, 1993). Children's longings also seem to vary according to gender, with boys missing their access fathers most and girls missing their access mothers most.

Although researchers used to think that ongoing contact was virtually always in children's interests, most now seem to believe the associations are more complex (Lamb et al., 1997; Kelly & Lamb, in press). Earlier studies found that children who kept contact with their access parent had better psychological scores, fewer behavioural problems and better peer-relationships (Nord & Zill, 1996). Other studies found that predictable and frequent contact produces low but significant correlations with positive child adjustment (Kelly, 1993). Children also appeared most likely to be well adjusted when the mother approved of and had a positive attitude toward their relationship with their access father (Kelly, 1993).

Some studies now show, however, that ongoing access with both parents either does not significantly affect a child's post-divorce adjustment or improves their adjustment in some circumstances but not others. In regard to the first point, one recent analysis of the U.S. National Longitudinal Study of Youth (NLSY) data found that fathers' visits had no discernible effect on children's well-being, although their child support payments did significantly raise children's school achievement and later economic well-being (King, 1994). Other researchers found a similar lack of connection between contact and adjustment (Nord & Zill, 1996; Kelly, 1993). Among the reasons offered by other researchers for the lack of connection were: contact too minimal to make a difference; positive effects of more contact may be offset by higher conflict; and fathers are not so important as theory would predict (Kelly, 1993). Some researchers also hypothesize that contact may undermine its own benefits, insofar as it emphasizes repeated separations of father and child, and so increases the father's stress.

The U.S. NLSY study defined "well-being" in terms of negative behaviours such as lying to parents, skipping school, hurting someone badly enough to need a doctor, being suspended from school, or being in a special remedial education class. Other researchers have suggested that the degree of connection between the non-custodial father's contact and the child's adjustment varies with which measures are used and which families are studied. This was the conclusion from one researcher's survey of 33 studies examining the effects of frequent access parent visitation. The

survey reported that 18 studies found that frequent contact improved child outcomes (one study finding it only for non-custodial mothers), nine studies found no relation, and six studies found that contact undermined children's adjustment (Amato & Rezac, 1994). Most researchers remain convinced that ongoing regular contact with an access parent in cases when parents have a cooperative and communicative relationship, and when the child had a meaningful relationship with the access parent, is good for children (Lamb et al., 1997). They believe most post-divorce families fit these criteria.

Assuming that ongoing positive access is important in most instances, just *how* important is it to a child's best interests? The custodial parent's well-being has been shown to be one of the strongest predictors of a child's post-divorce adjustment (Kelly, 1993), stronger than ongoing contact with the access parent. Several studies have compared the impact of ongoing contact with that of other factors. They suggest that a child's economic situation is most closely tied to his of her later educational achievement and economic success (Wallerstein & Lewis, 1998).

One possible reason for the mixed results on the impact on children of ongoing access is that researchers typically use frequency and regularity as the only measure of ongoing involvement. Some studies also appear to show that the access parent's importance to the child can be somewhat independent of how often he or she sees the child. Evidence suggests that the perceived emotional bond that the child feels for the parent can be more indicative of well-being than actual contact (Nord & Zill, 1996). However, affection need not entail respect (Wallerstein & Lewis, 1998).

No studies were found that systematically isolate the impact on children of access, compared to situations when the access parent also accepts caring responsibility, or access and decision-making responsibility. However, one group of experts concluded that the *quality* of the access parent/child relationship was more important to the relationship than the amount of time spent in contact (Lamb et al., 1997). They agreed that access parents who remain involved in important day-to-day aspects of children's lives, such as getting the child to school, putting them to bed, taking them to the dentist, are psychologically more important to their children's lives, and are more likely to stay involved (Lamb et al., 1997).

Access and High Conflict

There is considerable agreement among researchers that ongoing contact is not always in the child's best interests, and may actually damage a child in situations when parents are very hostile to one another, since access in these cases may exacerbate the conflict or create more opportunities for its expression. This is not to imply that both parents necessarily contribute equally to the conflict; one study of extremely high conflict cases in California courts, for example, indicates that one parent is often mentally ill or has a drug or alcohol problem (Ayoub et al., 1999; ALRC, 1995).

Many studies show that children with high conflict parents "act out" more than children in low conflict divorced families (Kelly, 1993; Ayoub et al., 1999; Rhoades et al., 1999), and also internalize problems more (Kelly, 1993). One meta-analysis of 92 studies and 13,000 children found that conflict in both intact and divorced families is associated with poorer functioning on the part of the children (Ayoub et al., 1999).

These studies mirror research done on intact families, which also found children in these families harmed by ongoing high conflict (Ayoub et al., 1999). Some evidence indicates that some poor outcomes for children of high conflict parents after divorce can be attributed to the conflict that persisted before the divorce (see discussion in Ayoub et al., 1999). On the other hand, some other studies find no connection between inter-parental hostility and children's post-divorce adjustment (Kelly, 1993). The overall picture seems to be that the connection between high conflict among separated and divorced couples and their children's well-being is nuanced: children in some high conflict situations fare poorly (poorer well-being and adjustment), but not children in others.

One detailed analysis of the U.S. National Survey of Families and Households found that ongoing contact did not diminish outcomes for boys (aged 5-18) in separated or divorced families when the conflict among parents was low, but was damaging to boys when the conflict was high. No negative effects were found for girls, but the internalizing reaction most common among girls was not tested. Parents' conflict levels were determined by self-reporting questionnaires, which were then sorted into three groups. The conflict included, but was not limited to, contact issues (Amato & Rezac, 1994).

Other studies have found that conflict is most likely to lead to depression or behavioural problems among children when they feel "caught in the middle" of their parents' conflict, for example, when they are asked to carry messages, asked intrusive questions about the other parent, or feel they have to hide information or feelings (Kelly, 1993). Adolescents are more likely to feel this way in high conflict families, but not all high conflict parents make their children feel trapped (although a majority do). Adolescents were less likely to feel trapped if they felt closer to both parents.

Other studies have shown related results: that the impact of the parental conflict on children depends on the strategies that parents use to resolve their conflicts (Kelly, 1993; Nord & Zill, 1996) and on the extent to which parents expressed their conflicts with and through their children (Nord & Zill, 1996; Kelly, 1993).

In summary, ongoing contact seems positive for most children and better for them than no contact, but there are instances when contact is definitely harmful and the child would be better off without it. There may be more cases in which ongoing contact is not directly harmful and yet does not serve the children's best interests, that is, they would still be better off without it. However, since the U.S. research is conducted in a legal context that favours contact unless the child is in direct danger, it is difficult to extract this information from a quick survey of the studies.

The survey has also been too broad to assess the extent to which irregular contact is always better than no contact. Finally, no studies were found that explicitly examined the effects on children of how much care-taking or decision-making responsibility access fathers exercise.

High conflict parents are more likely to go to court over their disputes, and there is some evidence that intense litigation itself may harm children by polarizing the parents, entrenching their hostility, and forcing the child into the middle of their conflict. One study, for example,

found that contact tended to positively affect child self-esteem in the absence of legal conflict, but not when there was legal conflict (Amato & Rezac, 1994).

In conclusion, then, the literature seems to confirm that access matters significantly to children when the parents cooperate or manage their conflict, and when the child has a meaningful relationship with both parents. When some children are subject to certain kinds of conflict and parental behaviour, however, ongoing contact may directly harm them. One of the problems with many U.S. studies, in particular, is that the child's best interests are often equated with the absence of harm (reflecting the legal presumptions operating in most states). As a result, there is little examination of intermediate cases in which access does not directly harm the child, but may still not be in their best interests—that is, all things considered, the child would benefit most if there were no access.

1.4 HARD CASES

Most separating or divorcing couples appear to resolve their access arrangements without high conflict or extensive use of the courts. In fact, only half of Canadian separated couples have a court order for custody five years after separation (Department of Justice Canada, 1999). As indicated earlier, social research indicates that only a third of separating couples experience high conflict, and for all but 5 to 10 percent of these couples, the conflict dissipates over time.

Certainly, this does not mean that low conflict couples do not have access problems, including denial and breaches of contact, or unsatisfactory access arrangements (Weir, 1985). One of these unsatisfactory arrangements appears to be no contact, at least for some of these couples. As outlined earlier, upwards of 15 percent of Canadian parents lose touch with their children when they separate, and more lose touch as time goes on. Failure to exercise access clearly seems to be one strategy that some couples "adopt" to deal with their conflict.

Still, there appears to be a small group of these high conflict parents whose hostility does not diminish—in fact, seems to deepen—and who make continuing use of the courts to litigate access and other disputes, including applications against unwarranted access denial. In the mid-1990s the Australian Law Reform Commission (ALRC) undertook a study of some of the particularly difficult and complex cases in the Australian court system. The study's objective was to identify who these people were, why they were there, and how much of the Australian court's resources they consumed (ALRC, 1995). The study's goal was to find ways to resolve these cases more effectively and to reduce court costs.

This in-depth study of the registry of the Sydney suburb of Parramatta found 48 active complex cases, most of them involving one to three years of litigation, but few going back more than five years. The cases were defined as complex if they involved repeated applications, if they used considerable court and Legal Aid resources, or if one or more of the parties had difficulty making and maintaining contact arrangements that were in the best interest of the child (ALRC, 1995).

The study found four key predictors of a case becoming complex: continuing conflict; children under the age of two at the time of separation; children allegedly refusing access; and a restraining application as part of the initial application. There was extreme conflict in about

80 percent of the cases. Most of the conflict concerned access, rather than custody, and most of the access parents in these cases already had access. The complex cases, therefore, predominantly involve parents who have access, try to use it, and have enormous conflict over it.

These contact cases were in the court system on average three times longer than other cases, had twice the number of applications and cross-applications by non-custodial fathers and custodial mothers, twice the number of meetings with registrars and deputy registrars, and four times as many days in hearings before the judge (ALRC, 1995). One quarter of them had five or more appearances before a judge. The more that complex cases involved hand-over problems, high conflict, personality disorders, or mothers applying for Legal Aid, the more court resources they consumed. The complex cases also used more of the court's counselling resources, especially if they involved interim hearings or rigid adherence to contact terms.

Several other factors also distinguished the complex cases, including allegations of children refusing to go on contact visits; claims that children's behaviour problems were being caused by contact; difficulties with hand-over and rigid adherence to the contact conditions; parents both being in a new relationship or fathers not being in a new relationship; and instances when the case had been transferred from Magistrates Court (a lower quasi-judicial court). Two other marginally significant factors that suggested the need for further research were mutual allegations of child sexual abuse or alcohol abuse, and court counsellor's recommendations against further counselling.

Although many practitioner submissions to the ALRC consultations suggested that most parents who pursue complex cases have personality disorders, only 35 percent of the Parramatta registry's parents involved in complex cases had such disorders, compared to 25 percent of non-complex case parents.

Violence and Abuse

The complex cases also tended to involve more allegations of violence (32 cases), although so did many of the registry's other cases. Fathers alleged mother's violence in four of the 32 violence allegations, mothers alleged fathers' violence in 17, and there were 11 cases of mutual allegations. Applications for restraining orders were also significantly higher in complex cases. Most Australian judges surveyed in the late 1990s (to assess the impact of the country's 1995 law reforms) thought a background of violence was extremely common. The vast majority of interim hearings observed in the Duty Lists concerned the issue of contact, and in most cases the dispute involved allegations of domestic violence or some other risk (Rhoades et al., 1999).

Given that only one percent or so of non-custodial parents are denied access after divorce in Canada (McCall, 1995), and physical cruelty was grounds for four to five percent of divorces in 1995 (Department of Justice Canada, 1997), there is good reason to think that some abusing or violent Canadian parents get access to their children after divorce and that the violence continues in some post-separation parenting relationships, as it does elsewhere.

Many Canadian provinces and territories accept violence and abuse against the child as grounds for denying or restricting a parent's access, on the basis of the established link between parental violence and bad outcomes for children. Nevertheless, some violent parents still get access to their children in most jurisdictions. Under Australia's new family laws, which have similar

provisions, virtually all parents who apply to the court for residence or contact (similar to custody or access) receive interim access at separation, most often on a shared "week-around" residence basis, even though 23 percent of these parents are ultimately denied access at the final court hearing (Rhoades et al., 1999).

Spousal violence and violence against children often go together. Research shows that at least one quarter (some studies show three quarters) of men who physically abuse their partners also abuse their children (see Bala et al., 1998) during marriage. Spousal violence during marriage can end at separation, or it can begin or escalate (Bala et al., 1998). About half of all women murdered in the United States are killed by their intimate partners either when they are attempting to leave the relationship, or have recently separated (Strategic Partners, 1998). Separation can be a high-risk time for battered spouses.

However, many jurisdictions do not accept spousal abuse, in itself, as grounds for denying, or even restricting, access. Research does not show that uncoupling spousal and child violence is in children's best interests. Children who witness inter-parental abuse risk serious maladjustment (Bala et al., 1998) and are often terrified by it. In some cases, witnessing even a single serious incident can produce post-traumatic stress disorder in children (Bala et al., 1998).

In fact, a growing number of Canadian judges now apparently deny access to abusive spouses (Bala et al., 1998) or restrict it. In Australia as well as some Canadian jurisdictions, it is an explicit consideration in determining children's best interests. Increasingly, courts are attempting to balance the perceived interests of the children in maintaining contact with the risk of violence to a child or spouse by ordering supervised access. Cases now going to supervised access include an Australian father who had been jailed for stabbing the mother six times in the face and neck during a previous contact visit (Rhoades et al., 1999).

There remains considerable debate about whether a child's best interests are served by continued contact with a parent prone to violence or abuse (Strategic Partners, 1998). There are relatively few studies of the effects of domestic violence on children after their parents have separated, especially longitudinal studies.

The upshot of existing legal practice, however, is that violence and/or abuse are a serious problem in only a small fraction of post-separation parenting relationships. Most of the resident parents using supervised access in an Australian pilot project said they had felt unsafe in unsupervised access, and evaluators found some instances of alleged and actual sexual abuse of the children by access parents.

Many of the men awarded supervised access tend to diminish or deny the risk of violence and abuse (Strategic Partners, 1998). But while any one parent may fabricate charges, no evidence supports the claim that most charges are fabricated. Investigators studying 50 cases of alleged child sexual abuse before Australia's Family Court found 21 cases in which there was confirmed abuse, eight cases in which it was inconclusive, five cases in which there appeared to be no abuse, and 17 cases for which no investigations were conducted (ALRC, 1995). Another U.S. study of cases involving allegations concluded that 13 percent of complainants had exaggerated the issue of violence as a ploy in custody disputes (Johnston & Campbell, 1993).

There appears to be considerable overlap among post-parenting relationships that involve violence and abuse, complex cases that return repeatedly to litigation to resolve access disputes, and high conflict couples who experience ongoing chronic access disputes that include access denial, breach of access and other conflict over the terms of the access agreement.

1.5 CONCLUSIONS

Access denial and failure to exercise access are significant problems in post-parenting arrangements in Canada and elsewhere. These problems together become particularly important for policy makers whose guiding policy objective is to promote the continued involvement of parents in their children's lives, except when it would not be in the child's best interests. In the context of this objective, failure to exercise access is at least as significant as unwarranted access denial, and, given its prevalence, may even be the more pressing concern (although it is clearly harder to assess the true prevalence of unwarranted access denial).

However, it is equally clear that the problems of unwarranted access denial and failure to exercise access are embedded in a more complex set of problems between post-separation parents, of which access disputes may only be a part and access denial only one dimension of that part. The complex set of problems must be addressed as a whole according to a policy guided by the child's best interests, since the single most important message from the research is that children's best interests are served when parents are able to forge cooperative, positive post-separation parenting arrangements. When parents do not achieve such arrangements, children's best interests are not well served.

The Australian research shows that, in that country at least, access disputes that come before the courts are most often complex cases involving ongoing high conflict between the parents and, very frequently, violence and/or abuse. These very difficult cases may be the courts' main fare, because the existing access enforcement system deters all but the most litigious parents from taking their complaints to court, and leaves reasonable parents with legitimate grievances no ready mechanism for resolving their disputes. Nonetheless, there is no evidence that the legal system creates these difficult or complex cases—that is, transforms manageable conflicts into difficult and intractable disputes—though it certainly does not help. As the Australian Family Law Council puts it, the cases that consume the courts represent "a dynamic and continuing series of disputes which may often need ongoing involvement or supervision at an individual level" (Family Law Council, 1998b).[9]

Revising access enforcement provisions in isolation, therefore, will not address these difficult cases in a way that is likely to serve the child's best interests, since it will not address the underlying conflicts that drive these cases into the courts. Nor is there any evidence that increasing other parents' access to court-based solutions to their legitimate access grievances is

[9] In its final report the Family Law Council recommended a three-tier approach to access enforcement, starting with (a) preventive strategies, such as ordering counselling and attaching model orders and warnings on orders about the significance of breaching contact orders; followed up with (b) remedial strategies when no resolution was reached, including referral to anger management, the court's parenting education program or parenting skills sessions, and reaching (c) punitive measures only as a last resort or when there was deliberate disregard for a court order. It urged avoiding a punitive approach if possible, since it could merely support a parent whose main aim was to punish his or her former partner.

more likely to serve the child's best interests than an approach that fosters cooperation among parents. Any reforms to the existing access enforcement provisions that are intended to put the child's best interests first should therefore be consonant with a broader strategy designed to optimize the incidence of cooperative, positive post-separation relationships among parents.

CHAPTER 2: MODELS OF LEGISLATIVE APPROACHES TO ACCESS ISSUES

This chapter provides brief descriptions of the different legislative approaches to access disputes, including access enforcement, in the jurisdictions of Australia (which has a federal family law system), the U.S. state of Michigan, and each of the Canadian provinces and territories. Included in each account is a description of the program supports and services used to facilitate access or access enforcement. The differences in the models demonstrate some of the possible variations in approaches to access enforcement and facilitation.

2.1 AUSTRALIA

In 1996, Australia proclaimed new family law reforms. While the reforms made only slight changes to existing access enforcement provisions, they introduced fundamental new legal principles to govern post-separation parenting. A recent study of the reforms' impact found significant changes in the awarding of access and, on paper at least, greater sharing of parental responsibility between parents (Rhoades et al., 1999). The reforms appear to have significantly changed the post-separation parenting context in which access enforcement disputes may arise. The report's main findings are outlined below.

The Legislative Framework Governing Access

The 1996 family law reforms replaced the traditional categories of "custody" and "access" with a single concept of "parental responsibility". Custody typically entails that the child both lives with and is the responsibility of the custody parent, usually the mother. The concept of custody, therefore, fosters a view of the child as a prize awarded to one parent after divorce, with the other parent left on the periphery as periodic visitor. The new law's notion of parental responsibility severs "residence" from "responsibility" in principle. How much "residence" a parent has becomes independent of how much "responsibility" that parent has for the day-to-day caring for the child and the decisions affecting the child's life.[10]

The intent of these category shifts is to have post-divorce parenting arrangements governed by the best interests of the child (see Appendix 2), rather than the parents' interests or rights regarding their children as property. In keeping with this, the children's wishes are an important consideration for judges determining the child's best interests in parenting and access disputes, and children can participate in disputes either before the court in person or through a court-appointed lawyer.

The new law also conceives of parental responsibility as ongoing and shared. It presupposes that residence and responsibility will be shared more freely between both parents than either would be in the custody/access model. There is no presumption of residence or access in the new law, and no onus on a parent to establish that access would be detrimental to the child.

[10] Nonetheless, the new law explicitly asserts that in practice the residence parent(s) will have most of the day-to-day decision-making responsibilities (as well as all of the caring responsibilities) while the child is living with them (Rhoades et al., 1999).

Under the new law, the responsibility of access parents for a child may or may not amount to more than maintaining contact, depending on the parenting agreement. But contact is now seen as a parental responsibility rather than an individual "right" to be exercised or not at will. Hence, the new law treats denial of access and failure to exercise access the same, as equally failures to exercise parental responsibility.

As a matter of practice, most Australian mothers continue to be the residence parent, and fathers the contact parent. Two thirds of post-separation parenting agreements ordered by the courts are for "residence/contact", "although this is significantly lower than the four fifths of agreements that used to provide for "custody/access" (Rhoades et al., 1999). Some 12 percent of parenting agreements now awarded are for shared residence, even though residence is shared equally (that is, the child actually lives with both parents) in only a fraction of those cases. Parenting agreements still typically give the contact parent every second weekend with the child, who thus "lives" with the contact parent two days out of every fourteen.

Since most children continue to reside with their mothers, mothers still bear most of the day-to-day caring responsibilities for their children. However, about half the lawyers recently surveyed say they include provisions regarding day-to-day and long-term parental responsibility in parenting orders.

About 45 percent of court orders include no "responsibility" provisions, while 35 percent give sole daily responsibility to the resident parent and 20 percent allocate each parent some responsibility. Sole responsibility tends to be awarded in cases involving violence or risk of sexual abuse, when there are high levels of conflict among the parents, and if the contact parent has a psychiatric disability of an "unsettled lifestyle".

Trends in Access Awards

The new laws assert access or contact to be a child's right, except when it would be contrary to the child's best interests. A separate clause (s. 65E) provides that the court must regard the best interests of the child as the paramount consideration in deciding whether to make a particular parenting order (Rhoades et al., 1999).

The Family Court and High Court have fleshed out these provisions with case law provisions. They explicitly state that there is no legal presumption for contact and no onus to demonstrate that a parent should not receive contact. Nonetheless, the court will "give very great weight to the importance of maintaining parental ties," since it is considered prima facie in the child's best interests to maintain the filial relationship with both parents (Rhoades et al., 1999).

The evaluation study found that many lawyers and court counsellors think that fathers in general are pursuing more contact and more extensive contact, and that nowadays they often obtain orders for contact in circumstances in which they would not have been successful before the reforms (Rhoades et al., 1999). In fact, the number of applications for contact has jumped sharply—from around 14,000 in 1994-95 and 1995-96 to almost 24,000 in 1997-98 (Family Law Council, 1998c). However, the Family Law Council cautions that this increase might reflect a surge of parents seeking a new arrangement merely because they thought they would fare better under the new laws.

Almost all interim court orders now award access pending final hearing, which typically involves waiting several months. Only four percent of non-residence parents are denied access at the interim proceedings, compared to 24 percent before the reforms, when the courts tended to deny access in difficult cases until the evidence could be properly assessed at the final hearing. However, 23 percent of non-residence parents are denied access in final court orders now, slightly more than under the previous laws. Significant numbers of non-residence parents are therefore having contact with their children on an interim basis before being denied access at the final hearings (Rhoades et al., 1999).

While the evaluation study did not explore whether the new laws have affected exercise of access, there is some evidence that access parents' opportunities for contact have increased. About one third of the lawyers surveyed think that fathers are generally receiving more generous contact awards, such as extended weekend contact (to Monday morning, rather than to the traditional Sunday night) and more days than the standard two days out of fourteen. Judges reported that interim access applications for more than the standard alternate weekend had become more frequent, and some said they were generally granting more access when possible.

Access Enforcement

The 1996 reforms made only minor changes to the access enforcement provisions, although they did replace "the welfare of the child" with "the child's best interests" as the governing principle in deciding access disputes, including access enforcement applications.[11] Although the new laws permit court applications for denial of access, failure to exercise access and breaches of access equally, the overwhelming majority of court applications are made by access parents charging access denial. As indicated earlier, many residence parents do not appear to be fully aware of their legal entitlements (Family Law Council, 1998b).

The Family Law Council of Australia recently conducted a study of access enforcement and penalties in Australian family courts. It found that of the 2,000 a year or so breach of access or injunction applications that entered the Australian courts in 1996 and 1997, 600 or 15 percent of them went all the way to a final judgement over those two years (Family Law Council, 1998b). Of these, two thirds were related to access (contact) issues and a quarter involved contempt charges (a more serious claim that involves demonstrating the action was wilful and deliberate). Men made about 75 percent of them, and women (no information in the other cases) about 19 percent. Since the Australian Family Court estimates that only five percent of all cases commenced in Family Court reach final judgement (ALRC 1996, Harrison 1997), the Court appears to resolve relatively fewer access enforcement cases than other kinds of family disputes.

Trends in Litigation Rates

The 2,000 or so breach of applications made in 1996 and 1997 were a small fraction of the 22,000 to 23,000 contact related cases that came before Australia's Family Court annually, of the total 100,000 or so cases commenced in the court annually, and of the 51,000 divorces each

[11] The new laws also eliminated "the best interests of child" as the explicit governing principle in awarding compensatory access as a penalty for breach of access (Family Law Council, 1998a).

year.[12] The majority of these applications were self-litigated, although most cases that reached final hearing had legal representation (Family Law Council, 1998b).

However, litigation rates have risen sharply under the new laws, if less dramatically than the increase in applications for contact. Applications for denial of access rose from 786 in 1995-96 to 1,434 in 1996-97 and 1,659 in 1997-98. These figures exclude the 400 or so applications for contempt involving access (Rhoades et al., 1999).

In a recent study on the impact of the new laws, several lawyers said they thought disputes between parents had increased, mostly instigated by access fathers who had expected greater parenting rights under the new laws, and/or felt that residence mothers were not sharing decision-making responsibilities properly (Rhoades et al., 1999). Increasing numbers of breach of access applications seem to be about failure to share parenting responsibilities rather than about breaches of visitation arrangements. To show how detailed complaints can be, the study described one Duty List case in which the father brought an application because the residence mother, finding a pornographic magazine in a boy's bedroom, had not taken him to a counsellor (Rhoades et al., 1999).

Lawyers report that they now routinely draft very specific orders for the allocation of day-to-day responsibilities (e.g., how decisions will be made for taking the child to the doctor) and access arrangements (e.g., exact pick-up times) to minimize disputes. Several judges echoed the lawyers' remarks, noting that applications were frequently frivolous and without merit. One judge said: "50 percent of those applications don't have merit" (Rhoades et al., 1999).

The study findings indicate that the new provisions for sharing day-to-day parental responsibilities between residence and access parents have opened up new litigation territory for some couples.

No studies on re-litigation rates were found.

Convictions and Penalties

Australian law enforces access with a range of penalties (see Appendix 2). The Family Law Council study found that the courts convicted in 37 percent of the 600 finalized cases, while the rest were dismissed or withdrawn, some apparently by consent. Some 38 percent of the defendants pleaded not guilty, and 15 percent pleaded guilty, with the remainder making no plea or no plea being recorded.

The Family Law Council found the conviction rate in access enforcement cases was roughly the same as in other Australian tribunals and courts, such as the Commonwealth Ombudsman and the Administrative Appeals Tribunal. At least one party had legal representation in almost 85 percent of cases, and both parties had representation in 44 percent of cases. Male defendants were more likely to be convicted than female defendants were.

[12] There were about 3,800 contested custody and access cases in 1996-97. Only five percent of contested custody and access cases were finalized in 1996-97, compared to 23 percent in 1995-96, indicating that the courts are taking much longer to deal with cases than before the reform (see Family Law Council, 1998b).

Judicial officers' reasons for dismissing applications included difficulties ascertaining the facts (given the high levels of hostility between the parties), the best interests of the children, the respondent's provision of a reasonable excuse, delays between the time of the breach and the court hearing, and a belief that criminal penalties are inappropriate when orders relate to parenting.

Among those parents convicted, about 18 percent received no penalty and 49 percent received recognizance, that is, were placed on a bond to comply by the provisions of the order. About 14 percent were required to give compensatory contact, 10 percent were fined an average $1,200 (two percent suspended fines), five percent were imprisoned (one percent suspended imprisonment), and five percent received other penalties, including two awardings of costs to the applicant, one community service order, one order to repay, one reprimand, and one order to attend a parenting education course. A few cases received multiple penalties. Clearly, the Australian courts rarely punish breach of access in the traditional legal sense. In its report on the study, the Family Law Council resisted requests from many submissions to punish access breaches more vigorously. Instead, it proposed a three-tiered enforcement approach aimed at preventing and remedying access disputes before imposing punishment such as fines and imprisonment as a last resort (Family Law Council, 1998b).

Only a quarter of the cases were finalized within a month of application, and most were finalized within six months. Given the long delays, compensatory access is increasingly seen as the main form of redress (Family Law Council, 1998b).

The Australian government recently introduced new enforcement legislation that proposes a three-tiered system for the enforcement of parenting orders. Penalties for unwarranted access denial escalate with the severity and frequency of access violation. The legislation provides a scale of penalties ranging from compensatory contact or an order to attend a parenting program for initial non-willful offences, to fines and imprisonment for offences demonstrating willful disregard for parenting obligations (Parliament of Australia, 2000).

Supports for the Resolution of Disputes

As indicated earlier, only five percent of all cases commenced in Australia's Family Court reach a final judgement. Three quarters of all cases are resolved through an extensive system of court counselling.

Counselling and Conciliation

Counselling is the primary support used by the Australian court system to reduce court litigation in family disputes. It is freely available to anyone bringing a case to family court, and at any stage throughout the process up to the final judgement. In addition, judges may order counselling before proceeding with cases. In 1995-96 nearly half the courts' counselling clients were voluntary, and 47 percent were ordered to attend. The remainder were seen before trial for a family assessment (an in-depth appraisal of especially difficult cases, typically involving the child's welfare) done by a counsellor at a judge's request (Harrison, 1997). All the voluntary counselling cases and almost all the court-ordered counselling cases are confidential. The in-depth appraisals are not.

Counselling services include exploring alternatives to litigation, helping couples make their own decisions, educating clients about the law and their legal options, and giving clients the skills to resolve future disputes (ALRC, 1997). The Chief Justice characterizes the court's counselling as involving a mixture of techniques to effect both change and agreement, in contrast to task-oriented mediation, the goal of which is agreement (Nicholson, 1994). Specifically, the Australian Family Court provides conciliation counselling and a hybrid of conciliation counselling and conciliation (Brown, 1997b). The former is therapeutically oriented, and deals with underlying emotions blocking resolution, is educational to parents about the likely impact of their dispute on their child and the over-riding principle of the best interests of the child, and aims to settle the dispute and resolve the conflict. The latter is conducted by a lawyer and counsellor together. It is oriented towards problem solving, involves solution-based bargaining, is educational in the ways described above, and evaluates the likely outcomes. Family court counsellors do not provide relationship-based counselling.

Court figures show that nearly three quarters of clients who attend counselling before filing an application settle at least one issue at that stage (Nicholson, 1994). Nearly 60 percent of clients who attend counselling after their first court appearance (many of whom would have been ordered to do so by the judge) resolve at least one issue (Harrison, 1997). Parents who attend counselling as one of the first steps in the case management guidelines that govern how family court cases proceed through the courts also had higher rates of agreement than those who attended counselling farther along in the litigation (Nicholson, 1994). About 60 percent of all counselling cases are fully resolved without having to return to court (Nicholson, 1994). However, agreement rates are lower in cases involving charges of child abuse (50 percent full or partial agreement), and also when domestic violence allegations are involved (57 percent) (Brown, 1997a).

Who attends counselling? All counselling clients, whether voluntary or court-ordered, tend to have higher levels of conflict and poorer communication than those who use voluntary mediation. Serious issues are often involved, such as family violence, child abuse or neglect, drug and alcohol problems, and children refusing contact, although the issue of residence is less often an issue among court-ordered families (Brown, 1997a). Counselling clients also have lower incomes and are less educated on average than mediation clients (Brown, 1997a).

Counselling caseloads have risen sharply since the introduction of the new family law reforms, and counselling resources are apparently stretched to the limit. The number of parents seeking voluntarily counselling (before and after filing claims) rose 41 percent between 1995-96 and 1996-97, before falling slightly in 1997-98 (Family Law Council, 1998c). The courts have introduced telephone counselling to meet the increased demand. They are also ordering many more parents to counselling: 14,000 or so in 1997-98 compared to 10,400 or so in 1995-96 (Family Law Council, 1998c). The number of in-depth family assessments ordered by the courts has also risen, from about 1,500 in 1994-95 to nearly 1,800 in 1997-98 (Family Law Council, 1998c). The rising number of in-depth assessments suggests that more difficult cases, usually those involving direct risks to children's welfare, are entering the courts.

Given that counselling is the Australian court system's first and main "line of defence" in dealing with family law disputes, the sharp increase in counselling cases suggests a system under siege from a rising tide of hostile parents. However, as mentioned earlier, some of the increase

may be parents who, unhappy with their arrangements made under the old laws, felt they would fare better under the new.

The number of contact enforcement cases seen by counsellors has also risen recently, from 894 in 1996-97 to 1,088 in 1997-98 (Family Law Council, 1998c). However, the Family Law Council's enforcement and penalty study reveals that for access enforcement cases that go beyond a certain point, counselling is ineffectual. Almost 20 percent of the 600 cases that reached final judgement were ordered into counselling at some point. The proportions varied widely by states, with fewer than 10 percent of Tasmanian cases but nearly 70 percent of Western Australian cases being ordered to counselling. Yet the conviction rates in these two states varied little (42 percent in Tasmania and 44 percent in Western Australia) (Family Law Council, 1998b). The Council attributed the wide variation to differing interpretations about when the court should order counselling.

Counselling services provided by the Family Court do not screen cases for domestic violence and abuse, as mediators must (Nicholson, 1994; Brown, 1997b).

Mediation

Voluntary mediation is available to parents involved in access and custody disputes at any point in the process in Australian courts. Judges may also order it, but with the parties' consent. The court is currently expanding its mediation services (Nicholson, 1999a), with one-time mediation in single-issue matters as the model of choice, and focussing more attention on it as a resolution strategy. The court also links with outside mediation providers, including the federal government's Legal Aid and Family Services (LAFS), which funds 13 mediation services.

An evaluation of the LAFS mediation centres found that clients in the Sydney and Melbourne centres reached agreement in about 75 percent of cases (ALRC, 1997). It also found mediation to be less expensive than litigation, although the analysis was based on the assumption that cases receiving counselling did not reach final hearing.

The laws provide no special provision for reporting back to the court after mediation, and there is some discussion about whether the integrity of mediation would be compromised if mediation results were reported back to the courts (ALRC, 1997).

Australian mediation guidelines require mediators to screen clients for abuse or domestic violence issues at introductory intake sessions. Mediators may decide to proceed with mediation or refuse it, regardless of the parties' wishes, depending on each case. However, if mediation continues, mediators would see each parent separately to minimize unequal bargaining (Nicholson, 1994).

Arbitration

There are no provisions for arbitration to be used in custody and access disputes in Australia, although there are some unused provisions for the arbitration of child support and property disputes.

Information Sessions

Information services are provided in all Australian family courts, and the Family Court says it is in the process of improving them. They are run by social services professionals rather than lawyers.

Cases Involving Violence and Abuse

Australian courts are increasingly turning to supervised access to preserve contact in extremely difficult cases, especially those in which violence and abuse to a child or spouse are involved. Contact centres typically provide a safe supervised drop-off and pick-up point for high conflict parents, as well as a safe supervised space where access parents can spend one or more hours with their children. The recent evaluation of the pilot project is described in Chapter 3, section 3.3.

The 1996 reforms also allow access to be denied when a child is at risk of violence or abuse. One of the recent study's main aims was to assess how often, and how much, access was being awarded in such cases. It found that significant numbers of parents are awarded interim access but denied it at final access hearings months later, which suggests that interim access *is* being awarded in cases when the child is at risk of violence or abuse. In some cases, interim access is restricted to supervised or indirect access (for example, by way of cards or letters).

Nevertheless, while the apparent intent of the law was for the family violence clause to trump the "child's right to contact" clause, this does not seem to be happening in the awarding of interim access (Rhoades et al., 1999). The study found that judges now rarely deny fathers interim contact orders, even when they have a family violence order (which prohibits them from approaching the victim). In some states, the family violence orders include the clause "except for the purpose of exercising contact ordered by the Family Court" (Rhoades et al., 1999).

There is no consensus in the legal community about the extent to which this practice is due to ignorance of the law, or common interpretation of the law giving contact precedence over all other considerations, or, in the case of interim orders, to judicial fears of prejudicing final hearings by denying all access before the facts have been assessed.

2.2 MICHIGAN

Michigan enforces access through the arms-length Friend of the Court Bureau, set up in 1919 to enforce child support in divorce cases on behalf of minor children at risk. In 1983, its mandate was expanded to include the enforcement of custody and visitation (access) orders.

The Legislative Framework Governing Access

The *Michigan Child Custody Act* lists extensive considerations for determining custody awards, including the child's preferences, the capacity of the parents to give the child love and affection, the extent to which the custodial parent will encourage contact with the other parent, and the existence of domestic violence towards either child or spouse (Model Friend of the Court Handbook, 1998).

However, Michigan law awards access to all non-custodial parents, *except* when there is clear and convincing evidence that access would endanger the child's physical, mental and emotional health. Thus, the best interests of the child primarily do not govern access awards, access disputes, or judgements on applications for access enforcement. Rather, there is a legal presumption of access, that is, access is conceived as a fundamental parental right that the access parent is free to exercise at will. The regulations are explicit that failure to exercise access is not a violation. In fact, the custodial parent is held responsible for promoting a positive relationship between the child and access parent, one that fosters the child's desire to see the access parent and vice versa. The child's wishes do not count in either the decision to award access or the decision about the kind of access awarded. Children of any age are expected to obey the access order.[13]

Nonetheless, court decisions about the frequency, duration and type of access to be awarded are governed by a long list of considerations, including the child's age, the access parent's exercise of access track record, and the risk of violence and/or abuse to the child or spouse (see Appendix 2). The access parent can only forfeit his or her right to access by endangering the child, but the courts can restrict the exercise of that right when the access parent seems unable or unwilling to exercise it properly.

There are no readily available data on how many Michigan parents are denied access, or on how many parents have their access restricted, or in what ways. The standard access award consists of two days access out of fourteen, or every second weekend.[14] No studies were found documenting the incidence of failure to exercise access.

Access Enforcement

Michigan enforces access through the Friend of the Court (FOC) office attached to each county court. Parents who believe there has been a violation of their parenting order can apply to the FOC office to have their order enforced, and can seek FOC help in writing their application. In some counties, custodial parents can also apply to the FOC to enforce a breach of access when the access parent has failed to return the child on time. It is not known how many applications custodial parents bring.

The Friend of the Court decides whether the parenting order has been violated by considering the access parent's claim and any reply the custodial parent may wish to make; custodial parents must be notified of the claims made against them, and are given a few days to reply. If there has been a violation, the FOC may decide to meet with the parties to try to resolve the dispute, or may refer the parties to voluntary mediation or, in some counties, to binding arbitration, with their consent. Since the FOC is deciding only whether access has been denied or breached, and not whether the denial or breach was warranted, its task is simply to establish facts. If the FOC meeting with the parties or the voluntary mediation fail to resolve the dispute to everyone's

[13] In some U.S. jurisdictions, children can be imprisoned for refusing to see their access parent, and in several court cases children as young as seven years of age have been sent to detention centres for refusing visits (see Murray, 1999, for examples and discussion).

[14] Personal communication with Steve Capps, Management Analyst, Friend of the Court Bureau, Lansing, Michigan.

satisfaction, the FOC can impose a penalty of compensatory access, or hand the case over to the court for a contempt of court hearing.

FOC data indicate that the FOC found 5,570 violations of parenting orders in 1998 (it is not known how many applications the FOC rejected as not involving a violation of parenting orders). The FOC disposed of or resolved slightly less than half of these violations, while 2,993 went on to civil contempt hearings before a judge or referee. The proportion of access denial cases going on to full court hearing in Michigan appears to be considerably higher than the 15 percent that reach final hearing in Australia. This may be due to the efficacy of conciliation counselling or to the different considerations that enter into resolving disputes. As already stated, under Australian law, the child's best interests govern the resolution of access denial applications, whereas in the Michigan law, the governing consideration is whether the access parent's right to access is being violated, in the absence of any clear demonstration that the access endangers the child. Under Michigan rules, the custodial parent has fewer grounds to deny access and hence fewer defences against a finding of contempt.

There was widespread complaint during the public debates on the 1996 amendments to the law that FOCs often issued recommendations without bothering to meet with the parties. Apparently, many FOCs only meet with the parties if they request it (Ferrier, 1996a).

During the debates, many access and custodial parents complained about a lack of accountability by FOC officers as well. There appears to be no right of appeal against their decisions, and although unhappy parents can file grievances against FOC officers when they feel they have been treated unfairly, the grievances cannot overturn an FOC decision (Ferrier, 1996b).

Parents also complained about gender bias. Custodial parents claimed the FOC hounded them to provide access, but did not vigorously pursue access parents for child support. Access parents complained of being hounded for child support payments, but of not getting their children for visitation (Ferrier, 1996b).

Once the access denial case reaches the court as a civil contempt charge, the custodial parent must show good cause why he or she denied access, or face penalties ranging from compensatory access to fines and imprisonment. The judge may also order one party to pay court costs, or compensate the other party for costs incurred over the course of the case, especially if the case is judged frivolous. There are no data on the conviction rates for these cases, or on the distribution of penalties for those convicted.

When a custodial parent believes the access parent is drunk, on drugs, or otherwise likely to neglect, abuse or maltreat the child during an access visit, he or she *must* deny access or risk being charged with neglect. However, he or she must then be willing to go to court to "show cause" as to why access was denied if the access parent files an application. Drugs and alcohol figure prominently in many cases when the custodial spouse defends the denial of access.[15] Since the FOC, as an enforcement agency, does not investigate charges of abuse or neglect, the custodial parent must notify Protective Services of the Family Independence Agency, which will investigate the charges. However, Protective Services (the Michigan equivalent of Canada's

[15] Personal communication, Steve Capps.

Children's Aid Societies) does not investigate domestic violence allegations, except where they coincide with violence against the child.

Custodial parents who fear violence from the access parent must apply to court for an order to vary the access order, and must make the case there for restricting access because of the violence. An application to vary the order will at best lead to restrictions on the access parent's access, in the absence of violence or abuse against the child. Custodial parents' applications to vary access orders can be heard at the same time as the contempt hearing into the violation of the access order, although in some parts of the state, where the courts are not unified, the two orders will be heard in two different courts.

Supports for Resolving Disputes

Michigan legislation mandates that certain program supports and services be provided to help resolve access disputes that come to the court. These are described below. Individual counties provide varying levels of these supports, and many provide additional services.

Mediation

As indicated earlier, Friend of the Court offices provide voluntary mediation for couples when parenting orders are violated. The Friend of the Court also provides mediation for couples involved in access (and custody) disputes that do not involve access enforcement, as part of its mandate to resolve disputes not involving violations. Separating and divorcing parents who cannot agree on the terms of parenting orders, or parents who cannot agree on revisions to their existing orders, can ask for mediation at any stage of the process, from making application to final hearing. The FOC mediated 2,531 custody and access disputes in 1998.

Court-sponsored mediation is conducted by an attorney with at least five years' experience in law, especially family law, and the parents may bring their own lawyers. Mediation is confidential. If the parents fail to reach agreement, the case goes to court. There do not appear to be any safeguards against unequal bargaining in mediation (this may depend on the specific program) or any restrictions on mediation in cases when there are allegations of violence to or abuse of spouse or child. In fact, FOC regulations specify that it is the responsibility of parents to raise allegations of abuse or violence in disputes over parenting orders or custody. The court mediation is full fee for service.

Arbitration

Some counties offer voluntary binding arbitration in addition to, or in lieu of, voluntary mediation. An individual arbitrator or a panel may hear the case. Once the arbitrator decides, the decision becomes binding unless the court vacates it.

Conciliation

Some FOC offices offer conciliation for disputes not amenable to mediation. Conciliation may not be voluntary but required by the FOC or ordered by the court, and when the parties do not reach agreement, the conciliator may prepare a recommendation and the court may order a decision based on the recommendation.

2.3 CANADIAN PROVINCES AND TERRITORIES

Legislative responsibility for access and access enforcement is shared among the federal, provincial and territorial governments. The federal *Divorce Act* applies in divorce proceedings when custody and access are at issue, although custody and access issues may also be resolved under provincial legislation (see Appendix 2). Provincial and territorial statutes govern non-divorce matters that fall within provincial constitutional responsibility, including separation proceedings involving custody and access, and access enforcement. The provinces and territories also deliver programs and services that support separating and divorcing parents as well as parents engaged in access disputes, although the federal government co-funds some of these programs.

Approaches in the provinces and territories to access disputes and access enforcement vary significantly. Several provinces, including the populous provinces of Ontario and Quebec, continue to rely on some form of civil contempt as the primary legal remedy for access denial. Others supplement the fines and imprisonment for civil contempt with remedial penalties, the most common being compensatory access and reimbursement of the costs of incurred as a result of access denial or breach of access. Several provinces make explicit legal provision for courts to appoint mediators or order supervised access in access denial cases.

Most provincial and territorial legislation treats access denial and breach of access in the same way, and few jurisdictions also include cases of failure to exercise access under the same laws. However, when Alberta introduced access enforcement legislation in 1999, failure to exercise access was not included as a violation of an access agreement. The custodial parent could, nonetheless, make an application for reimbursement of expenses.

The main strategies in provinces and territories for dealing with access disputes and enforcement generally focus on prevention and resolution of disputes before they reach final court hearing. For example, Manitoba has offered free custody and access mediation services for many years, and has now developed a comprehensive co-mediation program to allow parents to deal with a wide range of family issues including access. British Columbia, on the other hand, relies more on voluntary counselling for separating and disputing parents as a way to reduce the incidence of access denial.

Most provinces and territories now augment mediation, counselling and other remedial programs with preventive parent education seminars. Several provinces have made such programs mandatory for separating or divorcing parents. However, there are relatively few programs to support access enforcement and thereby reduce the incidence of access denial. There is considerable interest in supervised access and supervised exchange for the most difficult access cases, but these services are still largely confined to major cities.

Appendix 2 provides a more detailed account of the legislative framework and program supports available in each province and territory.

CHAPTER 3: PROGRAMS AND SERVICES FOR RESOLVING ACCESS DISPUTES

Most jurisdictions increasingly combine legislative provisions with programs and services to address the cluster of access disputes that includes access enforcement. These programs are often legally mandated and delivered by the courts themselves, as in Australia. These are three types, seen from the perspective of access enforcement: prevention, resolution and enforcement. The following programs are some of the most prominent, although the list included here is neither comprehensive nor exhaustive.

3.1 PREVENTION

Given the high level of conflict among many divorcing couples, and the risk that this conflict will become entrenched and fuel ongoing access disputes, jurisdictions are increasingly adopting programs aimed at reducing the conflict and focussing parents on their children's best interests.

Parenting Plans

Several jurisdictions use parenting plans as a way to promote access agreements and prevent subsequent disputes. The objective is to have parents sit down together to work out comprehensive plans for allocating residence and other parental responsibilities. The assumption is that by working through these issues together outside a courtroom, parents are more likely to reach workable and durable agreements that focus on the child's interests, and do it with less conflict.

In the U.S., the state of Washington's *Parenting Plan Act* of 1987 requires almost all[16] separating and divorcing parents to replace the old custodial agreements (Tompkins, 1995). The agreements must set out a detailed residence schedule, list the form of decision making regarding the child's health, education and religion, and agree to a dispute resolution mechanism (Canadian Research Institute for Law and the Family, 1992).

One study conducted shortly afterwards (Ellis, 1990; Tompkins, 1995) found that most of the parenting plans were quite detailed and specific, with half including specified decision making about child care, and some even including provisions on teenage driving decisions.

The survey of post-reform parenting plans showed that more parents were sharing residence—20 percent compared to only three percent before the reforms—and that a little more than half the parenting plans specified shared decision making. The proportion of sole residence declined for both fathers and mothers. Mothers retained sole decision making in one-third of cases, and fathers had sole decision making in 10 percent of cases. All the fathers who had sole residence had sole responsibility,[17] while half the mothers who had sole residence (70 percent of all cases) had sole responsibility (Tompkins, 1995). How many of the shared residence arrangements are symbolic, rather than actual, is not known.

[16] The law puts limits on both shared parenting arrangements and future dispute resolution in cases where the parents or children might be placed in a vulnerable position (Tompkins, 1995).

[17] Responsibility seems to be defined strictly in terms of decision making.

The study found almost 70 percent of couples chose mediation as the way to resolve future disputes, compared to 16 percent who chose court litigation and seven percent who chose counselling. About 40 percent of the lawyers interviewed thought parental conflict had not been reduced by the introduction of parenting plans, or that parents were not more focussed on their children's needs and best interests.

Another recent study of the legislation found only a handful of plans provided for more alternate residential time than every other weekend, and about one fifth had no specified residential schedule (Lye, 1999). Three quarters of the primary residential parents were mothers. Three quarters of parenting plans specified joint decision making, but the parents and providers surveyed said few parents actually make decisions jointly. Parents and providers also expressed frustration at the limited choice of arrangements provided by the state's parenting plans. Many said it was hard for the ex-spouses to reach agreement. They also felt the process lacked safeguards to protect domestic violence survivors while the plan was being worked out, and to ensure their safety under the plans that were reached.

In Australia, the 1995 family law reforms introduced voluntary parenting plans, and provided for couples to legally register these plans if they wished. A 1998 study of the impact of the 1995 reforms (Rhoades et al., 1999) found that neither counsellors nor lawyers used them regularly. Some 40 percent of court counsellors had never used a plan, and even fewer private counsellors had used them. However, mediators reported using them regularly (43 percent said "very often"), largely to assist settlement, the intention of the law.

As indicated in Chapter 2.1, the proportion of cases of shared residence rose after the reforms, to 12 percent, including a small proportion of equally shared residence. Some 55 percent of post-divorce parenting agreements included responsibility provisions. Most of these (35 percent of all agreements) gave sole responsibility to the resident parent and 20 percent shared responsibility (Rhoades et al., 1999). It is not known how much these changes are attributable to parenting plans, rather than the larger shift from "custody/access" to "shared parental responsibility" as the guiding categories of post-divorce parenting. No detailed analysis was done comparing the arrangements chosen under parenting plans with agreements chosen without such plans.

No comparisons have been done to see whether parents who made parenting plans had more access or responsibility disputes after the reforms than before, or whether they resorted more or less to mediation, counselling or litigation to resolve disputes, or how often. No information was found on whether fathers are exercising access more than before. However, the general increase in litigation over access (its awarding and its denial) indicates that the introduction of parenting plans has not reduced post-parenting litigation over these issues. On the contrary, the severing of residence and responsibility (which were welded together in the old category of "custody") appears to have created new opportunities for legal conflict among some ex-spouses, resulting in increasing litigation brought by access parents. The Australian experience, therefore, appears to confirm the anecdotal information about the State of Washington's experience.

The registration of parenting plans also seems to have proven cumbersome and costly, and there have been recent recommendations for eliminating registration (ALRC, 1997).

In summary there is little evidence yet that parenting plans alone lead to greater sharing of residence or responsibility among parents in post-separation parenting, or that plans reduce the incidence of disputes, including legal conflict over access. It appears that, for low conflict couples, parenting plans can be useful in helping them reach a child-focussed agreement, but will not help, and may even cause harm, in cases when parents are in high conflict.

Parenting Education

Mandatory and voluntary parenting programs have mushroomed in North America. Models vary widely,[18] but most programs aim to improve the ability of parents to understand their children's needs and to focus on their children's interests in their post-divorce parenting. Programs will often teach parents about court rules and processes concerning divorce and separation. Some are designed to be prerequisites for other programs, such as mediation.

Studies show that divorcing and separating parents are often unaware of how poorly their children are coping, and often underestimate or ignore the effects on children of their fighting, their questioning of a child about the other spouse's activities and their demands for first loyalty (Arbuthnot & Gordon, 1997; Arbuthnot et al., 1996).

Parenting education programs that rely on divorce guides, videos, etc., appear fairly successful in making parents more responsive to their children and more positive towards increasing the other parent's involvement with the children (Arbuthnot & Gordon, 1997). However, these tend to reach only a minority of parents and those most disposed to optimizing their post-parenting behaviour.

Most parents graduating from parental education programs say they are glad they attended and that they feel more aware of their children's point of view and are better able to help them (Arbuthnot et al., 1996). However, the few follow-up studies that exist suggest that this does not change their actual behaviour (Arbuthnot et al., 1996). Lectures and other programs that evoke sympathy for the children but do not teach new parenting behaviours have the least effect on parents' learning or their later practices (Arbuthnot et al., 1996; Arbuthnot & Gordon, 1997). A program's length does not seem crucial.

Since most parenting education programs are voluntary, they reach relatively few parents, mainly those most receptive and keen to optimizing their parenting. What is the effect when programs are mandatory?

In 1998, British Columbia introduced three-hour mandatory parenting programs in the Vancouver suburbs of Burnaby and New Westminster. The programs, required for all parents bringing access, custody, support and guardianship applications to Provincial Court, taught parents about the impacts of divorce on children and how to help them, and about court options and processes. These pilot mandatory programs were instituted because the voluntary programs introduced in 1994 had been little used, possibly because parents did not know about them.

[18] For a description of the kinds of programs available in California's courts, where parenting education is closely tied to mediation, see Lehner (1992).

Evaluators found that two thirds of the people attending the workshops were required to be there. About half were initially resistant ("I shouldn't have to go") and the most resistant were parents who had been divorced or separated in the distant past and did not see the need for such a program. By the end of the seminar, two thirds of those who responded to surveys felt no resentment about attending, and 83 percent agreed that divorcing parents and guardians should have to attend a mandatory *Parenting After Separation* workshop.

About 95 percent of survey respondents found the workshop interesting, and 85 percent said they would recommend it to others. Most people found the information was new to them. There were some complaints that the seminars were not racially or culturally sensitive enough (e.g., because men and women attended them together, or because they didn't provide sufficiently for language diversity) or sensitive enough to violence in relationships. One respondent applying for a restraining order was worried about having to go "through an extra hoop" before getting to court.

No follow-up has yet been done on how much parents retain of what they learn in the program, on how the information affects their behaviour towards their children and spouses, or whether the program actually reduces access disputes and litigation.

Long-term Effects of Parenting Education

One U.S. study pursued some of the above issues. Evaluation of Maryland's mandatory *Making it Work* program (Gray et al., 1997), a program delivered outside the court system, also found that most parents were initially hostile about being forced to attend the course, but that this dissipated quickly (the parents interviewed, and the parents in the control group, were drawn from a pool of parents who had litigated custody arrangements; it is not known how far their cases had proceeded before they entered the program). In a mail-out questionnaire six months later, these parents reported more positive behaviours than did parents who had not gone through the course. These parents reported they were able to keep their children out of conflicts, and had fewer struggles over custody, visitation and co-parenting in general. The number of meetings with mediators and attorneys also decreased.

One of the problems in assessing these results, however, is that studies show that parents substantially underreport instances of children caught in the middle of parental conflicts (Arbuthnot & Gordon, 1997). Furthermore, graduates of a parenting education course may be the most likely to underreport such behaviour since they have been told it is wrong.

Another U.S. study evaluating the mandatory *Children in the Middle* program in Ohio (Arbuthnot & Gordon, 1997) did not rely on self-reporting measures (the participants had filed for divorce or separation). This program focusses on teaching parents not to "catch" the children in the middle of their conflicts. Telephone contacts six months after the program found that the parents had not forgotten the skills they had been taught (e.g. knowing what to say or do in particular situations). They also rated their awareness of their children's views and needs lower than did a control group of similar parents (which evaluators took to be a sign of greater awareness), and were more willing for their child to spend more time with their ex-spouse. However, their conversations with their ex-spouses were just as likely to end in argument, and there were no differences in how often they encouraged their child to spend time with their ex-spouse. The results did not vary by gender or by their attitudes toward the mandatory nature of

the court. In short, the parents' attitudes towards their children and relationships with ex-spouses changed, but not much of their behaviour did.

With regard to litigation, parenting education programs have been shown to reduce it in some cases. A two-year follow-up study of 94 Lexington, Kentucky parents ordered by the court to pursue parenting education found that these parents did not re-litigate significantly less often than similar parents who had not passed through the course (50 percent compared to 60 percent of the similar parents). On the other hand, only 13 percent of the parents who enrolled in the course straightaway came back to court, though arguably these were probably the most cooperative, child-oriented parents (Arbuthnot et al., 1996).

Another study in Ohio by the same researchers found that parents who went through mandatory parenting education averaged 1.6 filings, while similar parents who had divorced or separated the year before the program was introduced litigated an average 3.7 times. However, the longer the delay between filing for divorce and attending the program, the more likely parents were to re-litigate over access (Arbuthnot et al., 1996). Parents' education levels did not affect their tendency to re-litigate in either study.

In summary, parenting education programs do seem to have some long-term effect on parental attitudes and understanding and, perhaps because of that, on their willingness to litigate disputes. But there is little evidence as to whether they directly affect parents' behaviours. Only a narrow range of behaviours has been tested.

3.2 RESOLUTION

Most family courts across jurisdictions offer programs aimed at resolving the disputes that have come to the court before they reach a final court judgement. Alternative dispute resolution mechanisms, usually counselling, mediation and/or arbitration, are typically available to parents in all kinds of access disputes: disputes in setting up access agreements, disputes in revising the agreements (varying the orders), and disputes about enforcement of the agreements. These programs, therefore, function both to *prevent* access enforcement disputes (to the extent that they help parents achieve durable access agreements that both parents can live with) and as alternative *methods of resolving* access enforcement disputes.

Unfortunately, most research on these programs lumps all kinds of access and custody disputes together. It is difficult to ascertain whether alternative dispute resolution programs are more, less or equally effective in resolving access enforcement disputes as other kinds of access disputes. Most of the outcomes cited below are for all types of access disputes, including custody disputes.

Counselling

Conciliation counselling is used as a primary strategy in many jurisdictions to resolve cases before they proceed too far along in the litigation process. Counselling models vary widely, and some may overlap with models of mediation, but generally speaking they tend to be "open-ended" services that provide information about legal options and alternatives to litigation, help couples make their own decisions, and give clients the opportunity to resolve differences (ALRC, 1997). Unlike mediation, they do not focus primarily on reaching agreement (Nicholson, 1994).

Australia's Family Court relies heavily on counselling to resolve access disputes before they reach a final court hearing. As indicated in Section 2.1, an estimated 75 percent of the family law disputes entering the Court are resolved through counselling, and this rate may be as high for breach of access disputes as well (15 percent of which reach final judgement).

As outlined in Section 2.1, surveys of conciliation counselling cases lead to high rates of agreement for most participants, with somewhat lower rates for couples ordered into counselling and for cases involving allegations of child abuse or domestic violence. Periodic court surveys have also shown high levels of satisfaction with the service (Gibson et al., 1996). Counselling is less successful when it begins after an application is filed (60 percent success rate), suggesting that conciliation that begins before litigation is more likely to be successful.

One New Zealand study, for example, found a 69-percent success rate for disputes over custody, access and domestic violence when counselling had begun before applications were filed, but only a 39-percent success rate in cases when counselling began after filing (Brown, 1997c).

Periodic court surveys have also shown high levels of satisfaction with the service (Gibson et al., 1996). There is some evidence, however, that such agreements may not last. In the Court's 1996 satisfaction survey, for example, only 29 percent of the clients agreed that after counselling they could resolve any future disputes with their ex-spouse without outside help (ALRC, 1997).

There is also evidence that counselling does not work for difficult cases, as seen in Section 2.1. In the Family Law Council study, counselling seemed to make no difference for access enforcement cases that had reached final hearing (Family Law Council, 1998a). Moreover, the "complex cases" identified at the Paramatta court registry by the Australian Law Reform Commission's study indicated these cases used large amounts of the registry's counselling resources, to no effect (ALRC 1995). Nonetheless, the Family Law Council report concluded that counselling might be some help in cases that reach final hearing by clarifying issues.

The Principal Director of the Australian Court Counselling System suggests that complex cases need a range of different strategies, depending on the case (Brown, 1997c). These include clinical case management plans involving more than one counsellor or mediator and perhaps the involvement of extended family members (see section on impasse mediation, below). The early detection and diversion of potentially complex cases is also essential to prevent them from becoming entrenched in litigation. On the other hand, custody evaluations, if they are ordered early in the proceedings, can intensity conflict by focussing the parties on the dispute rather than on its resolution.

One of the problems for jurisdictions offering more than one resolution support program is deciding where different kinds of clients should be referred to, or, in jurisdictions like Australia where all services are voluntary, providing the right mechanism for clients to make the best choices.

The Australian Family Court piloted an Integrated Client Services (ICS) scheme in Paramatta during the mid-1990s, and the government has plans to implement it across the country. An evaluation was under way in 1999. The scheme provides a one-stop intake desk for clients and a

multi-disciplinary team of service providers to assess clients' dispute resolution needs and direct them to appropriate internal and external alternative services (ALRC, 1997).

Conciliation counsellors in Australia screen for cases involving domestic violence or abuse, and, like mediators, receive special training in identifying and dealing with these cases (ALRC, 1995). Court guidelines provide for the possibility of separate counselling when there is fear of violence. However, prior to 1995 at least, counsellors were frequently forcing women into joint counselling despite their objections, according to submissions to a study by the Australian Law Reform Commission (ALRC, 1994).

Mediation

Mediation programs differ from counselling programs mainly in their focus on reaching agreement (although some voluntary mediation programs resemble some counselling programs). Programs vary widely; for example, they may be voluntary or mandatory (court-ordered), the outcomes may be confidential or made public, the mediators may be lawyers or non-lawyers, and the programs may screen for violence and abuse cases or not and treat these separately or not. These and other factors are believed to significantly affect the likelihood that mediation will bring about reasonable cooperative agreements that work and last.

Canadian courts are turning increasingly to mediation to resolve access disputes, and mediation is widespread in the U.S., where an estimated 205 court mediation programs are operating. Just over one third of these are strictly mandatory, another third deal with both mandatory and voluntary cases, and the rest serve voluntary clients only (Thoennes et al., 1995).

Most research shows reasonably high agreement rates for both mandatory and voluntary mediation. An evaluation of a pilot voluntary mediation program in Melbourne, Australia, in 1992-93 found that about three quarters of the clients who completed the program reached a full settlement though mediation (Nicholson, 1994). About 18 percent of clients dropped out before finishing the program. Most of the cases had more than one issue to resolve; 13 percent had only child-related issues. Many of these cases were high conflict and involved serious issues, including unresolved separation, past violent or threatening behaviour, or past significant drug or alcohol problems. Still, the study found that, as with conciliation counselling, the agreements rates were lower when couples had already launched court applications (ALRC, 1997).[19]

Another comprehensive "snapshot" study of California's state-wide mandatory mediation program found that 55 percent of the families reached agreement during the two weeks of the study period in 1991, and more than one quarter of the remainder were scheduled for further mediation (Depner et al., 1995). About 20 percent of these mediation cases involved one parent's inability to abide by the parenting agreement (Depner et al., 1992), although most cases also involved several issues.[20] Four fifths of the mediation sessions involved fairly difficult issues, including, besides high conflict, high frequencies of child and spousal violence and substance abuse.

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[19] Studies of the cost-effectiveness of these programs relative to litigation have also been done. However, they were not researched. See references in ALRC (1997).

[20] It is not known whether this group included custodial parents bringing complaints of breach of access against the access parent, in addition to access parent complaints.

Since there is no control group of similar parents against which to test the results of the 20-year-old mandatory California program, it is difficult to say how many of these agreements would have been reached without mediation. The agreement rates in the Australian mediation programs compare well to those reached in conciliation counselling, but the voluntary mediation programs seem to self-select a different clientele. Consider, for example, that an estimated 85 to 90 percent of divorce disputes that go into Louisiana's voluntary mediation system end in agreement (Pappas, 1993). In any case, it is not clear how effective mediation is in securing durable agreements in cases that would otherwise have ended up in final court hearings.

Participants in mediation tend to rate it highly. Clients in the Melbourne project, for example, expressed high satisfaction rates of 80 to 97 percent regarding their mediators' skills, their empathy and the fairness of the agreement, among other things. A Legal Aid and Family Services study found similar levels of satisfaction among clients in the Sydney system (Brown, 1997b).

Just over three quarters of the 1,400 or so families participating in the California study (Depner et al., 1995) were satisfied with the results of their mediation (success or failure), and 90 percent agreed it was a good way to develop a parenting plan (Depner et al., 1992). More than 80 percent thought what they had agreed on would be good for their children, about the same proportion felt their agreement was fair, and almost 70 percent felt it would work (Depner et al., 1992).

A recent study by the U.S. National Center for State Courts compared mediation to more traditional custody evaluation services and found that parents thought the mediation was fairer, involved less pressure for them to make unwanted agreements, produced more satisfying agreements and gave parties more control over decisions, than the traditional adversarial court process (Thoennes et al., 1995).

These recent studies appear to confirm earlier studies which showed that mediation empowered parties, gave them the opportunity to air grievances seldom addressed in litigation, helped them focus on their children's needs, and developed agreements that were more satisfying to the parties and fair and acceptable over time (Newmark et al., 1995). These largely U.S. studies typically compared mediation to court litigation or in-depth family evaluations, so how much couples might prefer it to, say, conciliation counselling or a low-cost magistrates court, is not known. It is also not known whether these couples would likely have reached workable, durable agreements without mediation.

It is not known how many couples who reach agreement through mediation end up back in court. In the California-wide study, it is not even known how many parents abided by their agreements. A smaller study of mediation in one California county in 1988-89 found that while agreement rates regarding custody and parenting orders were high (three quarters of families reaching full or partial agreement), respondents were ambiguous about their agreements. Parents' satisfaction with the agreement (as distinct from the mediation process) and their feelings about whether the agreements "were in everyone's best interests" were uncertain. Respondents expressed distrust of their spouse's willingness to live up to the agreement (Duryee, 1992). The durability of many of the agreements seems questionable.

However, a follow-up with participants in the Melbourne program six months later found that 86 percent were still abiding by their agreements (Nicholson, 1994). There were significant differences in the kinds of families who participated in the Melbourne and California programs, and these differences may be relevant to the durability of the Melbourne agreements. The voluntary Melbourne participants tended to have better than average education and income, and turned to mediation at least partly to avoid high litigation costs (Nicholson, 1994). Parents in the California mediation program, on the other hand, tended to have below average education and income, and were more similar socio-economically to the families in the conciliation counselling provided in all Australian courts (Depner et al., 1992). The primary alternative to mandatory mediation in California is also an expensive court battle, with little legal aid available.

Co-Mediation and Mediation Internship in Manitoba

Launched in early 1999, this Manitoba pilot project offers comprehensive co-mediation services (for custody and access, support and property issues) to separating and divorced parents, and a training program for family lawyers and family mediation specialists (MacKenzie, 1999). The mediation services consist of five to eight 1.5-hour sessions, led jointly by lawyers and family specialists. Some 150 participants were voluntarily referred to the program between April and November, 1999, mostly from existing family conciliation services, the province's parenting program and lawyers. However, one third of these referrals did not follow up. A handful were referred from the court. Cases involving violence, abuse or an evident imbalance in negotiating power were screened out, but at intake three couples reported restraining orders. The evaluator found no evidence that the program had engaged unsuitable participants, or that any participants were reluctant.

Nearly all the parents were separated (one divorced), most for less than six months. Most had not yet resolved custody arrangements, most of the children lived with their mothers, and on average children spent five days a month with their access father/parent. The participants tended to be more educated than those in the province's mandatory parenting education program, and most had high incomes (although 90 percent had seen their incomes fall since separation). The parents were likely to have child and spousal support problems, though access was also a problem for nearly half of those who had engaged lawyers.

Most of the participants also reported high conflict with their spouse currently and during the marriage, although "high-conflict" was self-defined. Between 40 and 60 percent believed their communication with their spouse was poor, that their spouse was neither fair-minded nor flexible and was taking advantage of them, and that they could not focus on problems with the former spouse without dredging up the past. However, only 30 percent felt harassed by their former partner. Problems during pick-up and drop-off of the children were reported to happen "rarely" or "sometimes". Most respondents thought their children were "rarely" caught in the middle of their conflict, and most thought they had adjusted well or adequately to the separation. Participants generally believed they were more supportive and flexible in access arrangements than their partners believed.

By November 1999, 20 of the 30 completed cases had reached full agreement and another five had reached partial agreement. About 23 percent of the 100 or so cases in the program were pending, and 19 were on the waiting list. A few other participants reconciled or reached agreement before mediation.

Interim results support the prevalent view in the research literature that mediation works for families with significant but not entrenched or extreme conflicts, especially if they begin mediation before post-separation animosities harden. A key question is how many of these couples would have reached agreements anyway, without ending up in the court system. In the absence of an answer to that question, these study results are inconclusive.

Criticism of Mediation

Standard mediation programs are frequently criticized for failing to ensure that agreements are genuine and fairly reached. Critics argue that mediation programs lacking specific safeguards against unequal bargaining run the risk that such inequalities will taint mediation agreements. They say this is because mediation is governed by fewer rules and procedures, the parties typically deal with each other directly, and the training and skills of mediators vary.

Critics also argue that battered women are particularly vulnerable to unequal mediation bargaining, since they usually have to face and negotiate with their batterers. This is not a minor issue. Domestic violence was an issue in nearly two thirds of the families in the California study, and in 20 percent of these families it was the *only* problem raised (not all involved current violence, however). In the remaining two thirds, domestic violence was typically one of a cluster of issues that might include substance abuse (one third of all families), child neglect (one third of all families) or violence against the child (18 percent of all families) (Depner et al., 1995). At least 16 states in the U.S. have responded to these concerns by enacting legislation to exempt battered women from mediation (Thoennes et al., 1995). One Alaska pilot project, after screening out abused and formerly abused women from mediation, found it had eliminated 60 percent of its prospective users (Thoennes et al., 1995).

A study of U.S. mediation programs (voluntary and mandatory) found that 20 percent of the overwhelmingly court-provided programs do not screen for domestic violence. Moreover, only one half of the programs screen each parent directly and privately for domestic violence, while the other 30 percent or so either do background checks or question both parties together about domestic violence (Thoennes et al., 1995). Mandatory mediation programs did not differ significantly from voluntary programs.

There also appears to be wide variation in mediators' training. Mediators receive some sort of training related to domestic violence in 70 percent of programs. Mediators without training are more likely to carry on as usual if domestic violence is raised during mediation than those with training. In all, six percent of programs always mediate as usual in cases involving domestic violence, while 23 percent never mediate as usual. Only two percent always use separate private sessions in such cases.

The study also found that most programs eliminate less than five percent of their cases due to spousal abuse allegations, and about 85 percent eliminate less than 15 percent of cases. Strictly voluntary programs eliminate the fewest cases, suggesting that cases involving violence, for one reason or another, are opted out of mediation. Elimination rates are highest when legislation or a court ruling specifically allows exclusions and specifies the criteria to be used (Thoennes et al., 1995). Some programs do not permit domestic violence cases to opt out of mediation.

Overall, though, significant numbers of parties with domestic violence issues remain in mediation, even when they are permitted to opt out. Many of the women excluded from the Alaska project opposed the exclusion policy because they thought the prospective gains from the project outweighed the risks (Thoennes et al., 1995). Other women in domestic violence cases are upset at being required to mediate (Newmark et al., 1995).

The authors of the nationwide U.S. survey speculated that women may not opt out because they feel pressured into staying by their bullying spouse, because they freely decide the benefits outweigh the risks, or because they believe it is still better than the expensive, perhaps no less unequal, alternatives (Thoennes et al., 1995).

One recent Nova Scotia study focussed on 34 women who had participated in private or court-provided mediation or conciliation at the break-up of relationships involving domestic violence. Most of the women said they felt coerced into mediation by their ex-spouses or the judicial system, and once in mediation, felt that the mediators rode roughshod over them, ignored the issues of domestic violence, or allowed their ex-spouses to bully them during mediation. Only two of the 34 women recommended mediation—because it had helped teach their ex-partners about basic parenting responsibilities, or led to a satisfactory agreement (Transition House Association of Nova Scotia, 2000).

In contrast, an Australian study found that 84 percent of the Australian women who participated in voluntary counselling, and whose relationships involved domestic violence, were satisfied with the counselling they received (Davies et al., 1995). It is possible the two studies reflect differences in the kind of processes being offered, since Australian conciliation counselling is less focussed on achieving agreement than are standard mediation programs.

The Nova Scotia study's findings that mediators may undermine mediation by coercing or bullying clients are supported by an English study of preliminary hearings at which couples are diverted into mediation under the U.K. family law procedures. Observing the hearings, the researcher found that some hearing officers virtually coerced parents into mediation by maintaining that there was no alternative (there is) or strenuously attempted to get the parties into agreement on the spot. In one case, the father, who had tried to strangle the mother the previous spring, was permitted to harangue the mother and make repeated motions to her during the proceeding, drawing his index finger across his throat (Pappas, 1993). The researcher found that half of the "agreements" reported over the 12-week period of the study were arguably inappropriately labelled (Pappas, 1993).

When mediation is conducted in the shadow of a strict legal penalty that leaves one party little leverage, it seems plausible that at least some of the mediation will really be pressure for the recalcitrant party to conform (whether or not he or she has good reasons for resistance). In the latter contexts, mediation functions as enforcement of *compliance* rather than as disagreement resolution.

Impasse Mediation

The impasse model of mediation was developed in the United States to be used for difficult and complex post-separation disputes, when couples seem unable to move on from their divorce. The mediation consists of an intensive 10-week series of sessions that combine therapy and

counselling, and includes the whole family. In evaluating the model, its creators found that almost 83 percent of couples initially reached agreement and that after six months 70 percent had kept them. After two to three years, 44 percent of families had kept the agreements, and 16 percent had renegotiated their own agreements using the original plan as a template. Thirty-six percent had returned to court, half to a mediator and half to a judge after further mandatory mediation had failed. Of this group, 23 percent returned more than once (including those who could not be helped by impasse mediation). There was also a marked decline in hostility and conflict among the couples who were helped by the mediation. The children's adjustment measures, however, did not improve (ALRC, 1995).

Australia's Family Court piloted a small impasse mediation project in Brisbane involving 13 parents and six children. Four couples and five singles were involved. One couple produced a written agreement to resolve their conflict, three who attended alone fully resolved their issues and either withdrew from or decided not to initiate legal action, four others achieved partial resolution, and two couples continued litigation (ALRC, 1995).

Following the pilot, the principal director of the Family Court's counselling service submitted that the impasse model is the best approach for difficult contact (access) cases (ALRC, 1995). It is also less costly than hearings, although more expensive than regular mediation. However, critics of impasse mediation argue that it cannot help in cases when the problem is an individual with a personality dysfunction, or in cases when getting the whole family together is unfeasible (ALRC, 1995). They also say it sidelines issues of violence which ought to be addressed.

While the Australian Law Reform Commission does not reject impasse mediation, it questions how often it prevents cases from proceeding through court that would otherwise have reached final hearing, and asks whether having an arbitrator or Court registrar on hand to provide legal advice and help decision-making would be more effective (ALRC, 1995).

Ontario's Intensive Short-term Intervention

In Ontario, the provincial Office of the Children's Lawyer and the Clarke Institute of Psychiatry have developed a short intensive intervention specifically for parents involved in access denial or breach of access disputes (Birnbaum & Radovanovic, 1999). Cases involving violence or abuse are excluded from the program. The 10-hour intervention is a substitute for the typically 22-hour comprehensive assessments sometimes ordered for difficult cases. Whenever possible, the parents are seen together or with the child early in the intervention, followed by parent-child interviews.

A follow-up evaluation of 40 parents found that about 45 percent of them were continuing to have access disputes. Thirty percent of the parents reported poor to very poor parent cooperation continuing after the brief intervention, and 55 percent of all respondents said that the intervention had not helped improve communication among the parents. However, 35 percent of the parents said their existing visitation arrangements had been made with the assistance of the clinicians, and 63 percent said the evaluators' suggestions were incorporated during court motions covering their disputes shortly after the intervention. These settlement rates seem higher than what is usually achieved with traditional assessments (Birnbaum & Radovanovic, 1999).

Special Masters in Mediation and Arbitration

Special Masters exist in some California courts to resolve cases in which mediation has failed and to prevent them from reaching final court hearing. The Special Master must be a mental health professional, mediator or family law attorney. He or she may make binding decisions about access disputes as well as parental decision-making responsibility when this is disputed, but cannot vary the basic access or custody orders.

In considering the use of Special Masters to effectively arbitrate complex cases that are well along in the litigation process, the Australian Law Reform Commission suggests they could be appointed in connection with an impasse mediation program to decide "minor, but nonetheless destabilizing, issues" (ALRC, 1995).

3.3 ACCESS ENFORCEMENT

Some jurisdictions have established access enforcement assistance and compliance programs that are aimed at enforcing access awards when there have been breaches or when breaches are likely, or making access possible in circumstances in which it would otherwise have to be denied by the courts. Like the California Special Masters and impasse mediation programs, these programs typically deal with complex cases that counselling or mediation has failed to resolve, and which tend to be more litigious.

Mediation and Arbitration: Arizona's Expedited Visitation Services

The Expedited Visitation Service in Maricopa County in Arizona enforces access when access orders have been violated. Conference officers (Special Masters) meet with the parties within seven days after a parent (usually the access parent) files an application claiming a violation, or after the court refers the dispute to the program. The conference officer seeks to mediate the dispute and at the end of the conference makes public recommendations to the court, which may include any agreements reached by the parties. The existing court order may be upheld, it may be modified or made more specific, or the conference officer may recommend other services, such as supervised access or supervised exchanges (Pearson & Anhalt, 1994; Lee et al., 1995).

Since the only permissible reason for denying access in Arizona is the threat of harm to a child, the result of the conference is usually access of some kind. The ordered access is monitored for compliance for six months via monthly telephone calls or mail monitoring. Parents or the monitor can request further conference with the Special Master during the six months, and if no progress is made towards compliance, the Special Master can request a hearing before a judge (Lee et al., 1995).

An evaluation of the program found that about 55 percent of the participants in the program had their access visits monitored by telephone or mail, some 17 percent in combination with supervised exchanges and 13 percent in combination with supervised access (Pearson & Anhalt, 1994).[21] Another quarter of the cases were referred to other services. The most common outcome of the conferencing was specification of the visitation orders, most of which had

[21] The evaluation covered roughly 80 percent of the eligible program participants: 88 children and an unknown number of parents (Lee et al., 1995).

authorized "reasonable access" (Pearson & Anhalt, 1994). Punitive penalties were rare, as were court-ordered custody changes.

The study found that nearly two thirds of the cases in the program had prior litigation, averaging almost two litigations per case, and one third involved a child support litigation shortly before the denial of access application (Pearson & Anhalt, 1994). Close to 60 percent of access parents were in child support arrears. The access parents' main complaints were that access was denied and make-up access for legitimate misses was not allowed. The custodial parents' main complaint was that access parents failed to exercise access by not showing up or by cancelling without notice (Pearson & Anhalt, 1994). About 40 percent of the cases involved allegations of substance abuse, spousal violence or child abuse, although these do not appear to have prompted any special treatment. The overwhelming majority of custodial parents were mothers. Access fathers rarely had access for more than one third of the child's time.

According to the study, the frequency of visitation did not tend to increase as a result of the program. Some parents saw their children more often than they had previously, but half the parents who visited their children regularly saw them less after participating in the program. Most of the latter parents were in child support arrears (Pearson & Anhalt, 1994). Re-litigation rates with regard to access did appear to decline, although litigation about child support did not. However, about half the mothers and fathers continued to have visitation problems after the program ended, and one third reported no resolution of any kind. Access fathers who cited ongoing problems were mostly unhappy with the amount of access they had, and custodial mothers who cited ongoing problems were mostly unhappy with child support payments, the frequency of the father's exercise of access, and the initial amounts of access granted the father.

When the parents did manage to resolve their dispute—which appears to have been in about one quarter of the cases—access was more frequent and child support tended to be paid (Pearson & Anhalt, 1994).

At least half the mothers and fathers in the program seem to have been moderately satisfied with their program experience. Most, though, doubted it would have any long-term impact on child support payments, the ability to exercise visitation or the behaviour of the other parent. Most mothers reported little change in delinquent child support payments, while most delinquent fathers reported having caught up.

Given the program's modest success in resolving parents' disputes, it is not clear why re-litigation rates declined as they did. It is not known how long the parents were interviewed after the program's end.

A second follow-up study of 70 children whose parents participated in the program found that the children's self-esteem, their overall adjustment and their school behaviour were not affected by compliance with the access order. However, these measures did improve with more frequent visitation (although the child's perception of inter-parental conflict also rose with higher frequency of visitation) (Lee et al., 1995).[22] As indicated above, visitation frequency generally increased when couples were able to resolve their dispute.

[22] This second follow-up excluded cases involving violence or abuse.

Manitoba's Access Assistance Program

An access assistance project, jointly funded for three years by the federal government and the provincial government, and solely funded by Manitoba for an additional year, was piloted in the province from 1989 to 1993. The program aimed to facilitate the exercise of access, when appropriate, in cases in which access was denied or not exercised and other measures to resolve the problem, such as mediation, had failed (Prairie Research Associates, 1993). The project combined long-term therapeutic and legal measures: assessments, recommendations and counselling, combined with legal information, ongoing legal advice from the parties' lawyer, and ultimately, contempt of court proceedings if the program felt access should be occurring as set out in the court order and the non-compliant parent was unwilling to participate. Unlike the U.S. programs described above, decisions were based on the child's best interests rather than on securing parental rights of access in all cases when the child was not in direct danger.

Referrals into the program could come from the parents, lawyers, the court or other social service agencies. Some 169 families were introduced to the program, but only 99 used its services. Half of the families reported a history of violence and more than a third reported alcohol abuse. Parents were generally extremely hostile to each other. A pre-service meeting was held to provide the parents and their counsel with an orientation to the program's procedures, goals and objective, so that they could decide whether they wished to participate. In addition, interviews were held directly with children only when appropriate. The assessment aimed to identify the child's best interests and needs in relation to the parents' dispute.

A therapeutic team developed recommendations on the basis of the assessment, which included a variety of services, such as in-house counselling, child counselling, supervised or monitored access provided by volunteers, and referrals to community agencies and social services. Only one in five cases used supervised access. If the access problem remained unresolved, the case could go back to a settlement meeting, be terminated, or proceed to the program lawyer and eventually to a contempt of court hearing.

A project evaluation found one third of the cases improved by the end of the program, an additional 10 percent were following the court order, and another third remained unresolved. About 10 percent were referred back to the client's lawyer for a variation. It is not known how many of the couples re-litigated after leaving the program, nor was the impact of the program on child outcomes measured satisfactorily (Prairie Research Associates, 1993). The average cost of the program was $3,484 per client, but it was estimated that 20 families consumed most of the program resources.

Supervised Access

Supervised access is gaining widespread popularity as a strategy to enforce access in the most difficult cases, especially in cases involving risk of abuse or violence, psychiatric illness or substance abuse.[23] These are often cases in which denying access may be the only safe alternative. Short-term supervised access is also frequently used by access parents who are re-establishing contact with their child after a long lapse.

[23] Membership in North America's Supervised Visitation Network has risen from 70 in 1992 to 420 in September 1998 (Johnston & Strauss, 1999).

Supervised access aims to provide a safe, neutral drop-off and pick-up point for exchanging the child during access visits, and a place where access parents can spend time with their children under third-party supervision. In many Canadian provinces, it remains an informal service provided by volunteers or community agencies, and is not widely available. Access centres are replacing the relatively unsatisfactory "police station exchanges" and supervision by relatives that used to be the only means of access supervision. Most Canadian provinces seem enthusiastic about expanding existing supervised access centres, although proposed service models vary. The Australia and New Zealand Association of Children's Contact Services (ANZACCS) identifies three major centre models (Strategic Partners, 1998):

- Low vigilance supervision, where the risk factors are minimal and the aim is to promote healthy relationships and improve the ability to manage independent access.

- Vigilant supervision when conflict is high between parents, parenting is poor, and the risk of violence is low. The orientation is towards providing conflict-free drop-off and pick-up points where the parents need never see each other.

- Highly vigilant supervision is a resource intensive service wherein access parent-child interactions are closely monitored and maintaining safety is the priority.

There is also wide variation in how often supervised access is embedded in a network of counselling, mediation or parenting services, and wide variety in staff training and supervision, among other things. These factors appear to make a difference to the quality of service, and the likelihood of parents graduating from supervised access to workable unsupervised arrangements.

Comprehensive evaluations of at least two major supervised access pilot projects were found. They are described below.

Ontario's Supervised Access Pilot Project

Ontario implemented supervised access in a 14-site pilot project between 1992 and 1994. The sites, scattered among major cities and rural areas, varied widely in the number of visits they supervised, but by the end of the pilot some centres were at capacity and had waiting lists (Park et al., 1997).

Some 60 percent of the parents surveyed had had ongoing access before, more than half of them relying on unsupervised access and slightly more than one quarter on friends or relatives. These arrangements had usually ended because the custodial parents denied access (reported most often by the non-custodial parents) or the parent feared for their safety and/or the children's (both reported mostly by the custodial parents). About 43 percent of custodial parents said they feared child abuse (17 percent of non-custodial parents), while high conflict and the reintroduction of parent and child were also common reasons (Jenkins et al., 1997). Judges and lawyers who were interviewed considered the program a "necessary and essential" service. They thought court orders for supervised access had risen simply because the service was available, and that without it these cases would have gone straight to trial or no access would have been ordered (Peterson-Badali et al., 1997). Most of the parents were referred to the service by the courts.

The evaluators found that supervised access was for a short term, mostly when a child was being reintroduced to a long absent parent. Parents most likely to use the service for a longer period had unmanageable psychiatric disabilities, suffered substance abuse, or feared their child's abduction (Park et al., 1997). The average time in supervised access was 7.7 months.

The parents were overwhelmingly satisfied with the supervised access (90 percent of custodial parents and 70 percent of non-custodial parents). Custodial parents were also overwhelmingly satisfied with the restriction of having the visit on site, but 44 percent of access parents were dissatisfied with this. Access parents were also much more unhappy with the legal system in general (almost two thirds) and with their lawyers (22 percent) (Jenkins et al., 1997). Virtually all of the judges and lawyers interviewed were positive about the pilot project.

Relatively few of the parents interviewed moved beyond the supervised access during the period; only 13 of 121 moved on to unsupervised access, and nine moved from supervised access to no access arrangement. There was no evidence, though, that supervised access reduced hostility between the ex-spouses or improved other aspects of their relationships, which in general remained very hostile. Seventy percent said their ex-spouse would lose his or her temper if forced to discuss an issue about their child. However, there were few critical incidents (1.6 for every 1,000 visits). The judges and lawyers interviewed perceived less hostility among the couples, perhaps because they no longer fought so much in the courtroom (Peterson-Badali et al., 1997).

The continued hostility between the parents raises questions about the role of supervised access as a stage to more flexible, cooperative access arrangements. One expert has asked whether long-term supervised access is really in the child's best interests (Bailey, 1998) in that it implies persistent parenting failure by one or both parents. However, the Ontario pilot project did not offer therapy, counselling or parenting training, services that experts say should be integrated with supervised access to foster attitudinal change and growth among the parents.

The evaluators found that most children were also happy in supervised access, although only a quarter understood why they were there and what it meant. Experts have raised concerns that unless abused children clearly understand what is going on, they may think that the supervised access with their abuser condones the abuse (Johnston & Strauss, 1999). However, a small minority did not feel insulated from their parents' hostility by the supervised access arrangements. The researchers suggest that supervised access might harm these children's interests by prolonging their exposure to high-risk events (Peterson-Badali et al., 1997).

Assessing the impact of supervised access on children is even more difficult because these children are 8 to 14 times more likely to have emotional and behavioural problems than other children (Abromovitch et al., 1994, Johnston & Strauss, 1999). Yet traumatized children do not necessarily appear overtly troubled, at least at this point in their lives (Johnston & Strauss, 1999). They often appear quite lively and full of laughter. However, their need to defend against a confused and frightening reality makes them seek predictability and control (Johnston & Strauss, 1999). Whether supervised access meets these deep needs is not clear. Unfortunately, no longitudinal studies of children using supervised access for long periods were found, presumably because formal services are relatively new.

Most of the judges and lawyers interviewed thought supervised access produced great court savings, by reducing court time and expense. The evaluators found that costs of providing the service varied greatly, but averaged $71,500 a year per small centre, or a $109 median per visit (1993 dollars). Based on the pilot projects' levels of service, the evaluators estimated that about 9,782 Ontario families could benefit from using supervised access (Park et al., 1997).

Ontario is currently finalizing plans to expand the existing network of centres. The average length of service in these networks, in operation for nearly a decade now, is still six to eight months, but some parents (especially those with mental health or addiction problems) have used the service for up to nine years.

Australia's Supervised Contact Pilot Project

The Australian federal government initiated a ten-site pilot project in 1996 as a possible prelude to introducing a widely available service. The pilots were considered timely since, as a result of family law reforms, virtually all fathers were being awarded contact or access in interim parenting orders (custody/access orders), including violent and abusive fathers who would eventually be denied access in the final orders. Many pilots provided counselling and other services as well as supervised access, and aimed to wean parents off supervised access, to workable unsupervised arrangements when possible, although these expectations were not explicitly set for clients.

The service was shown to be meeting a clear need. The two-year span of the project evaluation saw a marked increase in the number of parents wanting the service and in the complexity of the cases, which involved substance abuse, psychiatric illness disabilities and ethno-cultural diversity. The numbers of change-overs (dropping off and picking up children) jumped 230 percent, and the number of on-site access visits rose 60 percent. The number of children served doubled. Some of the pilot services had waiting lists by the end of the evaluation. The evaluators also surveyed eight unsponsored centres and found some of them overwhelmed by demand (Strategic Partners, 1998).

About 60 percent of the clients were residential (custodial) mothers, and about 60 percent of the clients received social security (social assistance). Some 27 percent of access parents were unemployed (or on assistance). Most parents had been separated for two years or more. Access had been inconsistent and infrequent among recently separated couples, and 30 percent of the access parents had not seen their child for at least a year. Most of the children were under age 10. Nearly a quarter of the clients had at least one family member born in a non-English-speaking country. About 60 percent of the residential /custodial mothers using the service reported high to extreme levels of conflict and violence, and several cases involved alleged and actual child sexual abuse. The staff also noted high levels of emotional abuse during visits, which challenged their commitment to providing a neutral as well as safe space. Some services explicitly targeted cases involving alleged violence and abuse, but to some parents this stigmatized the service and some men decided against using the service for this reason.

Referrals came mostly from lawyers (40 percent), judges (22 percent) and community legal centres (10 percent). Nearly 20 percent were referred from community and social services agencies. The court-referred cases were "higher vigilance" cases, and centres could refuse such a case if they felt they could not handle it. Most services conducted intake assessments, and lost

one third to one half of their potential cases as a result. Half of the centres eventually began charging fees, ranging from $2.50 to $30 per hour, but they reported this did not affect service use. The actual cost of the service ranged from $46 to $91 per hour.

The responses of outsiders to the programs were very positive, especially the police, lawyers and judges. Judges felt the contact services reduced litigation and were contributing to the parents' ability to reach workable contact and child exchange arrangements. Interestingly, the projects also won over those men's groups and women's advocacy and service groups that had initially opposed the centres (the men because they thought fathers were unjustly accused, and the women because they feared that fathers could abduct the child or that violent incidents might occur at the centres).

The children at the Australian centres were as traumatized, on average, as the Ontario children. Two years of close monitoring of 49 of the Australian children also revealed that, as in Ontario, most did not really understand why they were there, at least initially (Strategic Partners, 1998). Half of the children said they were happy (more of these in change-overs than supervised visiting), and half said they liked seeing their visiting parent now. All children in change-over and 70 percent of children in supervised visits said the visits were better than they had been before. Three quarters of the children said they felt safe at the centre. Security for them seemed to be provided by the constant presence of workers in the room.

Few of a smaller sample of 22 children wanted to see their access parent outside the centre. Seven of the 49 children stayed fearful—all of these children had experienced direct threats of violence or abduction from their access parent, and the poor quality of their interactions with their access parent appeared independent of the residential parent's behaviour. As in the Ontario project, this raises doubts that supervised contact is good for *all* children.

Most children's behaviour, however, seemed to improve after about six months; the more visits the more quickly it improved, and the longer the time in the service, the greater the gains. The more the children felt secure with regular safe contact, the more they responded positively to their access parent. Children in change-over responded more quickly than those in supervised visits. Better interactions between access parent and child were associated with a shorter time since separation, some willingness among the parents to communicate, an access parent's positive and well-attuned attitude to the child, and the belief of residential parents that their own relationship with the child was improved by using the service. Supervised access does appear to help begin to mend torn relationships between most access parents and their children. None of the centres forced children to visit. It seems reasonable to speculate that when a child is not free to resist access, as in some U.S. states, more children in supervised access will suffer badly.

How did parents feel about supervised access? Residential parents entering the program mostly wanted safety (77 percent). Most felt that previous arrangements had been unsafe. Most of those interviewed (a sub-sample) described having to cope with persistent conflict over access (ranging from violence to harassment by ex-partners) by going to extreme lengths to avoid it, that is, by denying access. All of the residential mothers interviewed said they felt safer using the program, but many entering the program thought the child ought not to have contact with the access parent. However, this attitude often softened over time. Two thirds of residential parents

reported that they coped better with access parent visits than they had before they were supervised.

Non-residential parents, on the other hand, primarily wanted access (60 percent), and one third of them strongly resented having to use the service. Many of them had thought there were practically no problems beforehand and that residential (custodial) parents had been obstructing access. They felt frustrated, confused and angry, and provoked into antagonistic behaviours by having to use supervised access, by their ex-partner's refusal to communicate directly, and by their grief and loss. Most felt locked into a personal and intense battle with their spouse that allowed little thought for the children. This had led many to stop seeing their children, before eventually seeking court orders to regain contact (access-related litigation nearly doubled after the 1995 family law reforms were passed in Australia. The increase may have been caused by renewed applications from fathers who felt they would fare better under the new laws [Family Law Council, 1998]). Access fathers' resentments also often softened over time.

Only half the parents (residential and access) thought their former visiting arrangements had also caused problems for their children, although the evidence from the children clearly showed them wrong.

The centres did not actively engage in helping parents improve the communication, cooperation and understanding needed to manage access independently (although some offered counselling and related service). Over the two years, the average length of stay in the service went from three to five months, reflected the increasing number of parents who did not move on. Centre workers felt most of the parents would need more than the regularizing of contact, including a hiatus in hostilities, to be able to manage access independently; they needed to learn parenting, communication and cooperation skills. Centre workers worried that without the additional supports, parents would become dependent on using the centres, thus hogging limited resources. One of the disturbing results of the study was that communication between parents did not improve during the time in the program, and 70 to 85 percent still had no contact, or worse contact, as time went on. The confidence of both residential and access parents to be able to manage contact without supervision actually diminished the longer they were in the program. The higher confidence of access parents at the outset diminished somewhat, while residential parents appear to have become even less confident about managing contact afterwards.

Sixty-three parents left the program during the evaluation, mostly because of changed court orders. Few felt ready to move on. On average, one third of the parents were trying to make their own arrangements. Two thirds of residential parents were less happy with the post-supervision arrangements, while only 10 percent of access parents were less satisfied. The high anxiety and dissatisfaction among residential mothers upon leaving the service raises questions about the capacity of supervised access, on its own, to diminish the incidence of access disputes among high conflict, non-communicating and non-cooperating parents over the long term. Unfortunately, no longitudinal studies were found that tracked graduates of access supervision to see whether any pre-supervision practices resurfaced.

Is effective access supervision an inexpensive strategy for dealing with hard cases, compared to the alternatives, primarily litigation? In a submission to the Australian Law Reform Commission's study of complex cases, the Australian and New Zealand Association of

Children's Access Services (ANZACAS) estimated that a two-percent reduction in existing contact litigation (contact cases and cases begun but settled before hearing) would cover the cost of establishing and operating a national system of access centres. The estimate was based on the costs of the Ontario's pilot project (ALRC, 1995). The Law Reform Commission endorsed supervised access as a short-term solution for complex cases.

CONCLUSION

SUMMARY AND OVERVIEW

There is significant evidence that access denial and failure to exercise access are significant problems, not only in Canada, but in other jurisdictions as well. While the precise scope of these problems remains unclear, the research suggests that failure to exercise access is a more prevalent problem than access denial. Where access is seen as a parental responsibility serving the child's best interests, rather than a parental right, both denial of access and failure to exercise access are equally important problems that need to be addressed. Yet enforcing exercise of access seems counter-productive at best, and if, as the research shows, the custodial parent's well-being is the single most important predictor of children's well-being, the onerous punishment of unwarranted access denial will be as well.

Complicating these issues is the fact that most of the access disputes pursued through the courts are complex cases involving an ongoing dynamic of extreme hostilities having their origin in the parents' unresolved separation. Disproportionately high numbers of these cases also involve violence and/or abuse. Punitive enforcement measures by the courts do not resolve these kinds of disputes and may actually encourage them.

The brief survey of legislative approaches to enforcement in Chapter 2 reflects the awareness of these difficulties in most jurisdictions, and the diverse strategies being adopted to address them. The most common approach is to prevent or resolve access disputes before they enter, or go too far into, litigation. The brief survey of strategies in Chapter 3 indicates that parenting education, counselling and mediation are effective in reducing hostilities at the time of separation and divorce, and do help parents reach initial agreements. However, these supports appear to be most effective for those disputing parents who need the least help, and ineffective for those parents who need the most help and who will end up using the most court time. It is not clear, therefore, just how much difference these programs ultimately make, although they do seem to make some difference.

For those jurisdictions where access continues to be awarded in very difficult cases—which would appear to be virtually all jurisdictions—by far the most popular strategy for resolving disputes is supervised access. Whether this is a solution that is always in the child's best interests, or whether it is a long-term solution as it is increasingly expected to be, is uncertain.

ADDRESSING DATA NEEDS

This report surveyed the state of the research on the incidence of unwarranted access denial and non-exercise of child access, as well as the legal caseload of access enforcement. The only systematic Canadian study found on these issues was the data on non-exercise of child access collected by the National Longitudinal Study on Children and Youth (NLSCY).

More systematic and reliable data are needed, either from existing Statistics Canada surveys or from specific court-based projects. Table I lists data that the author identified as important, the survey instruments from which these data could be drawn—or, in some cases, are already being

drawn—and a brief indication of each item's potential use. Clearly, the survey instruments would need in-depth analysis before any decisions could be made about adding the proposed items.

The items are listed in three categories: unwarranted access denial, failure to exercise access and court caseload, or the cases in the court system involving access denial and failure to exercise access.

Unwarranted Access Denial

The items in this category provide information on the following:

- the perceived incidence of access denial and unwarranted access denial;
- the nature of the pre-separation living arrangement and post-separation access arrangements in which perceived (unwarranted) access denial is most likely to occur;
- the nature of post-marital relationships in which perceived (unwarranted) access denial is most likely to occur; and
- the attitudes and values towards post-separation parenting of the custodial and access parents reporting perceived incidence of (unwarranted) access denial.

Surveys of parental self-reports cannot be trusted to reveal the actual incidence of access denial because parents' perceptions of access denial often err for a variety of reasons. Even when the survey documents the incidence of certain specified events,[24] it requires parents to judge whether things actually happened that way, and whether the custodial parent was actually denying access, with all the knowledge and intention that the word *denial* implies. Parental reports provide an even less trustworthy picture of the incidence of unwarranted access, because parents' lack of legal knowledge and their vested interests make them poor judges of whether any access denial was warranted.

Still, data from parental self-reports is important to policy making that treats access denial as one component of—and often a symptomatic measure of—more general problems in post-separation parenting practices among Canadian families, and has as its goal the fostering of post-separation arrangements that serve the child's best interests.

Large-scale surveys such as the NLSCY provide large survey samples, and a great deal of other data on the families against which the access denial data can be compared. These surveys are limited, however, in being able to measure only aggregates: they cannot compare responses of custodial and access parents in individual couples.

Court-based projects could also periodically collect data on the incidence of access denial, by tracking separated or divorced couples with court orders (cf. Ellis, 1995). A court-based project would sample vastly fewer families, however, and only those with court orders. Slightly less

[24] For example, by asking "How frequently does your ex-spouse refuse to allow the child to go out with you when you arrive to pick her or him up at the time specified in your access agreement?"

than one half of separating and divorcing parents do not have court orders even five years after separation (Department of Justice Canada, 1999). Existing research suggests only a minority of these will have access problems. Respondents to a court-based survey are also more likely to be self-selecting.

The NLSCY seems a suitable survey vehicle for collecting this information because it is a large, longitudinal and national (25,000 sample) study that:

- already collects information on separated and divorced families, their custody and access arrangements and access practices (especially exercise of access);
- already incorporates some of the variables (A6-12, Cycle 1) that would be useful in analyzing the factors associated with perceived access denial;
- surveys only families with young children (it will eventually track children into adulthood);
- would allow analysis of the impacts of perceived access denial on short-term and long-term outcomes for children and custodial parents;
- would allow ongoing longitudinal tracking of access problems in families, and analysis of the factors affecting unresolved access problems; and
- would provide insight into the family context before marriage break-up, and could be used to identify problems at the time of separation or divorce and their later impacts on the parents and children.

The survey can track both custodial and access parents' post-separation lives, but its current methodology needs adaptation to survey separated fathers and to explore the nature and impact of relationships between children and access parents (Department of Justice Canada, 1999). It would take considerable time to develop and pilot the questions (researchers would need to determine whether the additional questions made the survey unwieldy, for example, and to develop protocols for reaching access parents).

Failure to Exercise Access

The NLSCY already collects longitudinal data on exercise of access by access parents, and on the factors associated with different access patterns (Department of Justice Canada, 1999). No surveys currently collect data on specific instances of failure to exercise or breach of access—specific instances in which access parents fail to pick up the child as specified in the access agreement, or fail to return the child on time.

Analyzed in concert with items 5-11 in Table I, the data items in failure to exercise access section would provide information on the following:

- the incidence of failure to exercise access, including loss of contact, specific failures to exercise access and breaches of access;

- the nature of pre-separation living arrangements and post-separation access arrangements in which failure to exercise access is most likely to occur;

- the nature of post-separation relationships in which failure to exercise access is most likely to occur;

- the attitudes and values towards post-separation parenting associated with failure to exercise access;

- the quality of the access that is exercised;

- access parents' experience of access parenting; and

- possible alternative models of access arrangements.

The NLSCY would seem the natural vehicle to expand and deepen the data already collected with the new items suggested. The General Social Survey (GSS) also explores social relationships, including parental relationships with children. However, the GSS is smaller (10,000 or so sample size) and not longitudinal, so it would not be possible to analyze the impacts of quality of access on child or parents.

Court Caseload

The items in this category provide information on the following:

- the incidence of applications concerning access denial and non-exercise of access entering courts in Canada, the passage of these applications through the courts, and the disposition of, and penalties awarded in, cases that receive final court hearing;

- the extent to which repeat litigations, and re-litigating individuals, figure in the court caseload for these kinds of cases;

- the effectiveness of court-based programs, such as mediation and counselling, in resolving these kinds of cases before they reach final hearing, and in preventing re-litigation; and

- the nature of the applicants who enter the courts seeking redress regarding access denial and non-exercise of access, including the nature of their post-separation relationship with the other parent, their attitudes and values towards post-separation parenting, their post-separation parenting arrangements, the frequency and quality of their exercise of access, when applicable.

Given the small numbers of individuals making court applications concerning access denial and other post-parenting problems, it would be inappropriate to gather this data from large-scale surveys designed for broader purposes. However, the courts do not currently collect systematic data that could be used to assess access enforcement in the courts. The first step to collecting this data in a systematic way would be to implement a consistent and appropriate system of court recording within Canadian courts. A recent study (Ellis 1995) concluded that it would also be feasible to mount a periodic national study of custody and access issues, using court files to

identify claims and claimants, and as a basis for follow up with families. A court-based project would be too small to make longitudinal study of families possible, since attrition rates would be too high. Still, it would need to be national, and to collect data periodically over considerable time, to be useful to policy makers.[25]

The court-based project envisaged above would have two complementary parts: providing data on the numbers and kinds of access enforcement cases that occupy the courts, and providing data on the characteristics of the applicants, derived from follow-up interviews with applicants.

In follow-up interviews, the project could use the same questions proposed for the NLSCY to assess the nature of the applicants (items 5-12 on unwarranted access denial and items 4-6 on failure to exercise access). This would enable researchers to compare the characteristics of this tiny—and possibly atypical—group with the characteristics of other Canadian separated and divorced couples with young children. A court-based study would also facilitate qualitative research into the problems of access denial and failure to exercise access. Despite the small numbers of subjects involved, this project would take considerable time to mount, depending on the number of researchers involved.

[25] The Australian Family Law Council's study of access enforcement cases—the only comprehensive study the author found—included all applications filed over a two-year period across Australia.

TABLE I : DATA NEEDS AND POTENTIAL DATA SOURCES

Section A: Unwarranted Access Denial

Data item	Existing source	Possible source	Rationale for item
1. Number of access mothers and fathers reporting access denial (defined)		NLSCY	Incidence of access denial.
2. Number of custodial mothers and fathers reporting access denial (defined)		NLSCY	Incidence of access denial.
3. Reasons given by custodial parent for denying access		NLSCY	Reasons for access denial and incidence of unwarranted access denial.
4. Number of access mothers and fathers reporting "interference" with access visits		NLSCY	Incidence of access difficulties that fall short of access denial, but that may be associated with other access difficulties and with failure to exercise access.
5. Characterization of access agreement reported by custodial and access parents reporting access denial: • "reasonable" access vs. specified access; • rigid vs. flexible access; • frequency of access for specified access; • restrictions on access; or • conditions under which access can take place (e.g. supervised access).		NLSCY	Association of access denial and type of access arrangement. Impact of changes in levels of access awarded and access denial.
6. Characteristics of access arrangement (court order, private agreement or no agreement) reported by parents reporting access denial	NLSCY	NLSCY	Association access denial and type of access arrangement.
7. Frequency of exercise of access by access parent among custodial and access mothers and fathers reporting access denial	NLSCY	NLSCY	Association access denial and actual frequency of access.
8. Type of marital arrangement	NLSCY	NLSCY	Association of access denial and type of arrangement.
9. Preferences by the access and custodial parents for the access parent to spend more time with the child than currently authorized		NLSCY	Assessment of the proportion of access parents who do not experience access denial, assessment of satisfaction with current access awards, and measure of exercise of access in relation to awarded access.
10. Custodial and access parents' beliefs about the importance to the child of maintaining close contact with access parent		NLSCY	Estimate of prevalence of key reason for denying access without warrant by custodial parents. Could be subsumed as a possible reason for denying access under 3, above.

DATA NEEDS AND POTENTIAL DATA SOURCES (cont'd)

Data item	Existing source	Possible source	Rationale for item
11. Relationship with ex-spouse: • degree of tension; and • ability to resolve access disputes.	NLSCY	NLSCY	Association of access denial and type of marital relationship.
12. Age of child	NLSCY	NLSCY	Association of access denial and age of child.
13. Number of access parents reporting access denial who had filed a complaint in court		Court-based	Proportion of access parents reporting access denial who make application in court.
14. Among those access parents reporting access denial who do not file a complaint, reasons for not filing		Court-based	Barriers to access parents seeking access enforcement through the court system.

Section B: Failure to Exercise Access

Data item	Existing source	Possible source	Rationale for item
1. Frequency of exercise of access by access mothers and fathers: • at separation, two years and five years; • type of marital arrangement; • type of separation and access agreement; • age of child; and • child support payment.	NLSCY NLSCY NLSCY NLSCY NLSCY NLSCY		Incidence of failure to exercise access, and factors associated with failure to exercise access.
2. Number of access mothers and fathers reporting breach of access		NLSCY	Incidence of failure to exercise access.
3. Number of custodial mothers and fathers reporting breach of access		NLSCY	Incidence of failure to exercise access.
4. Number of access mothers and fathers reporting failure to exercise specific access		NLSCY	Incidence of failure to exercise access.
5. Number of custodial mothers and fathers reporting failure to exercise specific access		NLSCY	Incidence of failure to exercise access.
6. Reasons reported by access parent for failure to exercise access		NLSCY	Incidence of failure to exercise access.
7. Characteristics of fathers who fail to exercise access (e.g. income, age or remarriage)	NLSCY	NLSCY	Further factors associated with failure to exercise access.

DATA NEEDS AND POTENTIAL DATA SOURCES (cont'd)

Data item	Existing source	Possible source	Rationale for item
8. Access parent's involvement with child consists of: • outings, visits with child; • taking child to the doctor, parent-teacher nights; • taking child to recreation, hobby, extracurricular activities; • taking child to school and collecting from school; or • making breakfast, reading bedtime stories, nursing child when sick.		NLSCY or GSS	Assessment of kind of involvement with child, including extent to which access parent takes decision-making and caring responsibility for the child. Assessment of responsibility-sharing among parents after separation or divorce. Assessment of extent to which different kinds of involvement affect ongoing exercise of access differently (if at all) and/or impact of access on child outcomes.
9. Child's preferences concerning, and feelings about, frequency and quality of visitation with access parent		NLSCY	Assessment of impact of child's attitudes and behaviour on exercise of access and access denial, and on the effect of access on child outcomes.
10. What access parents would like to do with their children that current access arrangements preclude them from doing		NLSCY GSS	Assessment of the impact of the access parent role on access parents' exercise of access and nature of ongoing involvement with their children. Assessment of access parents' attitudes to, and preferences regarding, access with their children.
11. Number of custodial parents reporting ex-spouse's breach of or failure to exercise who have filed a complaint in court		Court-based	Proportion of custodial parents reporting access parent's breach of or failure to exercise access who make application in court.
12. Among those custodial parents reporting breach of or failure to exercise access by the access parent who do not file a complaint, reasons for not doing so		Court-based	Barriers to custodial parents seeking exercise of access enforcement through the court system.

Section C: Court Caseload

Data item	Existing source	Possible source	Rationale for item
1. Number of applications filed with the court alleging access denial		Court-based	Incidence of access denial applications entering the courts.
2. Number of access denial applications that reach final hearing		Court-based	Incidence of access denial applications proceeding through the courts. Assessment of the proportion of cases entering the system that are not resolved by resolution programs.
3. Number of repeat applications filed with the court alleging access denial		Court-based	Incidence of re-litigation of access denial disputes.

DATA NEEDS AND POTENTIAL DATA SOURCES (cont'd)

Data item	Existing source	Possible source	Rationale for item
4. Number of applications filed with the court alleging breach of access or failure to exercise specified access (when applicable)		Court-based	Incidence of failure to exercise access applications entering the courts.
5. Number of failure to exercise access applications that reach final hearing (when applicable)		Court-based	Incidence of failure to exercise access applications proceeding through the courts. Assessment of the proportion of cases entering the system that are not settled through resolution programs.
6. Number of repeat failure to exercise access applications filed with the court		Court-based	Incidence of re-litigation of failure to exercise access disputes. Assessment of the proportion of cases entering the system that are not settled through resolution programs.
7. Number of applicants making access denial applications, who have other current or past applications before the court on issues related to post-separation parenting (e.g. applications relating to child support, initial court custody and access awards, applications to vary access orders)		Court-based	Extent to which individuals who make applications about access denial use the court system to pursue other post-separation complaints. Other post-separation grievances experienced by individuals making applications about access denial.
8. Number of applicants with repeat applications concerning access denial, breach of access or failure to exercise access		Court-based	Incidence of frequent users of the court system to pursue failure exercise access complaints.
9. Characteristics of applicants making applications about denial of access, breach of access or failure to exercise access: • items 5-12 on unwarranted access denial; and • items 4-6 on failure to exercise access.		Court-based	Association of access enforcement applications and individuals' use of the courts to resolve access enforcement problems: type of access arrangement, conditions and constraints on access, type of pre-separation living arrangement, socio-economic status of family, type of post-separation relationships among ex-spouses, exercise of access, quality and kind of exercise of access, and attitudes to post-separation parenting.
10. Participation in: • voluntary or compulsory parenting education at time of separation or divorce; • voluntary or compulsory counselling at time of separation or divorce; and • voluntary or compulsory mediation at time of separation or divorce.		Court-based	Effectiveness of prevention and dispute resolution programs in resolving access disputes at time of separation or divorce, and subsequent access disputes.
11. Whether or not problem was solved following participation in the program(s) above		Court-based	Effectiveness of prevention and dispute resolution programs in resolving access disputes at time of separation or divorce, and subsequent access disputes.

DATA NEEDS AND POTENTIAL DATA SOURCES (cont'd)

Data item	Existing source	Possible source	Rationale for item
12. Participation in the following programs to resolve access enforcement disputes: • voluntary or compulsory counselling at time of separation or divorce; and • voluntary or compulsory mediation at time of separation or divorce		Court-based	Comparison of provincial and territorial approaches to resolving disputes before they reach final hearing.
13. Whether or not problem was solved following participation in the program(s) above			Effectiveness of prevention and dispute resolution programs in resolving access disputes at time separation or divorce, and subsequent access disputes.
14. Proportion of convictions for access denial, breach of access and failure to exercise access		Court-based	Assessment of the dispositions of applications filed in court over access denial and/or failure to exercise access.
15. Penalties		Court-based	Kinds of penalties applied to enforce access.

NOTES TO THE TABLE

(A) Unwarranted Access Denial

3. Lists of possible reasons for denying access can be found in Thiessen (1994), cited in Strategic Partners (1998).
4. A list of possible kinds of "interference" can be found in Kruk (1993), p. 62.
5. Hirst and Smiley (1984) provide a range of access types: free, regular flexible, regular rigid, irregular (not more than once in six months) and no access.

5-8. The variables listed in items 5-8 are already collected by the NLSCY for separated and divorced parents as a whole.

9. Question modelled on survey by Perry, Bolitho, Isenegger and Paetsch 1992, cited in McCall (1995).
11. The NLSCY already captures level of tension among separated and divorced parents as a whole. However, recent literature distinguishes between levels of conflict and ability to resolve access conflicts, and suggests child outcomes do not suffer when high conflict parents have strategies to resolve access disputes (cited in Kelly, 1993).

(B) Failure to Exercise Access

2. Possible lists of self-reporting reasons for failure to exercise can be found in Kruk (1993), and Family Law Council (1998a).
3. It is not clear whether this information is already available, but was simply not included in the custody- and access-related analysis of the NLSCY (Department of Justice Canada, 1999), or if access parents' characteristics are not tracked after separation or divorce.

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APPENDIX 1: MAJOR STUDIES: ACCESS DENIAL AND FAILURE TO EXERCISE ACCESS

ACCESS DENIAL

Study	Finding
Kruk (1993) *(Canadian-British)*	70 percent of a sample of 80 con-custodial fathers believe their wives actively discouraged contact by denying access or otherwise interfering with access.
Arditti (1992) *(U.S.)*	Half of the non-custodial fathers studied reported that their ex-spouses "interfered" with visits.
Perry, Bolitho, Isenegger & Paetsch (1992) *(Alberta)* *(cited in McCall 1995)*	70 percent of custodial and 64 percent of access parents said access was rarely denied. Some 37 percent of the access parents wanted more access and 55 percent of the custodial parents reported wanting their ex-spouses to exercise more access.
Braver, Wolchik, Sandler, Fogas & Zvetina (1991) *(U.S.)* *(cited in Kelly 1993)*	Interviews with 40 pairs of separated spouses found 20 to 40 percent of custodial mothers "interfered with" fathers' visits.
Wallerstein & Kelly (1980) *(U.S.)*	A longitudinal study of 130 California children in post-separation or divorce households found 20 percent of the custodial mothers denied access regularly to the access fathers. 30 percent of the couples in an ongoing longitudinal California study experienced conflict for three to five years after divorce
Funder (1996) *(Australia)*	An ongoing longitudinal study found 30 percent of couples experienced high conflict at divorce, with only 10 percent of couples still in conflict three years later.
Kelly (1990) *(U.S.)* *(cited in Kelly 1993)*	40 percent of couples reported high or moderate conflict over visitation and/or co-parenting during the first six months after divorce. Two years later 20 percent reported frequent arguments.
Maccoby, Depner & Mnookin (1990) *(U.S.)* *(cited in Kelly 1993)*	30 percent of separating and divorcing couples reported substantial or intense legal conflict when resolving custody and access issues. In the second year of divorce, one third of the couples were still in conflict.

FAILURE TO EXERCISE ACCESS

Study	Finding
Department of Justice Canada (1999) *(Canada)*	Analysis of National Longitudinal Study of Children and Youth found that 31 percent of non-residential fathers saw their children at least once a week or biweekly, another 32 percent saw them monthly and/or on holidays or irregularly, and 24 percent never visited. Non-custodial mothers maintained much higher contact rates: almost 86 percent of non-custodial mothers were visiting regularly at separation, compared to 47 percent of non-custodial fathers. Five years after separation about half the mothers were visiting irregularly or not at all, compared to slightly less than two thirds of fathers. (1994-95 data)
Nord & Zill (1996) *(U.S.)*	Analysis of Survey of Income and Program Participation found that U.S. custodial mothers with written agreements report that 32 percent of non-resident fathers had not seen their children in the last year. However, 24 percent had seen their children at least once a week. Some 16 percent of non-resident mothers with written agreements had not visited in the part year, and 35 percent saw their children at least once a week.
King (1994) *(U.S.)*	Analysis of U.S. National Longitudinal Study of Youth found that 17 percent of non-custodial fathers saw their children at least twice a week, another 25 percent saw their children 1 to 4 times per month, 5 percent saw their children 7 to 11 times a year, 20 percent saw their children 1 to 6 times in the past year, and 31 percent of fathers never visited. (1988 data)
Hirst & Smiley (1984) (*Australia)*	Survey of 147 Australian custodial parents (solicited from Brisbane's family court registry), most separated two to four years. Slightly more than 50 percent of the children in these families were seeing their access parent less than twice a year, if at all. Another 22 percent were seeing their parent on a regular flexible basis (more than biweekly) while 17 percent visited fortnightly. Exercise of access had declined since separation, and among the one third of parents who had had agreements at separation, only 20 were still in use and half had not lasted a year.
Wallerstein & Kelly (1980) (*U.S.)*	Longitudinal qualitative study of 130 largely middle-class California children found 20 percent had infrequent contact (unspecified) and this did not change over time.
Seltzer & Bianchi (1988) *(U.S.)* *(cited in Nord & Zill 1996)*	Half of all children with a non-custodial father saw the father less than once a month or had not seen him at all during the past year. (1981 data).
Funder (1996) *(Australia)*	Longitudinal study by the Australian Institute of Family Studies reported that five years after divorce 15 to 20 percent of children had not seen their non-resident parent for up to one year, and another 25 percent saw their non-resident parent less than every two months. Only 10 percent of children saw their non-residential parent more than twice a month.
Mitchell (1985) *(Scotland)* *(cited in Family Law Council 1992a)*	Scottish study found that 25 to 33 percent of children lost contact with fathers soon after separation and only half maintained regular contact over time.

APPENDIX 2: LEGISLATIVE APPROACHES AND SUPPORTS TO ACCESS AMONG JURISDICTIONS

AUSTRALIA

Principles governing access awards	Children's best interests 1. Child's expressed wishes and any factors relevant to determining how these wishes should be weighted. 2. Nature of the child's relationship to each parent and other persons. 3. Likely effect of changes in the child's circumstances, including likely effect of separation from either or both parents, other children or a person with whom the child has been living. 4. Practical difficulty and expense of contact with a parent, and whether the difficulty or expense will substantially affect the child's right to maintain personal relations and direct regular contact with both parents. 5. The capacity of each parent or other person to provide for the child's needs, including emotional and intellectual needs. 6. The child's maturity, sex and background and other relevant characteristics. 7. The need to protect the child from physical or psychological harm caused, or perhaps caused by being subjected or exposed to abuse, ill treatment, violence or other behaviour; or being directly or indirectly exposed to abuse, ill treatment, violence or other behaviour directed towards, or which may affect, another person. 8. Attitude of the child, and attitude of each parent to the responsibilities of parenthood. 9. Any family violence involving the child or a member of the child's family. 10. Whether it would be preferable to make the order that would be least likely to lead to further proceedings in relation to the child. 11. Any other relevant consideration.
Provisions for dealing with cases involving child abuse and violence and spousal abuse and violence	1. Federal Family Court accepts witnessing domestic violence as a form of abuse for children, but state services do not (Brown, 1998). 2. Spousal violence is a consideration in determining child's best interests. 3. Judges are required to ensure their residence and contact orders do not expose any person to an unacceptable risk of family violence. 4. The court must refrain from making any contact order inconsistent with a family violence order unless it is in the child's best interests to do so. When inconsistent orders are made, the judge or magistrate must explain the reasons for the order, among other things (Rhoades et al., 1999).
Penalties for unwarranted access denial	1. Recognizance—that is, was placed on a bond to comply by the provisions of the order. 2. Compensatory contact. 3. Fines. 4. Imprisonment. 5. Awarding of costs to the applicant. 6. Community service orders. 7. Reimbursement of costs. 8. Reprimands.
Role of the child's wishes in access disputes	1. Child's wishes are a consideration in determining child's best interests. 2. Children's interests can be represented by a "separate representative" in certain specified kinds of access and residence disputes including disputes about child abuse, intractable conflict, the child being alienated from one or both parents, and an older child wanting no contact or to change custodial parent. The number of requests for these representatives rose from 677 in 1992-93 to 2,577 in 1994-95 (the court clarified its role in a 1994 judgement). The program is considered to be underfunded and questions remain about the permissible extent of the children's participation in these cases (ALRC, 1996). 3. The 1995 reforms removed 14 as the threshold age at which the court was to consider the child's wishes in residence and access disputes (Family Law Council, 1992b).
Penalties for unwarranted breach of access or failure to exercise access	As above.
Mandatory supports for separating or divorcing parents	1. Counselling (conciliation) meeting is a prerequisite for a parenting order (custody and access award), except when the order is interim, the need for an order is urgent, or the order is consensual. 47 percent of Family Court counselling clients are mandatory.

AUSTRALIA (cont'd)

Voluntary supports for separating or divorcing parents	1. Counselling. Court provided counselling (conciliation) is available at any point. 49 percent of Family Court counselling clients are voluntary. Clients screened for violence during a preliminary meeting. Parents seen separately or not at all when violence is an issue. 2. Mediation. Courts provide mediation to parties before and/or after filing in residence and contact cases. Law now recognizes non-court mediation as well.
Mandatory supports for parties in access disputes, including children	1. Counselling. Court-ordered counselling (conciliation).
Legal Aid and other legal supports for parties in access disputes, including children	Unknown. However there is concern that recent cutbacks to Legal Aid are making it more difficult for access and residence parents to bring enforcement applications, and for parents to defend themselves against enforcement applications.
Voluntary supports for parties in access disputes, including children	1. Counselling. Court-provided counselling (conciliation) available at any point. 2. Voluntary mediation.
Mandatory supports for enforcement for access orders	1. Supervised access can be ordered by the courts (more likely to be ordered as a condition of interim access). Centres exist around the country, although demand exceeds supply. Program expansion is under way.

MICHIGAN

Principles governing access awards	1. A child shall have a right to parenting time with a parent unless it is shown on the record by clear and convincing evidence that the parenting time would endanger the child's physical, mental and emotional health. 2. Parenting time granted in frequency, duration and type to promote a strong relationship between the child and the parent granted parenting time. 3. Parents have a responsibility to arrange a schedule of parenting time that is reasonable based on the best interests of the child and the family situation.
Provisions governing frequency, duration and type of access awarded	1. Existence of any special needs of the child. 2. Whether the child is nursing and younger than six months of age, or younger than one year of age when still nursing significantly. 3. The reasonable likelihood of abuse or neglect of the child during parenting time. 4. The reasonable likelihood of abuse of a parent resulting from the exercise of parenting time. 5. The inconvenience to, and burdensome impact or effect on, the child of travelling to and from the parenting time. 6. Whether the visiting parent can reasonably be expected to exercise parenting time in accordance with the court order. 7. Whether the visiting parent has frequently failed to exercise reasonable parenting time. 8. The threatened or actual detention of the child with the intent to retain or conceal the child from the custodial parent. 9. Any other relevant factors.
Provisions for dealing with cases involving child abuse and violence and spousal abuse and violence	1. Access can be denied when there is "clear and convincing" evidence that contact would endanger the child. 2. It is the parent's responsibility to disclose claims of abuse or neglect to the Friend of the Court (FOC—the custody, access and child support enforcement and mediation arm of the court system) during any FOC investigation into applications for parenting time or access ordered by the court. 3. Spousal violence is not a consideration in awarding or denying access, or in deciding whether a parenting order has been violated. However, it can be a consideration in determining the frequency, duration and type of parenting time, and in applications to vary original access orders.
Role of the child's wishes in access disputes	1. Child's wishes do not count in decisions to award or deny access, or to vary access orders. 2. Child's refusal to see the access parent does not count in determining breaches of the parenting order. 3. It is the custodial parent's responsibility to promote a positive relationship between the child and the access parent—that is, to overcome the child's resistance to seeing the access parent.
Penalties for unwarranted access denial	1. Compensatory access. 2. Contempt: fines or imprisonment.
Penalties for unwarranted breach of access or failure to exercise access	As above in counties where the custodial parent may file applications for breach of access (i.e., failure to return the child on time).
Mandatory supports for separating or divorcing parents	1. Conciliation. Provided by Friend of the Court offices in some counties in cases in which disputes have not responded to mediation. When conciliation is unsuccessful, the FOC prepares a recommendation and the court may make an order based on the recommendation.
Voluntary supports for separating or divorcing parents	1. Mediation. Provided by Friend of the Court. Parents may request mediation in resolving disputes over parenting time or access at any time, or the court may order mediation with the parties consent. 2. Arbitration, or binding mediation. Provided by Friend of the Court. Available in some counties.
Mandatory supports for parties in access disputes, including children	1. Meeting with the FOC once the FOC has determined that the parenting order has been violated.
Legal Aid and other legal supports for parties in access disputes, including children	Unknown.
Voluntary supports for parties in access disputes, including children	1. Mediation. Provided by the Friend of the Court. The FOC may refer the parties to mediation, with their consent, after it has found that the parenting order has been violated.
Mandatory supports for enforcement for access	Some supervised access available. Where not available, judge may order access under the supervision of a relative, or child exchange at public places such as the police station.

CANADA

Principles governing access awards *Divorce Act* (R.S.C. 1985)	Children's best interests • As determined by reference to the conditions, means, needs and other circumstances of the child. • A spouse granted access has the right to make inquiries and to be given information as to the health, education and welfare of the child. • Child should have as much contact with each spouse as is consistent with the best interests of the child. • Court shall take into account the willingness of the person for whom custody sought to facilitate such contact.
Penalties for denial or breach of access or failure to exercise access	Provincial responsibility.
Mandatory and voluntary supports for separating and divorcing parents *Divorce Act* (R.S.C. 1985)	1. Duty of every barrister, solicitor and lawyer or advocate who undertakes to act on behalf of spouse in a divorce proceeding to advise the negotiating of custody and access matters and to inform the spouse of the mediation facilities known to him or her that could assist in the negotiation. 2. The federal government implemented the five-year, $50 million Federal Child Support Implementation and Enforcement Fund in 1996 to fund, in part, provincially delivered programs to support post-separation parenting arrangements, including access enforcement.

BRITISH COLUMBIA

British Columbia enforces access by providing penalties against parents who "interfere with" the execution of court custody and access awards. Its *Offences Act* provides for fines and up to six months' imprisonment for denial of access, but does not extend to breach of access or failure to exercise access.

Access parents who wish to file interference applications must present themselves to province-run counselling and referral registries, where these exist, before proceeding with the application. As part of their rulings, judges can order mediation, parenting education, counselling or supervised access, where these services exist, although the legislation makes no specific provision for this. In very serious cases, the judge can ask the Attorney General to appoint a family advocate to represent the child's interests in court, and children's wishes are specified as a consideration in determining initial access awards. Parents involved in access enforcement disputes may use the services of family justice centres for counselling or filling out interference applications.

The province's efforts in access enforcement focus on mandatory and voluntary preventative services that may resolve disputes before they reach the court. The province operates mandatory parent education and counselling programs for separating parents making application to Provincial Court. However, these programs are not available province-wide and are voluntary where no province-run centres exist.

Parents may be denied access when the child is known to be at serious risk of abuse, and violence against a parent may be construed as part of the considerations that determine the best interests of the child. Abused spouses may apply to vary orders, and judges can order supervised access where services are available, though there is no explicit legislative authorization for this.

Principles governing access awards *Family Relations Act* (R.S.B.C. 1979)	Children's best interests • Health and emotional well-being of the child including any special need for care and treatment. • When appropriate, the views of the child. • Education and training for the child. • Capacity of each person to whom guardianship, custody or access rights and duties may be granted to exercise these rights and duties adequately.
Provisions for dealing with cases involving child abuse and violence and spousal abuse and violence	1. Parents may be denied access when child is at serious risk of violence or abuse. 2. Spousal violence may be interpreted to figure into specified considerations in determining child's best interests. 3. Courts may orders access supervision with ongoing contact in access enforcement cases.
Role of the child's wishes in access disputes	1. Child's wishes a consideration in deciding access awards. 2. Family advocates are appointed by the Attorney General to represent children's interests in the most serious and difficult custody, access and access enforcement cases. Limited resources mean that advocates are appointed in 40 to 50 cases per year. A 1992 review of the Family Advocate was very positive. It was broadly felt that the Advocate facilitated settlement in difficult conflicts that otherwise would have gone to trial. Judges thought Advocates could be helpful in many more cases, if resources would permit. (British Columbia, 1992)
Penalties for unwarranted access denial *Family Relations Act* (R.S.B.C. 1979)	1. Fines. 2. Imprisonment for up to six months.
Penalties for unwarranted breach of access or failure to exercise access	None.

BRITISH COLUMBIA (cont'd)

Mandatory supports for separating or divorcing parents	1. Parenting education. Parenting after separation seminar. A three-hour program for separating parents wishing to make application to Provincial Court for custody, access, support or guardianship. Mandatory in high-population density locations where provincial centres exist. Parents may be exempted from the course for specific reasons, including immediate need for a restraining order. An evaluation was completed on the pilot project. 2. Counselling and application assistance. A pilot project involving province-run Family Justice Registries in five locations. Parents making application to Provincial Court meet with family justice counsellors, and may be referred to other information, education or mediation programs. Counsellor may help couples resolve difficulties without proceeding to court. Cases involving violence proceed directly to court. The program has yet to be evaluated. 3. Courts may refer parties to the education and counselling services at any time in the process. 4. Courts may also refer parties to a family case conference at any time.
Voluntary supports for separating or divorcing parents	1. Parenting education. Parenting after separation seminar. Voluntary program available in centres where numbers do not warrant provincially run centres. Provided through purchase of service. Self-help kits are available to parents in rural areas. 2. Family Justice Centres. Province-run centres in 31 sites offer conciliation and mediation, help parties get consent orders and written agreements, and help prepare applications to the court. Cases involving violence are screened in all cases. In 1996-97 the Centres took on 2,248 cases and provided 1,336 brief services and referrals.
Mandatory supports for parties in access disputes, including children	Family Justice Registries.
Legal Aid and other legal supports for parties in access disputes, including children	Family Legal Services provides legal services for initial custody and access orders, and variations to those orders when the client or client's children are at risk.
Voluntary supports for parties in access disputes, including children	Family Justice Centres.
Mandatory supports for enforcement for access	Courts may order supervised access (not provided as penalty) where available. Services are restricted to a handful of sites, part of an original pilot project, and privately provided under purchase of service. An evaluation was completed in 1995.

ALBERTA

Alberta's *Family Law Statutes Amendment Act 1999* introduces provisions for access enforcement to that province. Prior to 1999, civil contempt was the only remedy available at the Superior Court level for access parents who had been wrongly denied access, and penalties for contempt included fines and up to two years' imprisonment when fines were not paid (plus other minor penalties). When the access order was granted by the lower court (Provincial Court), any person who contravened the order was liable to be held guilty of an offence, and subject to a fine or imprisonment, or both. These remedies continue to exist in addition to the new legislation. Under the new law, penalties range from compensatory access to 90 days' imprisonment. The penalties apply to custodial parents who deny access without excuse and access parents who breach access by failing to return the child without excuse. When the access denial is found to be excusable by the courts, judges may still order penalties other than fines or imprisonment.

The new law continues Superior Court jurisdiction and gives a new jurisdiction to the lower court over access enforcement. Either court has jurisdiction to enforce an access order from either level of court. When a variation of a Superior Court order is involved, however, the application must go to the Superior Court. Except for variations, the new law allows most parties to self-litigate enforcement claims through the lower court.

There are no mandatory services for parents involved in access disputes prior to the court hearing. However, access parents who have failed to attend the mandatory parenting education course at divorce will not have their enforcement applications heard.

Judges may order counselling, education or mediation as penalties for a wrongful or an excusable access denial. However, there are no provisions for judges to order supervised access and no provincially sponsored system exists. There are no provisions in the legislation for children's counsel or advocates to represent children's interests in the court disputes, and children's interests are not articulated as a consideration in determining the child's best interests.

Following a recent pilot project, parenting education courses for divorcing parents are now mandatory province-wide when an action for access is brought in the superior court. The course is not mandatory in the lower court; however, the court may order attendance as a term of relief. Attend a course is a prerequisite to all divorce applications. There is no requirement to take the course when the children are all 16 years of age and older, or when both parties certify in writing that they have entered into a written agreement settling all the issues. Parents can also be exempted from these full-day courses (two half-days) for one month when the child has been abducted, there is a unilateral change in custody, or an interim custody order has been ordered and a restraining order made against one parent.

Voluntary information services are provided by courts for divorcing and separating couples. The government Family Mediation Services program also provides mediation services, whether court-ordered or voluntary, free of charge to divorcing and separating couples when one parent's income is below $40,000, and at least one child is younger than 18 years of age. About 765 mediation files are opened yearly. Another service includes open assessments that contain recommendations regarding access, and may be subsidized when mediation is deemed inappropriate or unworkable. This service is only available for actions initiated in the Superior Court. In the lower court, when an access dispute has been adjourned to trial, a court may order an assessment, which will be prepared by Family Court counsellor's at no cost to the parties through the Custody and Access Investigations program. As well, the skill-based Communication in Conflict three-part group workshop is available to assist parents going through separation or divorce. The workshop is voluntary and accessible to anyone who contacts the Mediation Program.

Parents may be denied access when the child is known to be at serious risk of abuse. However, violence against a spouse is not specified as a consideration for judges in determining access awards based on the child's best interests. Custodial parents at risk of spousal violence may apply to vary the original access awards, and these applications may be heard at the same time as the access enforcement application.

ALBERTA (cont'd)

Principles governing access awards *Domestic Relations Act* (R.S.A. 1980) *Provincial Court Act* (R.S.A. 1980)	Children's best interests • Welfare of the minor. • Conduct of the parent. • Wishes of the mother and of the father. Court must consider best interests of child.
Provisions for dealing with cases involving child abuse and violence and spousal abuse and violence	1. Parents may be denied access when the child is known to be at serious risk of abuse. 2. Spousal violence is not required to be a consideration in determining access awards. 3. Spousal violence may figure in adjudicating "excusable" access denial, depending on the judge. 4. Custodial parents at risk of spousal violence must apply to vary the original access awards.
Role of the child's wishes in access disputes	No provisions.
Penalties for unwarranted access denial *Family Law Statutes Act* Amendments 1999	1. Compensatory access. 2. Providing security (analogous to posting a bond). 3. Order to attend educational seminar, counselling or similar type of session. 4. Appointment of a mediator. 5. Reimbursement of necessary expenses incurred. 6. Fines not exceeding $100 per day to a maximum of $5,000, and in default, to imprisonment not exceeding 90 days. 7. Imprisonment, continuously or intermittently up to a maximum of 90 days. 8. Officer's assistance. 9. Anything else deemed appropriate to induce compliance with the access order.
Penalties for failure to exercise access	1. Reimbursement of expenses incurred.
Mandatory supports for separating or divorcing parents	1. Parent education. Parenting after separation program. Province-wide program for all divorcing parents, teaching how divorce affects children, how divorced couples can work together to protect their interests and their children's.
Voluntary supports for separating or divorcing parents	1. Information services. Courts provide legal information, help clients deal with legal system, make referrals and help resolve disputes. 2. Parent education. Parenting after separation seminar. The skill-based Communication in Conflict three-part group workshop is also available to assist parents going through separation or divorce. 3. Mediation, free when child is younger than age 18 and gross family income of one party is less than $40,000 per year. About 765 couples use the service yearly. The Open Assessment program provides recommendations to the Superior Court regarding access when mediation is deemed inappropriate or unworkable. The service may be subsidized. Family Court Counsellor with the Custody and Access Investigations program prepare assessments for the lower court, at no cost to the parties. 4. Family law case management. Case management can be requested by parties to speed up divorce proceedings.
Mandatory supports for parties in access disputes, including children	1. Judge may order parties to attend an education seminar, counselling or mediation as a penalty for access denial or breach of access
Legal Aid and other legal supports for parties in access disputes, including children	1. Available for parties who cannot afford to hire their own lawyers. In 1997, 2,091 divorce cases involving child custody or access received aid.
Voluntary supports for parents in access disputes, including children	1. Parent education. Parenting after separation seminar.
Mandatory supports for enforcement of access	No provincially sponsored service available.

SASKATCHEWAN

Saskatchewan enforces access through a variety of penalties, ranging from compensatory access to the fines and imprisonment of civil contempt. Similar penalties apply to custodial parents who deny access and to access parents who breach access orders by failing to return the child or to exercise specified access. There is no information on how often cases enter the court, the conviction rate or the distribution of penalties. However anecdotal evidence is that the penalties are infrequently used, and the serious penalties rarely applied. Compensatory access may be the most frequently used penalty.

There are no mandatory services or programs for parents making access enforcement applications. Voluntary mediation had been available in Superior Court, but was terminated April 1, 2000 when Family Courts in the province unified. Courts may order parents to mediation as a penalty for unwarranted access denial, where it is available. Courts may also order access under supervision as a penalty.

Voluntary parenting education is available to separating and divorcing parents around the province. There are no mandatory services or programs for separating and divorcing parents.

Parents may be denied access when the child is known to be at serious risk of abuse. Child protection laws link spousal violence with child abuse in assessing risk to the child, so that spousal violence figures in determining the child's best interests when child abuse is present. There are supervised access centres in Saskatoon and Regina.

Principles governing access awards *Children's Law Act* (S.S. 1990)	Children's best interests • Quality of the relationship between the child and the person seeking access. • Personality character and emotional needs of the child. • Physical, psychological, social and economic needs of the child. • Capacity of the person seeking access to care for the child during the time child in his or her care. • Wishes of the child to extent appropriate. • Child should have as much contact with each parent as is consistent with the best interests of the child and for that purpose take into account the willingness of the person seeking custody to facilitate contact.
Provisions for dealing with cases involving child abuse and violence and spousal abuse and violence	1. Parents may be denied access when the child is known to be at serious risk of abuse. 2. Child protection laws link spousal violence to child abuse, assessing risk to the child, so spousal abuse figures in determining child's best interests when child abuse is present.
Role of the child's wishes in access disputes	1. Child's wishes considered in determination of child's best interests.
Penalties for denial of specified access *Children's Law Act* (S.S. 1990)	1. Contempt. For wilful contempt of court orders or resistance to its process or orders. • Fines of up to $5,000, imprisonment for up to three months, or both, for first offence. • Fines of up to $10,000, imprisonment for up to two years, or both, for subsequent offences. 2. Compensatory access. 3. Supervised access. 4. Appointment of a mediator. 5. Varying custody or access order. 6. Requiring respondent to give security for performance of the obligation to provide access (posting a bond).
Penalties for unwarranted breach of access or failure to exercise access	1. Supervised access. 2. Appointment of a mediator. 3. Requiring respondent to give security for performance of the obligation to provide access (posting a bond). 4. Varying a custody or access order. 5. Requiring the respondent to provide his or her address and telephone number to the applicant.
Mandatory supports for separating or divorcing parents	
Voluntary supports for separating or divorcing parents	1. Free parent education sessions (six-hour workshops). 2. Fee-for-service mediation services (sliding scale) to couples in divorce, maintenance, custody and access disputes. 210 people participated in mediation (1997-98).

SASKATCHEWAN (cont'd)

Mandatory supports for parties in access disputes, including children	
Legal Aid and other legal supports for parties in access disputes, including children	Legal Aid available to parties in disputes in which parties are on social assistance, or when costs of a lawyer would reduce their financial resources to social assistance levels.
Voluntary supports for parents in access disputes	1. Court-provided supervised access and exchange. Roughly 60 cases per year, in Saskatoon and Regina only. 2. Looking at developing access sites elsewhere in the province where rural parents may come to for visits.
Mandatory supports for enforcement of access	1. Supervised access where available. 2. Restraining orders (restraining person from molesting, annoying, harassing or otherwise interfering with the applicant). 3. Recognizance. 4. Posting a bond.

MANITOBA

In Manitoba, access is enforced through several laws, including provisions for mediation in *The Court of Queen's Bench Act*, and penalties ranging from fines to imprisonment for civil contempt. Access enforcement applies to custodial parents who deny access without excuse, as well as to access parents who breach access by failing to return the child on time.

There are no mandatory programs or services prior to the court hearing for parents bringing access enforcement applications. However, once the case reaches court, judges may refer people to mediation. The courts may order supervised access as one of the remedies for breach of access or access denial. However, although some government-supported supervised access centres exist, there is no province-wide system. The courts' ability to order supervised access depends on availability of service.

Voluntary mediation and parent education is available without cost to parties involved in access disputes, and for divorcing and separating parents. The province also offers voluntary programs for children of divorcing or separating parents and parents in dispute.

Whether access is in the child's best interests determines whether access is granted. Parents may be denied access when the child is known to be at serious risk of abuse, and violence against a parent may be a consideration in awarding and adjudicating access disputes. The abused spouse can seek a wide range of protective relief (e.g. restraining order) and make a request to vary the access order. The court may require access supervision.

Manitoba's approach to access enforcement and to other family law issues focusses on dispute resolution alternatives to litigation, and it is increasingly looking to mediation. The Manitoba Civil Justice Review Task Force (1996) endorsed an alternative dispute resolution approach, and recommended a system of mandatory screening for mediation for all separating parents, and expansion of the mandate of existing government-sponsored, court-connected mediation services to provide comprehensive mediation services for access, custody, support and property issues. A comprehensive mediation pilot project is under way (see Chapter 3, section 3.2 for a preliminary evaluation).

Principles governing access awards *The Family Maintenance Act* (R.S.M. 1987)	Children's best interests • Views and preferences of the child when appropriate. • May include investigation by qualified third party to determine best interests.
Provisions for dealing with cases involving child abuse and violence and spousal abuse and violence	1. Parents may be denied access when the child is known to be at serious risk of abuse, and violence against a parent may be construed as a consideration in awarding access and adjudicating access disputes. 2. The abused spouse can seek a restraining order and make a request to vary the access order. The court may require access supervision.
Role of the child's wishes in access disputes	1. Wishes of the child are a consideration in determining the best interests of the child.
Penalties for unwarranted access denial *Child Custody Enforcement Act* (R.S.M. 1987; contempt clauses) *Family Maintenance Act* (R.S.M. 1987)	1. Civil contempt: fines of up to $500 and imprisonment for up to six months. 2. Access supervision. 3. Access to information. 4. Compensatory access. 5. Reimbursement to applicant of reasonable expenses incurred by wrongful denial. 6. Appointment of a mediator to assist resolution. 7. Restraining order. 8. Court-ordered assessment report. 9. Apprehension order.
Penalties for unwarranted breach of access or failure to exercise access	1. Reimbursement of applicant for reasonable expenses incurred as a result of failure to exercise. 2. Appointment of a mediator. 3. Court-ordered assessment report.
Mandatory supports for separating or divorcing families	1. Parenting education. For the Sake of the Children program (see below) is a pre-requisite for parents wanting to participate in the province-wide voluntary mediation program. It is not mandatory otherwise.

MANITOBA (cont'd)

Voluntary supports for separating or divorcing families	1. Parent education. For the Sake of the Children. Two-session program for separating and divorcing parents intended to provide them with legal information and a greater understanding of how divorce and post-divorce arrangements may affect children. High conflict parents are taught a low-to-no-contact approach to communications. An evaluation has been completed. 2. Voluntary mediation. Offered to Manitoba families free by Family Conciliation, a branch of the government. 3. Mediation pilot program. Comprehensive Co-Mediation and Mediation Pilot Project. Pilot project providing co-mediation (lawyer and social worker or family specialist team) to separating or divorcing couples. An evaluation has been completed. 4. Case management. Ongoing project in which couples are selected on a random basis for case management by a judge. 5. Children's program. Help children ages 8 to 12 cope with separation or divorce; offered by Family Conciliation.
Mandatory supports for parties in access disputes, including children.	1. Parent Education. For the Sake of the Children is a pre-requisite for parties wanting to mediate access disputes through Family Conciliation (see above). It is not mandatory otherwise.
Legal Aid and other legal supports for parties in access disputes, including children	1. Legal Aid Manitoba will fund applications for eligible parties, and will cover costs of private home-study assessments (usually) when parties agree to abide by its recommendations. 2. Legal Aid Manitoba will provide counsel to pursue civil remedies to enforce custody and access orders. In 1997-98 there were 22,000 application for Legal Aid, and 17,000 certificates issued.
Voluntary supports for parties in access disputes, including children	1. Counselling for parents regarding custody and access. Attendance at part 1 For the Sake of the Children program is a prerequisite. 2. Mediation. Offered to Manitoba families free by Family Conciliation, a branch of the government.
Mandatory supports for access enforcement	1. Courts may order supervised access. However, government-funded supervised access services are available in Winnipeg and a few regional centres, on a fee-for-service or means-tested basis.

ONTARIO

Ontario law has no provisions for access enforcement beyond the fines, imprisonment and other minor penalties of civil contempt. Bill 124, which would have made changes to the existing system to specifically address access disputes, has not been proclaimed and no new legislation has been announced. The civil contempt penalties apply to both custodial parents who deny access and to access parents who breach access by failing to return the child on time. Officials believe very few cases of breach or denial of access enter the courts as contempt proceedings. Most litigated access disputes involve requests to vary access orders by one party or the other because parents cannot agree to changes to the existing order. These may progress to contempt if unresolved.

The province's court system is in the process of unifying, and Unified Family Courts operate across about half the province. Parents involved in access disputes whose cases are being case managed at Unified Family Courts must attend three conferences with their appointed judge at different stages of the process. Case management also operates at courts in most large urban centres. All parents filing new applications at Ontario's Superior Court in Toronto must attend a parent education and information session and a case conference with a dispute resolution officer before proceeding, unless the matter is urgent. Otherwise, there are no mandatory programs or services for parents litigating access disputes.

Voluntary information advice and referrals, parent education programs and mediation are provided to parents involved in access disputes and to separating and divorcing parents at all Unified Family Court locations (mediation may involve sliding-scale fees). Parenting information and mediation are also available at the Superior Court and the largest provincial court location in downtown Toronto. Judges may also refer parties in access enforcement cases into any of these services where they are available.

Parents may be denied access when the child is known to be at serious risk of abuse, but evaluation of pilot supervised access centres in the early 1990s indicated that some access parents are granted supervised access when abuse or violence to the child may be present (See discussion in Section 3). Spousal violence is a consideration in determining the child's best interests.

Ontario is in the process of expanding its supervised access facilities to all court catchment areas. Bill 124 would have treated access denial and breach of access and failure to exercise access symmetrically, and would have introduced specific provisions for reimbursement, supervised access and appointment of mediators as penalties for access denial and failure to exercise access.

Principles governing access awards *Children's Law Reform Act* (R.S.O. 1990)	Best interests of the child. Consideration in determining best interests: 1. The love, affection and emotional ties between the child and each person entitled to or claiming custody or access to the child, other members of the child's family who reside with the child, and persons involved in the care and upbringing of the child. 2. The views and preferences of the child, when such views and preferences can reasonable be ascertained. 3. The length of time the child has lived in a stable home environment. 4. The ability and willingness of each person applying for custody of the child to provide the child with guidance and education, the necessities of life and any special needs of the child. 5. Any plans proposed for the care and upbringing of the child. 6. The permanence and stability of the family unit with which it is proposed that the child shall live. 7. The relationship by blood or through an adoption order between the child and each person who is party to the application.
Provisions for dealing with cases involving child abuse and violence and spousal abuse and violence	1. Violence to the child is a consideration in determining the child's best interests. 2. Parent's conduct is not relevant to determination unless relevant to his or her ability to act as a parent to the child.
Role of the child's wishes in access disputes	1. Children's wishes are a consideration in determining the child's best interests. 2. Judge or parties in an access dispute may request the Office of the Children's Lawyer to represent the child's interests in court. The Office screens prospective cases with a comprehensive intake package. The Office is involved in a reasonable number of the access disputes heard in court.

ONTARIO (cont'd)

Penalties for unwarranted denial of access *Children's Law Reform Act* (R.S.O. 1990) Family Law Rules: Rule 31	Civil contempt • Imprisonment (up to 90 days). • Any fine (up to $5,000). • Penalty to the other party. • Anything that the court decides is appropriate. • Not to do what the court forbids. • Pay court costs to the injured party. • Obey any other order. • Access to information.
Penalties for unwarranted breach of access or failure to exercise access	As above for breach of access (when access parent fails to return the child on time).
Mandatory supports for separating or divorcing parents	1. Parent education. Three-hour sessions required before filing application to Toronto's Superior Court.
Voluntary supports for separating or divorcing parents	1. Information Services. Family Law Information Centres at Unified Family Court sites in the province provide legal information and advice, make referrals to services including mediation, help parties negotiate the court system, and prepare applications. 2. Self-help divorce kits allow divorcing parents to represent themselves in divorce and custody and access proceedings. Available at courts and government offices. 3. Parent Education. Three-hour public information sessions provided at all Unified Family Court sites in the province, focussed on post-separation parenting. Also available at the Superior Court and Provincial Court in downtown Toronto. 4. Mediation. Court may order mediation, but only when parties agree. Mediation services available at all Unified Family Court sites and Toronto's largest Provincial Court on a sliding-fee scale. Parties may go or be sent to mediation elsewhere in the province where affordable and available.
Mandatory supports for parents in access disputes	1. Parent education. Three-hour sessions required before filing application to Toronto's Superior Court. 2. Case management at all Unified Family Courts and in Toronto's Superior Court and lower Court of Justice: involves mandatory case conference, settlement conference and trial management conference with the appointed judge at stages during the process.
Legal aid and other legal supports for parties in access disputes, including children	1. Legal Aid available to parties. However access disputes that do not threaten the parent's relationship with the child (e.g. applications to vary the orders) are a low priority for aid. 2. Children's lawyer appointments are without charge.
Voluntary supports to parties in access disputes	1. Supervised access where available (see below). 2. Information services. At Unified Family Courts and in Toronto. 3. Parent education. At Unified Family Courts and in Toronto. 4. Mediation. At Unified Family Courts and Toronto's largest Provincial Courts.
Mandatory supports for enforcement of access	1. Supervised access where available (90 percent of supervised access is court-ordered). The province is currently finalizing plans to provide supervised access (purchase of service) in all court catchment areas. Supervised access is also available in Toronto. (See Chapter 3, Section 3.3 for evaluation of the original pilot program) In 1998-99 11,290 families used supervised access centres, with 19,752 children served, 15,637 supervised visits taking place, and 11,500 or so child exchanges. Fees are based on a sliding scale.

QUEBEC

Quebec has no provisions for enforcing access beyond the fines and imprisonment and related minor penalties of civil contempt. Its access enforcement penalties, therefore, apply both to custodial parents who deny access and to access parents who breach access by failing to return the child as specified. It is not known how frequently cases are brought to court, how many applications are upheld or what penalties are levied.

Parents bringing access enforcement applications to court are required to attend an information session on the mediation process before proceeding to a hearing. Quebec relies heavily on mediation to resolve cases that enter the courts, and disputing parents may choose mediation following the information session or proceed with the application. Mediation is provided in provincially run youth centres, and is free for three to six sessions. Judges may also order the parties into mediation.

Superior Court judges may order parents into supervised access, and often do so on the recommendation of an expert psychosocial evaluation service, or parents' request. Social workers from the Youth Protection Branch or a judge from the lower court *Chambre de la Jeunesse* may also refer parents into province-wide supervised access services.

Voluntary parenting education programs are also available to Montréal parents using mediation and family evaluation services there. Separating and divorcing parents must also attend the information session as a prerequisite to contesting custody or access arrangements in the court. They may also choose to use mediation services and, be ordered into mediation by the court. Montréal parents using the mediation or evaluation services at youth centres may enrol in the parenting education program.

Parents may be denied access when the child is known to be at serious risk of abuse.

Principles governing access awards *Civil Code of Quebec* (S.Q. 1991)	Children's best interests • Moral, intellectual emotional and material needs of the child. • Environment and other aspects of his or her situation. • Child's wishes when age and power of discernment permit it.
Provisions for dealing with cases involving child abuse and violence and spousal abuse and violence	Parents may be denied access when the child is known to be at serious risk of abuse.
Role of the child's wishes in deciding access disputes	1. Child's wishes are a consideration in determining best interests. 2. Child has the opportunity to be heard in all cases affecting his or her interests when age and power of discernment permit it. 3. Child's Lawyers may represent children's interests in court, when the court orders it. 4. The Human and Young Persons' Rights Commission has a general duty to protect and promote children's rights, and may take the legal action necessary to correct violations of children's rights.
Penalties for unwarranted access denial	Contempt: fines of up to $5,000 and imprisonment of up to one year.
Penalties for unwarranted breach of access or failure to exercise access	As above for breach of access.
Mandatory supports for separating or divorcing parents	1. Information session on the mediation process required before court hearing of any custody, access or child support application (free). Parties choose mediation or court hearing at the end of session. 2. Court may order mediation for parties (see below).
Voluntary supports for separating or divorcing parents	1. Mediation available at parties' request (free for up to six sessions). 2. Parenting education program. Available in Montréal only for parents using the mediation or psychosocial evaluation services of the youth centres.
Mandatory supports for parties in access disputes, including children	1. Information session on the mediation process required before court hearing of any custody, access or child support application (free). The information session may take the form of a group session, a meeting between a mediator and the couple, or a group session with one spouse not present. Parties choose mediation or court hearing at the end of session. 2. Judges may order the parties to mediation during hearings. Services provided at youth centres. Either three or six sessions will be paid for by the family mediation service of the Superior Court.
Legal Aid and other legal supports for parties in access disputes, including children	1. Legal Aid available to eligible parties.

QUEBEC (cont'd)

Voluntary supports for parties in access disputes, including children	1. Mediation available at parties' request (free up to six sessions). Parties may end mediation at any point, or suspend it to consult with counsel. The sessions are confidential, although the mediator may file a report with the court. 2. Parenting education program. Available in Montréal only, and for parents using the mediation or psychosocial evaluation services of the youth centres. 3. Judges may order psychosocial evaluation in disputes that reach the court, but only at parties' consent. The evaluation service is designed to provide judges with impartial recommendations and information in disputed cases. 4. Supervised access available around the province. Provincially funded and provided by community agencies and associations. Parents may be referred to supervised access by Superior or lower court, at parents' request, or on the recommendation of social services. Some centres charge fees.
Mandatory supports for enforcement for access	1. Supervised access available around the province.

NEW BRUNSWICK

New Brunswick law has no provisions for access enforcement beyond the fines and imprisonment penalties of civil contempt. These penalties apply to custodial parents who deny access without warrant, as well as access parents who breach the terms of access. Officials believe very few cases of breach or denial of access reach the courts. Most litigated access disputes involve requests to vary access orders by one party or the other because parents disagree on visiting terms or custody. New Brunswick family courts hear about 200 applications a year to vary court orders.

There are no mandatory programs or services for parents making access enforcement applications. Information services and voluntary mediation are available to these parents at each point in the legal process. There are no mandatory programs or services for separating and divorcing parents either, except in spousal abuse cases, in which parties are referred to the provincial Family Solicitor who can provide a broad range of legal services. Information and voluntary mediation services are available to separating and divorcing couples. Mediators see some 3,600 clients a year, and it is estimated that half of mediators' time is spent explaining the order to parents and trying to help them live with its provisions.

The province is planning to introduce more services soon, and is looking most closely at parent education programs to which the court can order disputants, and to supervised access programs to support access enforcement. The province has rejected mandatory mediation. The province will be establishing a quasi-judicial function to enforce access.

While parents are denied access when the child is known by the Children's Aid Society to be at serious risk of abuse, access appears to be being granted in cases of spousal abuse on a regular basis. The legal system provides no support to custodial mothers who seek to vary their access orders on the grounds of spousal violence. In effect, then, if an abused custodial mother can successfully deny access to the access father, he is unlikely to be able to have his access enforced. However, if the violent father is able to enforce access, the abused mother's only recourse is to seek to vary the order.

Child protection laws link spousal violence with child abuse in assessing risk to the child, so spousal violence can figure in determinations when child abuse and neglect are present.

Principles governing access awards *Family Services Act* (S.N.B. 1996)	Children's best interests • Mental emotional and physical health of child and need for care or both. • Views and preferences of the child when they can be ascertained. • Effect on the child of any disruption of his or her sense of continuity. • Love, affection and ties existing between the child and each person to whom custody is entrusted (and others). • Merits of any plan by the Minister under which he could be caring for the child rather than returning the child with the parents, or allowing child to remain with them. • Need to provide a secure environment that enables child to become a useful, productive member of society. • Child's cultural and religious heritage.
Provisions for dealing with cases involving child abuse and violence and spousal abuse and violence	1. Parents may be denied access in cases where the child is known to be at serious risk of abuse. 2. Spousal violence may be a consideration in deciding access cases, but in practice access appears to be granted to violent spouses. 3. Judges may award access, or enforce access, under supervision, where services exist. 4. Spousal violence can figure in determinations of the child's best interest when child abuse is present.
Role of the child's wishes in access disputes	Unknown.
Penalties for unwarranted denial of access *Family Services Act* (S.N.B. 1980)	1. Contempt: imprisonment for up to 90 days and fines of up to $1,000. 2. Apprehension orders when abduction is feared.
Penalties for unwarranted breach of access or failure to exercise access	As above for breach of access.
Mandatory supports for separating or divorcing parents	1. In spousal abuse cases, parties are referred to the Family Solicitor, who provides a broad range of legal services. Provided to 1,358 clients in 1996-97.

NEW BRUNSWICK (cont'd)

Voluntary supports for separating or divorcing parents	1. Information services. Provided by social workers, who may also assess Legal Aid eligibility and refer parents to other services. 5,000 clients in 1996-97. An evaluation has been completed. 2. Mediation services. For cases not involving spousal abuse.
Mandatory supports for parties in access disputes, including children	None.
Legal Aid and other legal supports for parties in access disputes, including children	Unknown.
Voluntary supports for parents in access disputes	1. Information services. 2. Mediation services.
Mandatory supports for enforcement of access	Few to none.

NOVA SCOTIA

Nova Scotia enforces access through fines and imprisonment. The *Family Maintenance Act* also allows a court to make any additional order (such as an order of contempt) it deems necessary to ensure that a court order, such as an order for access, is followed. These kinds of civil contempt orders could apply to custodial parents who deny access without warrant and to access parents who breach or fail to exercise access orders.

Parents making applications for access enforcement at a Unified Family Court (the province's courts are currently unifying) are required to meet with a conciliation officer who can stream them into other services, such as parenting education and mediation, or provide conciliation for cases requiring minimal intervention. All other services are voluntary prior to the hearing, although judges may order parents into one of these programs as part of the judgement of the case.

Voluntary parenting education programs are available in parts of the province for parents making access enforcement applications and for separating and divorcing parents. Voluntary mediation services for both parents in access disputes and separating and divorcing parents are available in Halifax and Sydney, where there are Unified Family Courts.

The province is not planning to introduce access enforcement legislation. It is planning to expand counselling services within the new Unified Court system, and possibly make supervised access far more widely available than it is now. Officials believe the conciliation officers are able to "weed out" about half the cases that come into the court by providing information and preliminary support and conciliation services.

Parents may be denied access when the child is known to be at serious risk of abuse. New child protection laws link spousal violence with child abuse in assessing risk to the child, so that spousal violence figures in determinations of the child's best interests when child abuse is present.

Principles governing access awards *Family Maintenance Act* (R.S.N.S. 1989)	Children's best interests • Welfare of the child is the paramount consideration.
Provisions for dealing with cases involving child abuse and violence and spousal abuse and violence	1. Judges may award access, or enforce access, under supervision, where services exist. 2. Parents may be denied access when the child is known to be at serious risk of abuse. 3. Spousal violence can figure in determinations of the child's best interest when child abuse is present.
Role of the child's wishes in access disputes *Family Maintenance Act* (R.S.N.S. 1989)	1. Section 20 provides that a court may order that a child be brought before the court in custody and access applications.
Penalties for unwarranted denial of access *Family Maintenance Act* (R.S.N.S. 1989)	1. Civil contempt: fines and imprisonment. 2. Other sanctions for flagrant violations of the courts' orders.
Penalties for unwarranted breach of access or failure to exercise access	As above for breach of specified access.
Mandatory supports for separating or divorcing parents	1. Conciliation and resolution. Parents proposing to make court applications must present themselves to conciliation officers at Superior courts in Halifax and Sydney. These officers provide information and counselling, and help parties draw up a consent order when feasible. The conciliation officer can refer parties to other services. Evaluation recently completed.
Voluntary supports for separating or divorcing parents	1. Parent education. There are programs in parts of the province. 2. Mediation (Halifax-Dartmouth, Cape Breton) to help resolve custody and access issues. 3. Intake services at Supreme Court offices in Halifax and Sydney provide conciliation services for cases involving minimal intervention.
Mandatory supports for parties in custody and access disputes, including children	1. Conciliation and resolution. Parents proposing to make court applications must present themselves to conciliation officers at Superior Courts in Halifax and Sydney. These officers provide information and counselling, and help parties draw up a consent order when feasible. The conciliation officer can refer parties to other services. Evaluation recently completed.

NOVA SCOTIA (cont'd)

Legal Aid and other legal supports for parties in custody/access disputes, including children	1. Available to all parties and children (in appropriate circumstances), depending on eligibility.
Non-mandatory supports for parties in custody/access disputes, including children	1. Mediation. Provided by the province in Halifax-Dartmouth and Cape Breton to help resolve custody and access issues. 2. Conflict management services are available around the province, provided by private organizations on a user-pay or means-tested basis.
Mandatory supports for enforcement of access	Supervised access is provided by some community services in the province, though availability is not widespread.

PRINCE EDWARD ISLAND

Prince Edward Island enforces access primarily through the fines, imprisonment and other penalties of civil contempt, but its *Family Law Act* does specifically provide for enforcing access through restraining orders and other reporting penalties. It is not known whether the family law legislation applies to access parents who breach access or fail to exercise specific agreements, as well as custodial parents who deny access. The civil contempt penalties would apply both to custodial parents who deny access and to access parents who breach access by failing to return the child.

There are no mandatory programs or services for parents making access enforcement applications. Voluntary mediation is free and available to parents making access enforcement applications and to separating and divorcing parents. A voluntary parenting education pilot project is under way in Charlottetown and Summerside for separating and divorcing parents, and preliminary responses are positive. There are no mandatory programs or services for separating and divorcing parents.

The province is hoping to expand its prevention programs, notably its parenting pilot program. Judges would be able to order parents into parenting programs at separation and divorce hearings and in access enforcement disputes.

There are supervised access services across the province, publicly funded and privately delivered.

Parents may be denied access when the child is known to be at serious risk of abuse. Child protection laws link spousal abuse with child abuse in assessing risk to the child, so that spousal violence figures in determining the child's best interests when child abuse is present.

Principles governing access awards *Custody Jurisdiction and Enforcement Act* (R.S.P.E.I. 1988)	Children's best interests • The court shall consider the child's views and preferences when possible.
Provisions for dealing with cases involving child abuse and violence and spousal abuse and violence	1. Parents may be denied access in cases where the child is known to be at serious risk of abuse. 2. Judges may award access, or enforce access, under supervision, where services exist. 3. Spousal violence can figure in determinations of the child's best interest where child abuse is present.
Role of the child's wishes in access disputes	1. The court shall consider the child's views and preferences when possible in determinations of the child's best interests.
Penalties for unwarranted denial of access *Custody Jurisdiction and Enforcement Act* (R.S.P.E.I. 1988)	1. Restraining order. 2. Recognizance, requirement to report to the court and/or deliver documents as the court sees fit, and other ancillary powers.
Penalties for unwarranted breach of access or failure to exercise access	None.
Mandatory supports for separating or divorcing parents	None.
Voluntary supports for separating or divorcing parents	1. Parent education. A pilot project currently operates in Charlottetown and Summerside offering two three-hour sessions focussing parents on meeting the child's best interests. Targeted to those in need of immediate intervention and care. An evaluation of the project is almost complete, and anecdotal response was positive. The province is planning to extend this service. 2. Mediation. Freely and widely available from social workers, though less accessible in rural areas.
Mandatory supports for parties in access disputes, including children	None.
Legal Aid and other legal supports for parties in access disputes, including children	Provides access to services only when applicant or applicant's children are at risk of violence and abuse. 81 files opened in 1997-98.
Voluntary supports for parties in access disputes, including children	Mediation. Free and widely available at the request of the parties.
Mandatory supports to enforcement of access	Supervised access available in parts of the province by provincially funded community agencies. Judges may order supervised access where available.

NEWFOUNDLAND

Newfoundland enforces access with a range of penalties from civil contempt to compensatory access. Access enforcement applies to custodial parents who deny access without warrant as well as to access parents who breach access orders, although a limited number of penalties apply to the latter. It is not known how frequently the penalties are used, or how many access enforcement cases come before the courts.

There are no mandatory programs or supports for parents bringing access enforcement applications, although judges may order couples to mediation or supervised access, where available, as penalties for breaches of access, including access denial. Voluntary mediation is available to couples engaged in disputes at the outset of their journey through the court.

Separating and divorcing parents entering the court are required to proceed through an intake service that assesses whether their case is amenable to mediation, and assigns them a case manager. Voluntary mediation services are available to these parents also. The province has also launched a voluntary pilot parenting education program and a supportive education program for children of separating and divorcing parents.

Parents may be denied access when the child is known to be at risk of serious abuse. Child protection laws link spousal abuse to child abuse in determining risk to the child, so that spousal violence figures in determination of the child's best interests when child abuse is present.

Principles governing access awards *Children's Law Act* (R.S.N. 1990)	Children's best interests • Love, affection and emotional ties between the child and each person claiming custody or access, other members of the child's family living with the child, others caring for the child. • The views of the child when ascertainable. • Length of time the child has been in the environment. • Ability and willingness of each person applying for custody to provide guidance and education and necessaries of life and for special needs of child. • Ability of person seeking custody or access to be a parent to the child. • Plans proposed for the care and upbringing of the child. • Permanence and stability of the family unit where it is proposed the child will live. • Relationship by blood or through adoption order between child and applying parties.
Provisions for dealing with cases involving child abuse and violence and spousal abuse and violence	1. Parents may be denied access when the child is known to be at serious risk of abuse 2. Child protection laws link spousal abuse to child abuse in determining risk to the child, so that spousal violence figures in determination of the child's best interests when child abuse is present.
Role of the child's wishes in access disputes	1. No legal representation for children in courts unless ordered by Supreme Court judge. 2. No child advocate services.
Penalties for unwarranted access denial *Children's Law Act* (R.S.N. 1990)	1. Contempt: fines and imprisonment. 2. Apprehension order. 3. Supervised access. 4. Order to prevent removal of the child from the jurisdiction. 5. Compensatory access. 6. Reimbursement for expenses incurred as a result of denial. 7. Appointment of mediator.
Penalties for unwarranted breach of access or failure to exercise access	1. Reimbursement of expenses incurred as a result of failure to exercise access. 2. Appointment of a mediator.
Mandatory supports for separating or divorcing parents	1. Intake service. Assesses whether case is amenable to mediation. May refer parties to other agencies. 2. Case management. All applications referred to case management (does not apply to interim applications for custody or access).
Non-mandatory supports for separating or divorcing parents	1. Parents are Forever. Pilot project of parent education program. 150 served annually. 2. Mediation services. Mediators meet with individual parents to explain process and confirm their willingness to proceed. 300 to 400 cases handled annually. Supportive Education group for children. Provides safe place for children of separated parents to discuss issues. 8-week sessions semi-annually.

NEWFOUNDLAND (cont'd)

Mandatory supports for parties in access disputes, including children	None.
Legal Aid and other legal supports for parties in access disputes, including children	Intake service assesses applicants eligibility for Legal Aid.
Non-mandatory supports for parties in access disputes, including children	1. Mediation services. Mediators meet with individual parents to explain process and confirm their willingness to proceed. 300 to 400 cases handled annually.
Mandatory supports for enforcement of access	1. Supervised access. Provided only when court ordered, by court, often at court. 10 to 20 cases annually.

NUNAVUT

Nunavut provides for the enforcement of access orders through several penalties. Penalties apply to custodial parents who deny access without warrant, as well as to access parents who breach access terms by failing to return the child or failing to show up as agreed. Penalties apply more or less symmetrically to both kinds of violations. However, court officials say applications for access enforcement are rare, as are family court applications in general (8 to 10 per year).

There are no mandatory programs or services prior to the court hearing for parents bringing access enforcement applications. Once the case reaches court, the judge can appoint a separate counsel to represent the children's interests when they think it necessary, and the child's wishes are a consideration in determining the child's best interests.

Judges can order mediation or ongoing access under supervision as penalties for an access violation, but are unlikely to do so. The court does not provide, nor subsidize, parents' use of private mediation and supervision services, and they are not widely available. Some mediation, counselling and access supervision services have been initiated by social service workers, or are provided by individuals in some communities, but they are largely parallel to and distinct from the legal system.

There are no mandatory programs or services for divorcing or separating parents, and few voluntary services. The courts provide basic information to separating or divorcing parents, but do not offer mediation, counselling or other services. The territory is considering establishing more voluntary parenting education and counselling services, mainly by building on what services already exist in communities rather than through a territory-wide program.

Parents may be denied access when the child is known to be at serious risk of abuse, and violence against a parent may also be a consideration in awarding access and adjudicating access disputes. It is not known how often access is awarded in these circumstances. However, the abused spouse can seek a restraining order or have the other parent placed on recognizance when there is risk of violence. The abused spouse may be able to secure supervised access in these cases through the social services system, since authorities may attached supervised access as one of the conditions of access as part of peace bonds or restraining orders issued against the violent spouse.

Principles governing access awards Children's Law Act (Nunavut) 1997 (Revised statute of the Northwest Territories statute, Chapter 14)	Children's best interests • The love, affection and emotional ties between the child and each person entitled to or seeking custody or access, other members of the child's family, and persons involved in the care and upbringing of the child. • The child's views and preferences when they can be reasonably ascertained. • The child's cultural, linguistic and spiritual or religious upbringing and ties. • The ability and willingness of each person seeking custody to provide the child with guidance, education and necessities of life and provide for special needs of the child. • The ability of each person seeking custody or access to act as a parent. • Who, from among those persons entitled to custody or access, has been primarily responsible for the care of the child. • The effects a change of residence will have on the child. • The permanence and stability of the family unit within which it is proposed the child live. • Any plans proposed for the care and upbringing of the child. • The relationship, by blood or through adoption, between the child and each person seeking custody or access. • The willingness of each person seeking custody to facilitate access. • Any evidence that a person seeking custody or access has at any time committed an act of violence against his or her spouse, former spouse, child, child's parent or any other member of the person's household. • Family and any effect that such conduct had, is having or may have on the child.
Provisions for dealing with cases involving child abuse and violence and spousal abuse and violence	1. Parents may be denied access when the child is known to be at serious risk of abuse. 2. Violence against a parent may also be a consideration in awarding access and adjudicating access disputes.
Role of the child's wishes in access disputes	1. Judge can appoint a separate counsel to represent the children's interests when they think it necessary. 2. Child's wishes are one consideration include in determining the child's best interests.

NUNAVUT (cont'd)

Penalties for unwarranted access denial Children's Law Act (Nunavut) 1997 (Revised statute of the Northwest Territories statute, Chapter 14)	1. Supervised access. 2. Reimbursement of expenses incurred as a result of access denial. 3. Appointment of a mediator. 4. Compensatory access.
Penalties for unwarranted breach of access or failure to exercise access	1. Supervised access. 2. Reimbursement of expenses incurred as result of access denial. 3. Appointment of a mediator. 4. Requiring respondent to provide his or her address and telephone number to the applicant.
Mandatory supports for separating or divorcing parents	None.
Voluntary supports for separating or divorcing parents	1. Basic information services at the court. 2. Counselling, mediation or both may be available in some communities through social service agencies or individuals.
Mandatory supports for parties in access disputes, including children	None.
Legal Aid and other legal supports for parties in access disputes, including children	Available to parties in access disputes, including children.
Voluntary supports for parties in access disputes, including children	Counselling, mediation and supervised access may be available in some communities through social service agencies or individuals.
Mandatory supports for enforcement of access	Supervised access where available. Not generally available.

NORTHWEST TERRITORIES

Section 30 of the *Northwest Territories Act* provides for the enforcement of access orders through several penalties. Access enforcement penalties apply to custodial parents who breach access terms by failing to return the child or failing to show up as agreed. Penalties apply more or less symmetrically to both kinds of violations. However, the provisions are rarely used, if ever. Court officials say no applications have come before N.W.T. courts since August 1999, when all family law applications began passing through the hands of a single court officer.

There are no mandatory services for divorcing parents or parents engaged in access disputes prior to the court hearing. Judges can order couples into mediation as one of the penalties for an access violation. Judges may also order access to continue under supervision as one of the penalties. Some mediation and supervised access are available in Yellowknife privately, and the supervised access is largely volunteer-run and privately sponsored.

A pilot project offering voluntary group counselling for separating parents in Yellowknife recently ended, and territorial officials may implement the program permanently once it has been evaluated. Informal feedback was positive. Information and other support services for separating and divorcing parents had been available in Yellowknife until recently (with a 1-800 number and fax number), and will resume soon.

Parents may be denied access when the child is known to be at serious risk of abuse, and violence against a parent may also be a consideration in awarding access and adjudicating access disputes. It is not known how often access is awarded in these circumstances. However, the legislation allows the abused spouse to seek a restraining order or have the other parent placed on recognizance when there is risk of violence.

Principles governing access awards *Domestic Relations Act* (R.S.N.W.T. 1998)	Children's best interests • Welfare of the child. • Conduct of the parents. • Wishes of each parent. • Court may consult the wishes of the child.
Role of the children's wishes in deciding access enforcement disputes	1. Judge can appoint a separate counsel to represent the children's interests when they think it necessary. 2. Child's wishes are one consideration include in determining the child's best interests.
Penalties for denial of access *Domestic Relations Act* (R.S.N.W.T. 1998)	1. Supervised access. 2. Reimbursement of expenses incurred as a result of access denial. 3. Appointment of a mediator. 4. Compensatory access.
Penalties for breach of access or failure to exercise access	1. Supervised access. 2. Reimbursement of expenses incurred as result of access denial. 3. Appointment of a mediator. 4. Requiring respondent to provide his or her address and telephone number to the applicant.
Mandatory supports for separating or divorcing parents	None.
Voluntary supports for separating or divorcing parents	1. Information services: Family and Civil Law Information Officers disseminate legal information and may approve agreements among the parties. Yellowknife (plus 1-800 number). Lapsed but to be reinstated soon. 2. Parent education: Parenting after separation and divorce. Pilot project. Group counselling provided to couples (Yellowknife). May be expanded after evaluation complete. 3. Case management. At parties' request.
Mandatory supports for parties in custody and access disputes, including children	None (over and above penalties).
Legal Aid and other legal supports for parties in custody and access disputes, including children	1. Legal Aid includes assistance for access enforcement. 2. The Legal Services Board also provides representation for children old enough to instruct counsel when parents' counsel indicates this is needed.
Non-mandatory supports for parties in custody and access disputes, including children	Basic information services from the court. Sparse private counselling, mediation.
Mandatory supports for enforcement of access orders	Supervised access not widely available.

YUKON

Yukon leaves access enforcement penalties to judicial discretion. It is not known whether access enforcement provisions apply solely to custodial parents who deny access or also to access parents who breach access orders or fail to exercise access. It is not known how frequently applications come before the court, or what penalties are applied, if any, to those that do.

There are no mandatory programs or supports for parents in access disputes; however, parties who have commenced proceedings may be referred, with their consent, to a pre-trial settlement conference with a judge, or agree to a mini-trial, in which parties argue their cases to a judge for a non-binding ruling. Judicial mediation is also available and judges receive mediation training.

There are no mandatory supports or programs for separating and divorcing parents. A pilot parenting education program has been launched, using the Manitoba program as a model.

Parents may be denied access which the child is known to be at serious risk of abuse.

Principles governing access awards *Children's Act* (R.S.Y.T. 1986)	Children's best interests • Bonding, love, affection and emotional ties between the child and each person claiming or entitled to custody or access, other members of the family who reside with the child, and persons involved in the care and raising of the child. • Views and preference of the child when they can be reasonably ascertained. • Length of time (with regard to the child's sense of time) the child has lived in a stable environment. • Ability and willingness of each person applying for custody to provide child with guidance, education and the necessities of life, and for any special needs of the child. • Any plans for the care and upbringing of the child. • Permanence and stability of the family unit where it is proposed the child will live. • Effect that awarding custody or care of the child will have on other party's reasonable access to the child.
Role of the child's wishes in deciding access disputes *Children's Act* (R.S.Y.T. 1986)	1. A consideration in determining child's best interests. 2. Parties or the court may request a child advocate to represent child's interests in a proceeding.
Provisions for dealing with cases involving child abuse and violence and spousal abuse and violence	Unknown.
Penalties for denial of access	Court may give such directions as it considers appropriate.
Penalties for breach of access or failure to exercise access	Unknown.
Mandatory supports for separating and divorcing parents	None.
Voluntary supports for separating and divorcing parents	1. Parenting education. Pilot project. For the Sake of the Children. Four three-hour information workshops using the Manitoba program offered in 1998-99, repeated in 1999-2000.
Mandatory supports for parties in access disputes	None.
Legal Aid and other legal supports to parties in custody/access disputes, including children	Legal Aid available for interim proceedings involving custody and access orders. Cases must generally have no pre-existing orders of the court or other lawfully binding resolutions. Assistance may be provided when the health or safety of child or parent or the child-parent relationship is at risk.
Voluntary supports to parties in custody/access disputes, including children	1. Pre-trial conferences or court-based mediation. At parties' consent, dispute may be sent to a pre-trial settlement conference with a judge or a mini-trial, in which parties present their cases to a judge for a ruling. Rulings are not binding but parties typically settle disputes using this information. 2. Judicial mediation. Judges in both Territorial and Supreme Courts receive mediation training and with parties consent may mediate disputes prior to trial.
Mandatory supports for enforcement of access orders	None.