

THE UNIVERSITY OF MANITOBA
SCHOOL OF SOCIAL WORK

THE UTILIZATION OF SOCIAL WORK PERSONNEL
IN A DOMESTIC RELATIONS COURT

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RELATIONS COURT.

by

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ABSTRACT

The objectives of this research were to present an exploratory analysis of social worker roles and functions at domestic relations court using Marriage Conciliation Service as an illustrative situation, to identify issues relevant to the utilization of personnel in this setting, and to formulate recommendations concerning practice where appropriate. A qualitative methodology was designed to meet the research requirements of the study, sources of data being primarily field study and observation techniques. The richest source of information were semi-structured interviews with social workers, lawyers, and Family Court judges. Data collection was carried out in phases over several months.

Research findings were analysed and presented in terms of functional categories of social work activities and thematically related issues concerning practitioners roles and functions at domestic relations court. A synthesis of the descriptive data comprises a multi-dimensional portrait of social work practice at Marriage Conciliation Service. Attention was devoted not to concerns of the worker-client interaction, but to the issue of professional expertise in a non-social work practice setting. This exploratory study lead to conclusions regarding the necessity of social work in a technically-oriented service milieu to develop a clearly-defined mandate and consistency in the interpretation of delivery of services.

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TABLE OF CONTENTS

	PAGE
ABSTRACT.	ii
ACKNOWLEDGEMENTS.	iii
CHAPTER	
I INTRODUCTION AND RATIONALE	1
Purpose of the Study	
Recent Developments in Family Court Social Services	
Introduction to the Setting	
Historical Sketch of Marriage Conciliation Service	
Terminology Relevant to the Study	
II SOCIAL WORK PRACTICE IN HUMAN SERVICE ORGANIZATIONS.	21
Professionals in Bureaucracies	
Organizational Goals and Professional Tasks	
Social Work in Court Settings	
III SOCIAL WORK AND FAMILY LAW	38
Social Work and Law	
Social Work and Family Courts	
Court-related Counselling Services	
IV RESEARCH PROBLEM AND DESIGN.	59
Methodological Considerations	
V RESEARCH PROCEDURES.	69
Data Collection	
Data Analysis	

TABLE OF CONTENTS (Continued)

CHAPTER		PAGE
VI	SOCIAL WORKERS' ROLES AND FUNCTIONS.	78
	Preliminary Discussion of Findings	
	Presentation of Findings	
VII	LEGAL PROFESSIONALS' PERCEPTIONS OF SOCIAL WORKERS' ROLES AND FUNCTIONS	106
	Preliminary Discussion of Findings	
	Presentation of Findings	
VIII	FINDINGS ON RELATED ISSUES	135
IX	DISCUSSION OF EMPIRICAL DATA WITH THE THEORETICAL FRAMEWORK.	153
X	SUMMARY AND RECOMMENDATIONS.	162
	APPENDICES.	180
	BIBLIOGRAPHY.	194

CHAPTER I

INTRODUCTION AND RATIONALE

PURPOSE OF THE STUDY

One of the consequences of social change affecting the family in modern technological society is the necessity to establish accessible and appropriate human service organizations. The increasing occurrence of family breakdown requires service delivery organizations especially designed to respond to the emerging client population. The provision of service to families and children deemed to be 'at risk' because of the effects of marital conflict is crucial since domestic life has a profound impact upon so many aspects of human social functioning. One may observe a plethora of societal responses to family dissolution from 'creative divorce' counselling at the local community centre, to law reform commissions reflecting national concern with family law reform.

The profession of social work is committed to offering assistance to families in trouble at the levels of social welfare policy and direct service. Social work practice in the field setting of domestic relations court occurs at the interface of several phenomena associated with institutionalized responses to social problems. The perspectives from which one could examine the work environment of the court counsellor include emphasis on the actual problems created by marital breakdown, or a focus on the organization established to deal with the resulting situations. These approaches reflect either an emphasis on the client and problem orientation, or a focus on the issues around social service delivery. This research study adopts the later approach. Substantive

issues around utilization of social work personnel are examined within the context of domestic relations court.

An examination of the roles and functions of practitioners at Winnipeg Family Court, augmented by information from other sources pertaining to service delivery in family law settings may contribute to knowledge about appropriate deployment of social workers in this service environment. The objectives of this investigation into the practice of domestic relations court social work are:

- 1) a diagnostic description of the work roles and functions of a Family Court support service unit. An examination of the Marriage Conciliation Service at Winnipeg Family Court provided the central focus for this objective.
- 2) the identification of critical issues pertaining to utilization of social workers in this practice setting.
- 3) the formulation of guidelines for social work practice in a domestic relations court milieu.

Working with families experiencing conflict has long been considered a legitimate exercise of social work expertise and professional values, but the dominance of the legal profession has encouraged only limited scope for practice in the domestic relations court setting. Organization of service delivery depends on the kinds of service regarded as appropriate and necessary, and their relative importance in meeting organizational objectives. The predominance of the legal profession in dispute settlement has meant that social workers have had little input in domestic relations law administration. The nature of family law has necessitated concern with property matters; consequently, legal expertise has played the major role. The formal organizational objective

of any court is to dispense justice, that is, to give legal sanction to various forms of conflict resolution. Family Court too rests on this principle, but it dispenses judicial solutions to problems of a special nature. The necessity of admitting complex social factors and human relationship concerns in administration of family law warrants consideration in addition to the legal perspective on conflict resolution.

Planners of a human service organization take into account, among numerous variables, issues of deployment of human resources. A crucial element in planning service systems is the contribution to be expected from a relevant profession. Designers of new Family Courts must understand what kinds of activities are appropriate for social work staff so that their planning efforts will be consistent with the principles of planning and administration of human service organizations - to humanize, rationalize, and economize.¹

Among members of the legal profession and others associated with family law, there has been considerable activity concerning the renovation of legislation and administration of services in the domestic relations field. The profession of social work ought to be particularly attuned to these developments for matters around child custody, maintenance to dependents, other aspects of judicial separation, and the psycho-social consequences of marital conflict potentially constitute a large field of social work practice. Literature dealing with reform of family law in Canada and its administration, contain references to the role of the family counsellor - the social worker employed in the new courts to assist individuals and couples deal with the marriage problems leading them to seek judicial solutions to interpersonal problems. One finds suggestions for the utilization of social work personnel in

various capacities, but the roles and functions of these practitioners are seldom specifically defined.² For example, one notes considerable disparity of opinion regarding the desirability of and degree to which family counsellors should act in a para-legal capacity in the domestic relations field. Clarification of the ambiguity regarding social work activities in this setting is a major objective of this research.

RECENT DEVELOPMENTS IN FAMILY COURT SOCIAL SERVICES

By way of providing an introduction to basic concerns motivating this study, it is useful to survey some key issues discussed in the Law Reform Commission of Canada's Working Paper, The Family Court.³ Examination of this document provides general background on family courts and identification of major issues, the most significant of which illustrate the problematic nature of social services in domestic relations court settings.

The commissioners, on the first page of the report, say that a major concern is fragmentation of jurisdiction and responsibilities among levels of the courts dealing with family matters. In Manitoba, this results in most separations being handled in Provincial Judges Court, Family Division, while divorce proceedings occur in Court of Queen's Bench. As many as five different courts may handle family problems in some provinces. This overlapping and fragmentation that occurs in areas of custody, wardship, adoption, maintenance and divorce, leads to multiplication of effort and sometimes incompatible decisions. The commission points out that,

"The consolidation of family law jurisdiction in a single court would reduce the cost of legal services to the individuals, although an effective system of family courts with access to support

services would not necessarily reduce the financial cost to the state." (The Family Court, p. 8).

Having confirmed the need for comprehensive jurisdiction to be established in one court, the Law Reform Commission calls for immediate improvement on existing judicial processes in family matters. They consistently stressed the necessity of including support services.

"We consider that family conflicts require special procedures, designed to help individuals to reconcile or settle their differences and where necessary to obtain assistance. Therefore, the resolution of family conflicts particularly those involving children, requires some modification of the traditional adversary process. To leave reconciliation and settlement of issues exclusively in the hands of the lawyers is inadequate." (The Family Court, p. 8).

They readily state that reliance on the adversary process militates against reconciliation or the conciliation of marital or interparental conflicts. While it is held that an informal, less-adversarial approach to family conflict resolution exists in the current Family Courts, this sometimes accompanies a failure to protect the rights of individuals particularly children. The commission concludes in their discussion of 'conflicting philosophies and procedures of the courts' by saying,

"Substantial changes are required to attract well qualified judges and to provide simple, effective, inexpensive procedures in courts which are accessible and have the necessary auxiliary services available to those who need them." (The Family Court, p. 16).

Family Court requires administrative, counselling, conciliation, investigative, legal and enforcement services which promote out-of-court settlement of conflict. Current practices in most Canadian courts make little use of non-legal resources.

"...those responsible for the establishment and administration of the courts exercising jurisdiction in family law matters have totally failed to ensure the provision of adequate auxiliary services, whether one speaks in terms of their quality, quantity, or assessability." (The Family Court, p. 18).

After presenting the problems of family law administration, the Commission then makes several proposals to improve family courts. The discussion of support services deals first with a perceived need for legal services to be readily available to all who come to Family Court. Most auxiliary services however are non-legal, social-type services, for example they consider 'information and intake services' as an essential part of the Family Court structure.

"It should encourage the effective use of community resources and, where possible should deal informally and in a remedial way with family problems before they become formalized by the institution of legal proceedings."
(The Family Court, p. 42).

The commission goes on to say that 'family counselling and conciliation services' should be available in or to the Family Court. They recommend that conciliation counselling directed towards clarification and resolution of problems, regardless of whether the marriage survives, should be available on a voluntary basis. There is no specific description of what such counselling services would entail or what should be the qualifications of the personnel. The authors point out several times in the discussion of various support services that counselling, and indeed all auxiliary court services will evolve out of existing procedures and facilities, or be motivated by local needs and ingenuity. "The location and detailed organization of such services must primarily be determined by local conditions." (The Family Court, p. 43). The

commission in supporting the view that conciliation counselling services should be established in, or made available to, the court stressed that the counsellors role in attempting to resolve collateral issues is quite distinct from that of the lawyer who may eventually become responsible for drafting a legal settlement. They are also compelled to point out that the Family Court should not become a 'family clinic' with a judicial arm attached as the last resort in dealing with family problems. It will however be 'no less a court' if it utilizes preventive, diagnostic, and therapeutic services and procedures in the search of solutions to family conflict. (The Family Court, p. 44).

Regarding 'investigative services', the commission is in favour of their implementation in child custody matters, and also in providing independent appraisals of the means and needs of spouses in maintenance-related disputes. They point out that the use of probation services to prepare pre-sentence reports in juvenile delinquency proceedings is well established in Canadian courts. The use of reports in custody, adoption, and child neglect proceedings is also a common practice in Juvenile and Family Courts, and in County Courts. The authors of investigative reports should always be available for cross-examination. They state that if disclosures at intake and during counselling are to be open and candid, confidentiality must be extended to all communication, so investigative services should be separate from the conciliation function of support staff.

The commission included the need for 'enforcement services' to be available. They recognized that many court orders regulating family matters go unheeded and estimate that default of maintenance occurs in up to 75 percent of orders in some places. As for the personnel responsible

for this program, they said,

"Much of the responsibility for securing the enforcement of maintenance obligation should be assumed by trained para-professionals and the enforcement role should not fall upon the professional counsellor or legal staff except in circumstances where their respective professional skills or advice are essential to the resolution of the issue." (The Family Court, p. 52).

This overview of the report of the federal Law Reform Commission presents some of the issues which inspired an interest in social work practice in domestic relations court. In addition to the theoretical approaches or suggested models for legislative and administrative reform, there is some literature describing experimental family courts which have been established. A number of Canadian cities are currently sites of family court projects testing various modes of combined jurisdictions. Limited descriptive material on the functioning of their support services is available, and it is for the most part too nonspecific about what practitioners actually do. There are reports on the Unified Family Court Pilot Project in Richmond-Surrey, British Columbia; and the Edmonton Conciliation Counselling Project. There have recently been established Unified Family Courts in Toronto and Hamilton and a court of comprehensive jurisdiction in Charlottown, Prince Edward Island. Literature on family courts from Britain and the USA also provide some insight into utilization of social work staff in comparable social, legal, and administrative contexts.

Familiarity with issues around social work practice in domestic relations courts, as they are described in literature on theory and practice invites curiosity and concern about the present and future of family law administration in one's own province. How does the Winnipeg

Family Court deal with intake services, or investigative services? How does current practice in Manitoba reflect concern with the issues regarded critical to the establishment of improved services in the domestic relations court field? An analysis of the roles and functions of a social work unit attached to Family Court may clarify some of the ambiguity around auxiliary services.

INTRODUCTION TO THE SETTING

Werner Bohm suggests that in relation to an organization, agency, or bureaucracy of any type, social work is either the host, the guest profession, or the co-owner. In the court setting, social work is the 'guest' for the most part.

"Where utilization of social work competence is left to the discretion of the judge or another professional, the social worker when called upon, serves in a guest capacity. The contact with the other profession is intermittent, centered on a specific task at hand, and likely to end when the task is accomplished. Increasingly, there is a tendency for the social workers' role to move from the guest to the co-owner."⁴

The extent to which this process may have advanced in Manitoba may be revealed in this study illuminating the perceptions of roles and functions of Family Court social workers. The greater part of the literature on planning family courts adopts the view that non-legal family specialists have an important part to play in the sequence of service consisting of reconciliation if desired; conciliation if possible; and adjudication if necessary. An outlook generous to social work's potential contribution to reformed family law is evident here in a reference to a family court pilot project for Manitoba:

"So in this new proposed court system, family counsellors could and should be involved in a broad

range of conciliation services in relation to maintenance, child custody and access, and occupation of the marital home."⁵

The experience of experimental family court projects already in operation shows that family counsellors play an important part in providing more comprehensive service to clients.⁶

Some members of the legal profession express scepticism towards the value of social work intervention. A nonchalant distrust of social workers by lawyers is illustrated in this comment.

"As a general rule, the legal practitioner will not likely consent to any innovation which might jeopardize his client's position. Clearly, they cannot be criticized for that posture. But I suspect that as the family counsellors earn credibility and trust, lawyers will be more inclined to advise clients to give them a try."⁷

Apart from the skepticism and ambiguity regarding social worker's input in new family courts, the Winnipeg Family Court, unlike most Canadian family courts, has a tradition of utilization of social services. In this regard, the Marriage Conciliation Service has been somewhat unique. Winnipeg Family Court has three components administering the relevant legislation of domestic relations, juvenile delinquency, and child protection. The Juvenile Division has its own social work component in Probation Services similar to other facilities across Canada. The domestic relations component is quite separate. It has a different array of legislation to work with, enjoys the non-criminal aspect of family law, and its social workers have a less specifically defined mandate as in corrections where social workers are officers of the court. Of course, because it is part of the larger network, some attention must be devoted to its working relationships with other services such as the Enforcement Office, provincial financial assistance, Legal Aid, and

other agencies.

HISTORICAL SKETCH OF MARRIAGE CONCILIATION SERVICE⁸

In March of 1947, the government of Manitoba passed legislation providing for establishment of a Family Court in Winnipeg. This court, opening in October 1947, was attached to the existing Juvenile Court which had been in operation since 1909. All cases involving domestic disputes were, for the first time, heard in a 'closed' court. Prior to this, domestic relations matters had been heard, along with criminal matters, in Police or Magistrates' Courts which were open to the public. The staff of the new Juvenile and Family Court was increased by the addition of four graduate social workers from the recently founded School of Social Work at the University of Manitoba. They were designated 'family counsellors' to distinguish the domestic counselling function from the already established probation service. This passage from an article by the former Senior Judge of the Winnipeg Family Court describes the inception of the unit.

"The Hon. James McLenaghan, K.C. then Attorney General of Manitoba gave a radio broadcast in which he explained the nature and function of the Family Court. 'Because we were aware that domestic cases, he said, 'involved not only the parents but vitally affected the children as well, it was felt that some additional step should be taken to preserve the home, in so far as it was possible to do so. It was with this objective in view that the Family Court was created in 1947...The ordinary courts are busy with dealing with a great variety of cases. It was felt that the preservation of the family was of such importance that there should be a special Court for this purpose. It was decided that this Court should be presided over by a Judge who could devote the major portion of his time to cases involving marital disputes, and he should have a trained staff of counsellors whose aim would be to prevent the break-up of the home...A person seeking help with a problem which it is believed requires Court action is first

referred to one of the Family Counsellors. The function of the Counsellors is to preserve the family unit wherever possible. The husband and wife are brought together before the Judge or one of the Counsellors to air their grievances and to see if a reconciliation cannot be brought about and the home preserved...' "9

Over the years several legislative and administrative changes have expanded the mandate of Family Court to assist families experiencing difficulties. The Corrections Act of 1966 which allowed for creation of Family Courts like Winnipeg's elsewhere in Manitoba, defined the minister responsible for the Act to be Attorney General or 'such other member of the executive council as may be charged with the administration of this Act by the Lieutenant Governor-in-Council.' About this time, the administration of Family Court was transferred from the Attorney General's Department to the Department of Health and Social Development.

In 1968 the Court and auxillary services were moved from the downtown location at 221 Memorial Blvd. to 139 Tuxedo Blvd., the old Fort Osborne Barracks buildings. Also in 1968, an enforcement unit was established under the Director of Probation Services, to assume responsibility at the request of beneficiaries of court orders, for the enforcement of maintenance. It was during this period, that the name of the domestic relations court social work staff was changed from Family Counselling Service to Marriage Conciliation Service.

The current Winnipeg Family Court, as with others in the province, is administered under the aegis of the Provincial Judges Act, 1972. By that time, Family Court had returned to the administrative baliwick of the Attorney General's Department, so the Enforcement Unit, along with other legal court services were transferred. Marriage Conciliation

Service, a part of Probation Services, remained under the Department of Health and Social Development. Chapter six which presents research findings contains a more complete description of Marriage Conciliation Service.

TERMINOLOGY RELEVANT TO THE STUDY

The terms 'social worker', 'family counsellor', 'counsellor', and 'caseworker' are used interchangeably. In the Family Court setting being examined, all of the staff have had formal social work education. Unless indicated otherwise, as in the case of probation officers, or child protection personnel, 'social worker' refers to domestic relations court counsellors. The term 'caseworker' is employed broadly with the intent to convey the sense of social casework as an eclectic, multi-faceted, means of working with people. As described in a recent article, it embraces several modes of practice including ego psychology, communication theory, small group theory, and crisis intervention theory.¹⁰ The term counsellor also is employed somewhat indiscriminantly as is the practice at Family Court. The 'court counsellor' or 'family counsellor' is the professional who advises and provides consultation to clientele on the numerous concerns which have brought them to Family Court. Counselling is a multi-faceted activity at domestic relations court more so than the definition of a professional role. Marriage Conciliation Service staff, comprising personnel for domestic relations court support services, are responsible for a broad range of functions at Family Court. The terms social worker, counsellors, caseworker, by necessity, are used in non-specific, flexible ways. The terms must encompass, with minimal sacrifice of semantic legitimacy, the wide

variety of functions performed by the staff. Where the abbreviation M.C.S. is used in this thesis, it refers to Marriage Conciliation Service.

The terms 'legal professionals' including lawyers and judges, and 'social work professionals' referring to trained court counsellors, are consciously used loosely in this report. It is acknowledged that a body of literature has emerged from the debate over whether or not social work embodies enough characteristics of professionalism to entitle it to the label and resultant status. For the sake of simplicity, this writer adopts the position that social work may be referred to as a profession. This view is supported in social work theory literature exemplified by a classic article by Greenwood.¹¹ He described social work in terms of five characteristics of professionalization: 1) the extent to which knowledge employed by social workers is based on a systematic body of theory, 2) the degree of commitment to professional authority, 3) the extent of community sanction for social work activities, 4) the ethical code of social work, and 5) the values, norms, and symbols to which social workers are committed. Greenwood's conclusion is that social work is a bona fide profession.

Another school of thought holds that social work is not truly a profession because in comparison with law and medicine, it has a relatively undeveloped knowledge base on which practice is built.¹² Also it has no monopoly on a unique set of skills and enjoys little professional autonomy in formal organizations. Toren says that the humanitarian service orientation of the code of ethics so strongly emphasized in social work practice, does not endow the prestige of professionalism.

Regardless of considerations of prestige and authority, for practical

reasons it makes sense to use the term profession to denote modes of work activities and occupational cultures. With the increasing tendency for lawyers and doctors to become public employees similar to the traditional work patterns of social workers in large service organizations, the academic distinctions made in defining 'professional' may become less contentious. The traditional elements of professionalism as stated by Greenwood, Toren, and others continue to be relevant for they serve as a basis of comparison between occupational groups. Social workers and legal personnel have very different approaches to theories and methods of helping people, so the concept of professionalism provides a multi-faceted typology upon which comparison and analysis could be based. Some concepts relevant to the study of professionals in bureaucracies will be presented in the next chapter.

The diversity of meaning applied to the terms 'function' and 'role' also necessitate a comment on the way they are used in this study. As Merton points out, "The large assembly of terms used indifferently and almost synonymously with 'function' presently includes use, utility, purpose, motive, intention, aim, consequences."¹³ The way that 'function' is used here comes close to Weber's definition paralleling 'what one does in one's employment.' Weber defines occupation as "the mode of specialization, specification, and combination of functions of an individual so far as it constitutes for him the basis of a continual opportunity for income or profit."¹⁴ Actual utility to the organization rather than consequences of activity directly for the client is the focus of this approach.

This definition of the term expresses the aspect of task-orientation which is central to this research.

Function - the action for which a person, or thing is specially fitted, used or responsible; the activity appropriate to the nature or position of a person or thing; role; duty; work.¹⁵

The Oxford English Dictionary among its definitions also offers one which illustrates the work-activity element.

Function - the special kind of activity proper to anything; the mode of action by which it fulfils its purpose.

- the kind of action proper to a person as belonging to a particular class, esp. to the holder of any office hence, the office itself, an employment, profession, calling, trade.¹⁶

The concept of function has a limited scope here as it refers simply to sets of purposeful activities. The 'consequences' of actions are not considered in any analytical sense, nor is the 'purpose' of functions given attention. The research worker is aware of the structural-functional mode of analysis, but finds that its concepts are not required for consideration of functions at this level of inquiry into work activities. Distinctions between 'manifest functions' which are 'intended and recognized by participants in the system' and those which are 'neither intended nor recognized' that is, latent functions, would be useful for analysis of the functions of Family Court in a broader, more sociological context.¹⁷ The focus of this study is on functions of the members of a service delivery unit only in so far as it refers to 'work activities' in the most fundamental sense.

There are many ways the term 'role' is used, but this one is appropriate for the current study.

Role - a named social position characterized by a set of (a) personal

qualities and (b) activities, the set being normatively evaluative in some degree by those in the situation and others; a patterned sequence of learned actions or deeds performed by a person in an interaction situation.¹⁸

Role and function are both aspects of the concept of sets of work tasks. Sometimes they are used almost interchangeably, but for the most part, distinctions are apparent. The concept of 'functional specificity of roles' employed in sociological functional analysis illustrates the uniqueness of their connotations. In this research project, then, role refers to 'who' one is in their work involvement in the service setting under study, and function means 'what one does'. Role means 'being a social worker at domestic relations court.' Function connotes 'performing a task' for the organization and, or, the people it serves.

In the beginning of this chapter, the central research concerns were stated as objectives. These can now be stated as research questions. What are the tasks, or range of activities performed by the social workers in the practice setting of Family Court, and what are the conceptions held about them? What do other related professionals perceive to be social workers' roles and functions? What are the critical issues pertaining to an understanding of practice in this field setting?

Chapters four and five offer a two-part discussion of the methodology. Chapters six to eight contain the findings of the research on the roles and functions of social workers at domestic relations court, the perceptions of them by legal professionals, and identification of some relevant concerns classified as specific issues. Chapters nine and ten offer research conclusions, the first part being a synthesis and summary of the findings with the theoretical framework. The final chapter

contains conclusions leading to recommendations pertaining to social work practice in the domestic relations milieu.

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CHAPTER II

SOCIAL WORK PRACTICE IN HUMAN SERVICE ORGANIZATIONS

PROFESSIONALS IN BUREAUCRACIES

Administration of society's laws in the daily practice of the state legal organization can be regarded as a service delivery system. It may seem peculiar to refer to a legal system as a human service organization, but this perspective on Family Court allows for the application of many concepts germane to the study of organizations. This framework helps clarify the complexities which confront one attempting to describe issues in a service delivery situation. Having said that Family Court is a human service organization, it is necessary to point out its relevant characteristics. Such organizations are differentiated from other bureaucracies because:

- (a) their input of raw material are human beings with specific attributes, and their production output are persons processed or changed in a pre-determined manner, and (b) their general mandate is that of 'service', that is, to maintain and improve the general well-being and functioning of people.¹

Viewing Family Court as a human service organization permits use of concepts from administration theory, sociology of the professions, sociology of organizations and social work practice theory.

Bureaucracies are institutionalized strategies for accomplishing objectives. They organize social conduct to transform exceptional problems into routine duties of experts. The emergency of family conflict becomes a daily routine occurrence for the professional court counsellor. The crucial issue is how the bureaucratic structure of

service supports or impedes the practitioners' activities in responding to the situation. Social workers must learn about the nature of the relationship between organizational structure and the professional tasks of social work.

"The success of social workers in organizational settings will increasingly hinge on their ability to recognize the ways in which organizational structure affects the delivery of services."²

This view reflects thinking by those concerned about the future of social work practice, particularly in secondary settings. Dispassionate analysis of service environments must reveal the practitioner's role in the larger context of the service delivery structure. The everyday activities of the counsellor are determined by the goals and objectives of the organization of which he is a small part. Although the confines of this study can not admit extensive discussion of the manifest and latent function of the Family Court, it is recognized that practitioner roles and functions could be analysed within the wider context of organizational goals. A strictly sociological perspective on social work practice in the family law setting necessitates consideration of the relationships between practitioner activities and the broader social functions of the organization.³ Suffice it to say that Family Court social work is subject to the same forces that affect all human service organizations, for example it is held that "agency practice reflects community values in all their contradictions and ambiguities."⁴

The focus of this study being practitioner activities within a specific setting, it is useful to expand upon the concept of structure of service. Most social work activities are carried out in formal agency settings or institutions of varying degrees of organizational

complexity. There is considerable literature dealing with the relationship between social work values, methods, and aspirations and those of professionalism, and the characteristics of the bureaucracies within which social work occurs. The focus is often on conflict between professional autonomy and service ideals, and bureaucratic structure and control. Most of the literature employs the theory that professionalism and bureaucracy are both features of the specialization that has necessarily emerged in a modern industrial society. The salient features shared by each are 'routinization of activity' and 'formalization of relationships'.⁵ These also appear to be the source of some conflict arising between the professional's orientation to service clientele and the constraints upon him to always 'go by the book'. The literature on social work in bureaucracies deals with the dilemma arising because bureaucracies are designed in principle to facilitate efficient service delivery, but specialization and hierarchy among functionaries often creates obstacles and the impression of insensitivity to the individual.

The conflict between social work values and bureaucracy's impersonality are overplayed because the emphasis on objectivity and formality in the worker-client relationship is parallel to, and compatible with, the impersonality and technical orientation of bureaucratic environments. The effects of the organizational framework on the social worker's role are not completely detrimental. The issue is how to achieve a balance between ritualism, adherence to rules, objectivity, with appropriate involvement and 'common sense' resolutions of clients' problems. There are numerous facets to the discussion of how professionalism and bureaucracy are simultaneously in conflict and yet complimentary in various contexts.

Some of the literature emphasizes that professional orientation among functionaries works more to reduce bureaucratic tendencies.

"Professionalism gives one not only the incentive but also the strength to avoid excesses of bureaucratic proceduralism - for membership in a cohesive group with its own standards and with roots outside any given agency, frees the functionary from the fears and insecurity which would lead him to take refuge in fixed rules."⁶

This position that bureaucratic and professional orientations held by practitioners are in opposition is supported by some sociologists but denied by others.⁷ Conflict between bureaucratic and professional norms predicts one set of practitioner consequences while complementarity between them indicates different sets of responses. Comprehensive examination of the role orientations of socialworkers suggests that several factors must be considered. A study done by Epstein, for example, indicates that a bureaucratic orientation among social workers is found to be conservatizing, a client orientation radicalizing, and a professional orientation by itself is neither.⁸ He said, when held with a strong orientation to client need, professionalization intensifies radicalism. In conjunction with an agency or bureaucracy orientation, it increases conservatism. Epstein's statement that professionalism by itself has little profound impact on the service milieu supports the view that it is the individual social worker which determines his response to the work environment. Many social work authors have attempted to categorize worker orientations but the major issues should be 'under what circumstances can an individual worker maintain a high identification with both his profession and his organization?' Most writers hold the view that social workers when forced to choose between professional standards and agency policies will chose the later.⁹ All

the writers agree that when the central norms and values of the organization are consistent with professional beliefs then potential conflict is reduced for the individual.

Professionals in human service organizations value independence and initiative in the use of their skills, and particularly in transactions with clients. The organization must ensure however that staff behavior conforms with its general purposes and that the actions of its components are co-ordinated. Vinter describes four control mechanisms of organizations which at the same time respect professional claims to independence.¹⁰

Commitment to Organizational Goals - When the agency does not precisely specify the task to be performed or closely monitor performance it demands commitment to its general purposes. The organization relies on members of a profession espousing values and goals consistent with its own. Unfortunately vague ideological commitment sometimes tends to increase dogmatism and parochial perspectives among personnel. These often detract from rationalism in organizational operation and inhibit the potential for change.

Maximizing Colleague Controls - Professional practitioners are oriented towards collegial relations. They seek support and advice, and respect the judgement of those more experienced than themselves. The organization however does not design its administrative hierarchy to parallel the hierarchy of professional competence. Organizations should thus increase opportunities for interchange among personnel in decision-making. Staff meetings and case conferences according to Vinter, increase colleagues' controls and support ideological commitment and conformity. Taken to extremes though, excessive communication

and erosion of administrative authority inhibit the organization's capacity to perform its tasks.

Segregation of Tasks - Professionals accept the exercise of administrative authority, that is bureaucratic controls, over some of their activities, but rely on professionally-defined controls for others, particularly the substantive content of their work. Sometimes unclear and debatable boundaries divide the phases of agency activity governed by each kind of authority. Professionals are often assigned secondary activities that do not require exercise of their 'core competencies' and which can be governed by conventional administrative procedures. Such activities as case recording, report writing and the like are administrative, whereas therapeutically-oriented counselling is a primary professional task. Segregation of professional-oriented tasks and administrative controlled tasks, in theory, increases workers' adherence to organizational structure. The considerable amount of technical-administrative paper work required probably increases the bureaucratic orientation. It limits the amount of time and energy devoted to counselling and other professional activities, so the professional orientation may be reduced. The worker's orientation may become increasingly legal, and less social work-directed, as he does more technical work and less therapy.

Superordination of Professions - Organizational control is attempted by giving greater authority and pre-eminence to members of one profession. In hospitals, all others are subordinated to doctors, and nurses, and social workers acknowledge their leadership. In contrast, subordination of clinical psychologists to psychiatrists is often accompanied by tension. Within the courts, social workers are often skeptical of the

legal profession's pre-eminence. Vinter says that superordination of professionals is not especially useful as a control mechanism in organizations since each group attempts to affirm the authenticity of its own special competence and denies dependence upon other professionals. This may be applicable in some settings, but not likely in the court where pre-eminence of the legal profession keeps all others of less status and technical competence within the established hierarchy of authority. Vinter is certainly correct where he states that,

"...independent entrepreneurial professionalism must give way to the demands of practice in bureaucratic contexts. Study of such patterns among treatment organizations offers special opportunities for pursuit of more general questions about emerging forms of professionalized bureaucracies."¹¹

The demands of social work practice in the bureaucratic setting of Family Court must be analysed with a view to understanding these questions about emerging forms of professionalized bureaucracies.

ORGANIZATIONAL GOALS AND PROFESSIONAL TASKS

"The strains between professional and organizational norms are in part eased by concentration of trained workers, by location of professionals at higher supervisory and administrative levels of agencies, by limited specification of professional tasks, and by professionally consonant definition of organizational goals."¹²

The last two phenomena listed here have particular relevance for this discussion of social work and human service organizations. 'Organizational goals' and 'professional tasks' are concepts helpful for understanding of social work practice in a bureaucratic setting.

It is essential that the goals and objectives of the organization have been operationalized into work roles of the personnel providing

the direct service. If the goals of the agency are vague, or ill-defined in terms that cannot be translated into work activities for its staff, then conflict may arise between the professional orientation of the workers and the structure of the organization. This is one of the several forms of 'role conflict' identified in the literature on social work in bureaucratic settings.¹³

Role conflict may arise from discrepancies between an organization's limited service goals and the profession's more or less broadly defined commitments. This may be particularly problematic in a court setting where the organizational objective is to make decisions for people in clear cut terms based on 'facts' presented in an adversary procedure. Social work values however place emphasis on self-determination in decision-making and hold that there are no absolute rights and wrongs in interpersonal relationships, but only responses to human situations. Another kind of role strain occurs if agency practices and professional ethics conflict. The court must uphold legislation employing public policy and consequently must regard the interests of the individual as secondary. Social work is primarily committed to the individual in society, although the interdependence between the individual and social responsibility is recognized as a 'means' to the 'end' of self-realization.¹⁴

In human service organizations, goals are expressed as values, norms, or ideologies and are expressed in relation to a task environment.

"For human service organizations the task environment is composed of a multitude of social groups and other formal organizations that have interest in, or relations with the client. Each social group or organization defines its own expectations as to what should

be done for, or to the client on the basis of its particular value system, location in the social stratification system and interests."¹⁵

Applying this concept to Family Court, one finds that the task environment of the auxiliary social service unit is very complex. It consists of relations with different professional groups - other social workers, and legal professionals. The unit interacts with the financial assistance bureaucracy, the police, other elements of the Family Court organization such as the enforcement office, and of course Legal Aid and other lawyers. Each group relates to the client in a different way as they respond to a specific set of problems. Each has its own expectations as to what should be done 'for or to' the client on the basis of its own value system. What can be the stated formal goals of Family Court when its task environment incorporates such different sets of values and norms? The organization must have multiple goals to accomodate what it is required to do, and even with complimentary goals, there may be conflict, perhaps at the level of resource allocation.

"Preventing marital breakdown" and "helping couples dissolve their marriage in a minimally destructive way when all else has failed" are presumably two goals of domestic relations court. Different personnel and professional groups may emphasize either approach. Many lawyers strive to get their clients into court and have the decision process over and done with, whereas most social workers probably attempt to keep people out of court and labor to salvage the yet workable parts of a relationship. Though 'family conflict resolution' is ostensibly the common goal, the operational objectives of achieving it, and the

ideologies and technologies called into practice are probably often contradictory.

Resource allocation is a decision-making process requiring information about the roles and functions of the organization and the capacities of its personnel to fulfill them. This usually requires a high degree of 'role complementarity' which means that staff members' activities automatically conform with what the organization needs and with what personnel think they should do and want to do. A breakdown in this 'role complementarity' can result from many sources, some of which have been identified as the following:¹⁶

Cognitive Discrepancy - Staff personnel are not sure what exactly they are expected to do in relation to advancing the objectives of the organization. It must be clear to workers what is required of them in order that tasks can be allocated appropriately.

Requirement Discrepancy - Members of an organization may not be capable of meeting the demands expected of them. The organizational system cannot then reach its goals. For example, staff may not possess the training or experience necessary to meet clients' needs.

Allocative Discrepancy - This occurs if persons have no desire or obligation to meet the expectations of the role assigned to them. Staff may consider the demands inappropriate or undesirable. There is always, especially in social service agencies, a gray area in which it is debatable what expectations are appropriate. Clearly delineated explications of the range of expected activities can reduce such forms of conflict in role complementarity.

Absence of Instrumental Means - The staff person may be willing and capable of fulfilling the expectations made of him but is prevented

by concrete obstacles. Lack of time and money are obvious examples.

Discrepancy in Value Orientation - Differing values and norms may occur between agency director, line staff, and clients even in a strictly social work setting. This kind of conflict is more specific than that which may result from opposing professionalization and bureaucratization. A setting such as Family Court admits latitude for considerable conflict of value orientation. It could be based on differing professional values between the legal profession and social work.

Probably the most troublesome of the discrepancy problems are cognitive discrepancy combined with that of value orientation. Social workers must know in operational terms what is expected of them in their work activities, and there ought to be a minimum of dissensus between the professional norms of staff, and the goals of the organization and its other personnel. Task specificity is crucial for social service personnel to operate appropriately in a bureaucracy, and to ensure that others have accurate expectations of them. This is especially crucial where social work practice is carried out in a non-social work setting such as a Family Court.

The significance of size for organizational structures also requires comment as it may be relevant to the functioning of social work practice in a bureaucracy. In a small setting, workers have direct access to each other and the executive, so conformity to policy and standards of performance are readily apparent. Research on social workers in various sized units reveals differences in staff role conceptions and quality of performance.¹⁷ Workers in smaller units, as contrasted with peers in larger ones, evidenced more consensus with their supervisors about important work functions, greater breadth of role conceptions, and more

commitment to the ethics of social work. Does this imply that a relatively small unit such as Marriage Consiliation Services would manifest these characteristics? Other factors have been shown to affect the interplay between unit size and the consequences noted. Emphasis on aspects of professional practice such as controlled relationships (the ones compatible with bureaucracy) contribute to formalized relation even in small agencies. Also, staff members behavior and interrelationships may be related to the kinds of persons employed in small and large human service organizations. The variables presented above are but a few of the factors affecting the practice of professionals in bureaucratic human service environments.

SOCIAL WORK IN COURT SETTINGS

The court system is dominated by the ideology of the legal profession though some insist that Family Court is increasingly influenced by non-legal disciplines, especially social work and psychology. Nevertheless, lawyers are the primary professionals in the family conflict resolution establishment. Social work in secondary settings, whether medicine, law, or education, faces a challenge to maintain its professional identity and to promote its ideology and modes of assisting people. The relationship between social work and the host organization is of primary concern, while that between the social workers and the host professionals is its corollary.

For all professionals, autonomy within a bureaucratic framework is threatened to the extent that the organizational structure interferes with the application of professional skills, values and service orientations. Naturally, the strain between professional orientation and bureaucratic

constraints are less evident where social workers occupy all or most levels in the organization such as in a child welfare agency. In secondary settings where they are subject to the authority of other professionals the differentiation of distinctive functions for the social worker may be blurred and their definition can be problematic. At Family Court the social workers are clearly designated as auxiliary services and thus they assume the characteristics of 'heteronomous professionals', those who acquire authority from association with the primary profession. One of the consequences may be a sense of insecurity among its personnel which can lead to displacement of goals, 'Means' become 'ends' as workers may loose touch with their professional identity.¹⁸ Ritualism sometimes results from over-identification with rules and habituation to established practice. It arises especially from insecurity in social relationships in the organization and results in an anxious concern with the attitudes and opinions of superiors, usually members of the primary profession.

"Social worker in non-social work settings requires constant management of two inter-penetrating roles - with the client, and with the other professionals - not required when social work is practiced in a social work agency."¹⁹

In the domestic relations court setting, practitioners must be cognizant of both their heteronomous status within the court's organization and of their relationships with legal professionals. Such concepts as goal displacement, role conflict, ritualism, and over concern with primary professional's perceptions which have emerged from the study of professionals in bureaucracies, apply especially to social workers in secondary human service organizations. The relevance of these concepts for social work practice in the legal-dominated environment of

Family Court is of particular interest in this study. What do lawyers and judges perceive to be the roles and functions of social work personnel and are their views compatible with what they regard as legitimate work roles?

A recent study on congruence in perceptions of social work tasks was based on the notion that,

"Incongruence among groups in task orientation is probably a function of organizational role. Social work could properly be of help in developing and recommending administrative measures giving clarity to these orientations."²⁰

Flynn's study focused on the incongruency between various groups' perceptions of social work tasks in a school system. Teachers, principles instructional specialists and others held views on social work which were inconsistent with each other, and most importantly, with what social workers saw as their roles and functions in the organization. The present study of social work in domestic relations court does not focus on incongruencies in perceptions of task orientations, but starts from the position that only those who do them actually know what the tasks are. This research leads to a similar attitude as Flynn's however, who says that it is the responsibility of the social worker to identify purposely his own model of the delivery of social services and to reconcile that model with the orientation demanded by the system's goals and the perceptions held by other key professionals.²¹

In the setting of social work in domestic relations court, this reconciliation need not be a subordination of social work values to the bureaucratic requirements of the court system, or to the dominance of the legal profession. Adaptation based on a realistic appraisal of the

service structure, and client and system needs, is the key. An analysis of the roles and functions of social workers at Family Court is a step in that direction. To conclude this discussion of social work practice in human service organizations the following comment illustrates the underlying attitude of this research:

"Continued concern with the issue of professional autonomy versus bureaucratic control may offer little help to future social workers who will perform professional functions primarily within a bureaucratic setting. Professional definitions of practice will increasingly preclude the possibility of autonomy; the organization and structure of social services will increasingly determine the number and quality of services provided to clients."²²

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CHAPTER III

SOCIAL WORK AND FAMILY LAW

SOCIAL WORK AND LAW

A conceptual framework for study of social work in a court setting would be incomplete without a cursory discussion of the relationship between social work and law. What are the similarities and differences and how do they affect the delivery of services? Background information on law and social work's uneasy relationship aids to understanding the functions of social work personnel, and how they are perceived by members of the legal profession at Family Court. There are some basic similarities between the professions.

"Among social workers and lawyers there is a high regard for the dignity and worth of people and for the rights of individuals. Both professions exist to help people and they recognize that every case differs in some respects from every other. Thus, they share the concept of individualization and its application in daily practice."¹

At the level of philosophical discussion of common goals and values one can find similarities between the two professions. They share a heritage of social responsibility and concern about human relations but here the commonality ends. In the working world, the differences between the professions unfortunately have a greater impact than the general compatibility of value and goal orientation at an abstract level.

Literature on working relationships between law and social work in the past decade has emerged from the establishment and development of community legal services during the American war on poverty experience. The focus has been upon lawyers and social workers working in community

legal aid settings; however, much of what has been discussed about the interplay of social work and law is applicable to them in general. The major differences between law and social work can be grouped into four areas: 1) Methods, 2) Diffuseness of Social Work, 3) Criteria of Success, 4) Practice Settings.²

1) Methods - Simplistic as it appears, basically lawyers operate within an adversary system and social workers employ a consensual approach. Even when the lawyer adopts a conciliatory stance it is inspired by pragmatism. He always has the option of resorting to the adversary procedure if it becomes expedient to do so. Social workers thus often regard the lawyer as a ruthless mercenary whose goal is to win the case regardless of the consequences. Lawyers sometimes see social workers as reluctant or unable to openly present and defend their so-called professional position in a courtroom. Homer Sloan, a social worker and lawyer, conducted in 1966, a study using semi-structured interviews with the two groups. Exploring the attitudes of each profession towards the other he found several areas of friction and misunderstanding and asked, 'are they related to fundamental values or rather to professional ways of operating?'³ After examining the nature of the professional-client relationship, each group's specialized body of knowledge, and each professions' sanctions regulating practice, he concluded that the main source of conflict is the methods of the two professions.⁴

The legal approaches of conciliation and mediation are comprehensible to the social worker but the adversary system is not congruent with his conception of humanitarian conflict resolution. Perhaps the social worker chooses not to work within a climate of aggression and conflict

as does the lawyer. According to Sloan, the social worker translates an event into a psychosocial formulation, the lawyer into a legal one, and each insists his perception is the more valid. Underlying the conflict in methods, is a matrix of attitudes which have evolved out of the interaction of law and social work. Sloan, in his study, found that:

"The lawyers thought of the social worker as an ineffectual, giving, nursing female who wants to and does do much good, but at the same time is impractical, utopian, overidentified with and overprotective of her client, 'all heart and no head', subjective and not objective concerned only with feelings and not logical."⁵

Social workers see lawyers as rigid, technical, and pettifogging.

"He pays no attention to feelings and will see any complex human situation only in legalistic and financial terms. The lawyer patronizes the social worker, is hostile to clinical points of view and skeptical about any innovations suggested by the human relations professions. His profession has great power and authority and he is jealous of surrendering any vestige of these."⁶

The differences in professional approaches to conflict resolution, combined with an underlying antagonism towards each other, results in considerable interprofessional conflict between lawyers and social workers.

2) Social Work Diffuseness - The boundaries between social work and other disciplines are often vague and sometimes social workers are unable to present a clear image of themselves as professionals or precisely define what they do. Such ambiguity can present special problems in a legalistic setting where the court counsellors might be seen as overstepping the bounds of their authority and infringing on the prerogatives of the legal professionals. Research on the social worker-lawyer relationship conducted for the American Bar Foundation revealed

that confusion about the nature of social work service was at the root of most of the interprofessional conflict.⁷ Problems in the relationship of lawyers and social workers occur in the definition of the social worker's service in the legal setting, and in the legal profession's utilization of social workers. In the Smith study, four kinds of social work roles in legal aid settings were identified: study and recommendation; counselling; referral and investigation. An example of diffuseness in defining areas of social work expertise is evident where Smith says:

"In identifying counselling as a major service, the social workers may have been expressing a desire more than a reality, they may have been referring to the preliminary exploration and clarification of the problems, usually viewed as 'intake' rather than as ongoing casework services."⁸

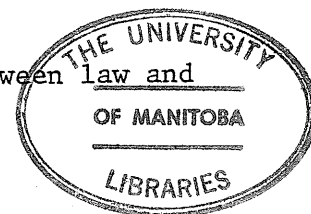
If social workers themselves fail to precisely define their functions so they can accurately describe their activities, then they can not expect other professionals to understand or appreciate their expertise. The lawyers in Smith's study held a variety of views on social work practice. Some said they could perform all of the functions as well as social workers since it requires only time to listen to people's problems. Others said social workers and lawyers could equally provide marital counselling, referral services, and handling of parent-child conflicts.⁹

3) Criteria of Success - From the attorney's viewpoint, success means winning a case or upholding the interests of his clients. The social worker evaluates success in terms of the client's personal growth and in terms of problem-solving or ability to improve his living situation. One is concerned with the individual's legal rights while the other is

concerned with the welfare of the individual in relation to society. Professional responsibility and goals are defined differently for each professional at this practical level. This is why it is so crucial for the primary service objective of a mutually-shared setting to be clarified. A legal service component in a family service agency must adopt social service as its primary objective. Though it may employ social workers, a legal service program has legal, not social service as its objective. Interprofessional conflicts are intensified if the service goals of the setting are unclear. What then is the criteria of a successful action in Family Court - speedy execution of the litigation process where legal rights and obligations have been upheld, or initiation of a therapeutic process in which conflicting family members learn to cope with trauma and change?

4) Practice Setting - The concept of agency practice setting creates differences for the two professions. Social work has developed a sophisticated sense of agency structure and an awareness of its advantages and constraints upon services delivery. Law has traditionally been practiced privately, and so a lack of sense of agency structure exists even in legal aid settings where the organization manifests structural looseness. Not only are lawyers unaccustomed to agency structure but regard it as detracting from professional status. The lawyer may see the social worker as an agency representative, not a practitioner using a specialized expertise within professionally-established boundaries. He perceives the activity of the social worker being controlled by agency policy and the employer-employee relationship, not as self-regulatory.

Despite the varied and deeply-rooted differences between law and



social work, they can and in some places do, work together. As the Smith study and the paper by Baron and Bryn indicate, there is considerable interprofessional liaison and cooperation in community legal aid agencies. Despite some conflict, social work has carved out for itself a set of roles and functions in this setting. The most significant services performed by social workers in these agencies appear to be: interviewing (to establish the facts); evaluation (to establish appropriateness of action); crisis intervention (to keep the lid on); short term casework; and negotiation (with other agencies) and referral services.¹⁰ Besides the specific setting of the legal aid office, some other fields have been identified as being shared common ground between the two groups for team work: welfare advocacy; family court; community organization; and student rights.¹¹ American lawyers and social workers have been working in shared settings since the mid '60's much more than in Canada. The domestic relations court setting, but for certain exceptions, has seen little collaborative effort between the legal and social work professions.

SOCIAL WORK AND FAMILY COURTS

The functions performed by social work, or quasi-social work personnel, for family courts are determined by each court's jurisdiction in child protection, child custody, juvenile delinquency domestic relations, and sometimes maintenance enforcement. It would be unrealistic to present a comparative or historical sketch of family courts' utilization of social workers since throughout Canada, the USA, and Britain, each jurisdiction is determined by its own local administrative machinery and legislative mandates. Family Court means different

things to different people. In most Canadian provinces, at least until the recent surge of interest in domestic relations law, it has meant primarily Juvenile Court. Most literature on family courts deals with juvenile corrections firstly while domestic relations and child welfare matters are peripheral.¹²

In some places probation officers perform a wide range of court-related functions including marital counselling. In another jurisdiction local child welfare authority caseworkers may be required to assume the role of reconciliation counsellor, or possibly that of court investigator for a contested custody case. All the various social work-type functions related to a family, or domestic relations court seem to be parcelled out to various units of service delivery according to local conditions. That includes considerations that are national, provincial, or municipal in scope. A common variety of legal-social services are available to most populations, at least in urban areas, but a variety of agencies and legal structures assume responsibility for them. For example, in Ontario it is the local Children's Aid Society who conducts investigations and prepares reports to the court in child custody cases. The Matrimonial Causes Act R.S.O. 1970, c.265,s.6(2) requires mandatory reporting to the court concerning the custody, maintenance, and education of a child by the Official Guardian where there is a petition for divorce or where custody is an issue and the child is under sixteen years of age.¹³ In Manitoba, such reports are at judicial discretion and are prepared by Marriage Conciliation Service at Winnipeg Family Court. In Britain, where much of the fragmentation in family law administration has been eliminated, social workers play an important role. In the child welfare field, the social service departments of the 'local authorities'

created in 1970, work closely with the courts. By dealing with problems in the schools, and homes of clients, communicating with other professionals, preparing reports and offering treatment, the social services intervene in the lives of children and their families in ways never available to the court. "The court is so dependent upon the social worker, that it must be able to place complete reliance on his integrity, professional skill and good judgement at all times or the system will fail."¹⁴ This British judge says that in all areas of service to families and children, the court requires the 'sensitizing and informing' influence of the social worker.

The literature on family law in Great Britain refers to three kinds of social service personnel reflecting the three elements of family-related law administration. 'Social workers' are those employed by the local authorities who attend to child welfare and family service matters; 'probation officers' who are attached to the courts and work in juvenile and adult corrections and have been responsible for some domestic relations court counselling; and the new breed of personnel referred to as the family or 'divorce court welfare officer'. Some manpower utilization concerns faced today in Britain illustrate basic issues:

"The taint of criminality attaching to probation is difficult for many of those in the throes of divorce to reconcile with their children's welfare. Local authority social services departments might fit more logically into the role, but the most attractive solution is contained in the recommendations of the Finer Report. This suggests a skilled, specialist family court welfare service to cope with all aspects of marital breakdown. It would be equipped to intervene at an early stage in proceedings to encourage conciliation - not reconciliation - between the parties."¹⁵

The task of the divorce court welfare officer focuses on assisting clients develop their coping skills and facilitating decision-making around planning for children. Though many such court-related counselling units have been established in Britain, they are not yet available to all who approach the court because of family conflict.

New Zealand and Australia have assumed a leadership role in the Commonwealth in the family law field. New Zealand's Domestic Relations Proceedings Act 1968, takes strong and precise steps to ensure that no domestic dispute ever results in the granting of a divorce decree before every possibility of reconciliation or conciliation has been exhausted. To avoid unnecessary or unjustifiable delays, however, the Act makes provision that a separation or divorce hearing may proceed if either party requests it not less than twenty-eight days after a case has been referred to a conciliator.¹⁶

Australia codified their family law reform in the 1975 Family Law Act. It establishes state Family Courts to deal exclusively with domestic relations matters - separation, divorce, custody and access, maintenance etc. It has marriage counsellors attached to the court encouraging reconciliation and conciliation, and also welfare officers to prepare investigatory reports to the court. The act provides for voluntary and in some cases mandatory counselling for parties to a dissolution of a marriage.¹⁷ In Australia, the handling of child protection and juvenile delinquency matters occurs in different courts.

As in Canada, most American family courts appear to have fragmented jurisdiction in family law. To confuse matters yet, family-related legislation is created and administered at the state level. This means that juvenile corrections, child welfare, and domestic concerns might

either be heard all at the same court, or in separate jurisdictions. One advantage however, is that there is no split between divorce legislation and that concerned with separation and other domestic matters as in Canada because of our federal-provincial legislative duality. This has enabled legislation to be implemented in many states which coordinates all aspects of marital dissolution into one domestic relations court. A product of this location of all domestic matters under one roof, has been the establishment of conciliation courts. The best known is the Los Angeles Conciliation Court which professionalized its social services in 1954, and has since inspired the development of such courts elsewhere. These specialized family courts require specialized marriage counselling services, and consequently social workers often play an important role in fulfilling the conciliation function. It is quite separate from child custody investigation work, maintenance pursuit or any of the other functions performed by social workers in broad-based family courts.

A family court which is more specialized than our multi-faceted Family Court but less specialized than a conciliation court, is described in a study done in 1960 in Maine. A counselling unit of social workers was attached to a divorce court and referrals were made where disputing parties had children. All counselling was voluntary and it was found that reconciliations were encouraged, and families reported constructive use of casework services. The purposes of the counselling unit were:¹⁸

1. To provide the court with facts for use in making its decisions on matters of custody, support and visitation.
2. To consider with parents with possibility of reconciliation and where possible to assist them in using appropriate community resources.

3. Where reconciliation is not possible, to help both parents to understand the effects of divorce on children and to develop plans for maintaining parental ties and responsibilities if the marriage is being dissolved.
 4. To identify those families who needed help with personal or social problems and assist them to make use of available community services.
- This combination of casework functions is consistent with the principles of assisting the court in executing its responsibilities and with offering direct assistance to families in trouble.

A specialized use of social work personnel has been recently introduced in Ontario. All maintenance orders under the jurisdiction of Ontario Family Courts are on an automatic enforcement system. It is supplemented by a second system called the Parental Support Program by which social workers are assigned by the Ministry of Community and Social Services to Family Court. The workers deal with cases where the unsupported wife has assigned her maintenance order to the welfare authorities. They trace missing payors, make home visits, assist and give moral support to spouses in situations involving variation of orders and devote attention to family problems with a view to reconciliation. The author of this report is careful to point out that the practitioners responsible for this set of activities are personnel from the financial assistance department, not court services. The Parental Support Program is an experimental use of counselling services in combination with bureaucratic legalities to meet the needs of clients and the public interest embodied in the welfare system. It is implementing in practice a recommendation of the federal government study on maintenance matters.

"Until such time as the courts themselves assume full responsibility, statutory arrangements should be made to confer appropriate standing on welfare authorities and to allow them, where they are the real parties in interest in enforcement proceedings, to take all necessary steps to enforce their assignments."¹⁹

This overview of 'social work functions' and 'functions performed by social workers' in various family courts would be incomplete without a comment upon the range of practice settings in Canadian experimental family courts.

Richmond and Surrey in British Columbia are the dual site of a Unified Family Court Pilot Project in which all family law matters, except divorce, are dealt with in a court of comprehensive jurisdiction. The social service personnel perform a wide range of functions. See Appendix A for a list of the counsellors many activities. A description of the unit by the Director of the Project points out that the family counsellors in the court's service do not necessarily have a social work background.²⁰ Staff were seconded from the Department of Human Resources, Department of Mental Health, Vancouver Resources Board (child welfare authority), and from the Corrections Branch. The Unified Family Court Act (1974) says any person can be appointed as a family counsellor and has the rights and duties of a probation officer. All Protection of Children Act matters are dealt with by social workers from the Department of Human Resources, although such matters are heard in Unified Family Court. The role of the counsellor is quite clearly defined in all areas except that of enforcement, and according to the Director, some confusion exists as to who should provide an enforcement service. The counsellors have nothing to do with Provincial welfare at all. The B.C. Project has been in operation for four years and has illustrated

many novel approaches to court social services.

From September 1972 to August 1975, a federal grant made possible a demonstration project called the Edmonton Family Court Conciliation Project. Results being favourable, the Alberta government assumed financing and the project continues. This facility is a specialized counselling unit attached to, but separated from, the usual family court services. It is administered by the judges of Family Court, and receives clients from divorce court, Family Court, and the legal community. The project was designed to demonstrate an approach adaptable to the law and courts system in Canada. Its primary concern is for lawyers and judges, and its secondary service is to clients and litigants referred by them.²¹ The conciliation service was designed to include conciliation, reconciliation, and divorce counselling which would be short-term, crisis-oriented. The clients of the Conciliation Counselling Project are referred from a legal source only, including lawyers, Family Court, and divorce court.

a) Letters were sent to all Edmonton lawyers informing them of the service and inviting referrals. Approximately 50 percent of all referrals were from lawyers.

b) Parties appearing at Family Court, at the discretion of the judge, could be referred to the Project for counselling. Also regular intake counsellors at Family Court could, with the judges' endorsement, make a 'counsellor-judge referral' and these accounted for 60.8 percent of referrals from Family Court.²²

c) A Project counsellor attended at the Law Courts when uncontested divorces were heard and often explained the service to litigants. "Some judges on their own initiative, were adjourning even uncontested divorces for fourteen days, to permit a counsellor to review the adequacy of

provisions for the care of children."²³

Project counsellors do not perform investigatory work, but the project staff discussed how conciliation might supplement custody investigations. The Conciliation Project is a specialized service modeled after the Los Angeles Conciliation Court. The regular Family Court counsellors are separate and provide a less specialized more administrative function. They refer an increasing number of the clients to Conciliation Counselling Project. The report makes no mention of other services in the Family Court such as enforcement or liaison with income security authorities. Presumably, the regular Family Court counsellors and other personnel assume these general responsibilities for the court.

Saskatoon and Winnipeg are to be locations of unified family court projects in the late 1970's. The Saskatoon project will be a joint venture by the Attorney General's Department and the Department of Social Services. Winnipeg's Family Court Project is to be a court of comprehensive jurisdiction, excluding juvenile delinquency proceedings and will have at its disposal an enforcement service, counselling service, and children's advocate. The social service facilities of the court will be housed in premises separate from the court and no marital problem will be required to proceed through counselling.²⁴ This will be an experimental court project serving a specific geographical area and will be separate from the existing Winnipeg Family Court, which will continue unchanged.

Toronto and Hamilton have recently acquired Unified Family Courts. The Toronto Court has a Conciliation Project comprised of a specialized service unit similar to Edmonton's. Family Court intake social workers refer client to Project workers for counselling, which is described as

short-term, and crisis oriented. Neither level of court social work performs child custody investigatory function, nor do they work in formal collaboration with financial assistance authorities.²⁵

In autumn 1975, a Unified Family Court was established in Charlottetown, Prince Edward Island. As a Division of the Supreme Court, it has been able to establish jurisdiction over virtually every conceivable matter involving any aspect of domestic or matrimonial problems - divorce, adoption, everything.

"In addition, there are attached to the Court three experienced social workers, who are styled 'court counsellors'. Their function is to conduct, on the initiation of the Judge, such enquiries and to prepare such social reports as he may deem necessary or useful as background in situations where he considers it appropriate. They also do some counselling work, both domestic and financial. A close liaison is also maintained with the field staff of the Department of Social Services, who provide similar services for the Court on matters in which they are directly involved."²⁶

This overview of Canadian family courts' social services illustrates the considerable range in the variety and availability of services. Not only does Family Court mean different things to different people, but Family Court social work can encompass a wide or narrow range of roles and functions depending on the local circumstances.

COURT-RELATED COUNSELLING

The situations where divorce legislation has been incorporated into Family Court are rare in Canada. Strictly speaking, conciliation counselling is usually associated with divorce court, so as we have seen, bona fide conciliation counselling is uncommon. Aside from some experimental situations, all counselling services are associated with the family courts of lower jurisdiction. Those who advance the concept and

practice of marital conciliation within the existing system do so in hopes that one day all family law and its administration will be coordinated. In the meantime, conciliation counselling can occur through government agencies attached to existing court structures with the cooperation of the legal profession.

For the purist, the L.A. Conciliation Court provides the model of a true conciliation service. As specialized as it is in practice, even this service has a broadly defined purpose in law:

"To protect the rights of children and to promote the public welfare by preserving, promoting, and protecting, family life and the institution of matrimony and to provide means for the reconciliation of spouses and the amicable settlement of domestic and family controversies." (California Code, Section 1730).

This principle translates into a specific process of working with people willing to explore the possibility of benefiting from counselling. It provides short-contact, reality-oriented crisis marriage counselling.²⁷ Each conference lasts approximately one and a half hours and from one to six sessions may occur, the average being three per family. Referrals are made to either family service agencies for long-term counselling if it is indicated. Elkin points out that the Court's effectiveness depends upon close interprofessional cooperation with the legal community. Sources of referral for conciliation counselling are:²⁸

- a) 50 percent come from lawyers.
- b) 20 percent of referrals are from judges and magistrates.
- c) 20 percent result from the petitioner receiving a pamphlet describing the function of the service. It is mailed to all persons filing for divorce where there are children under 13 years.
- d) The remaining 10 percent are referrals made by clergymen, physicians

and other such professional persons.

The American conciliation courts report a high rate of success in reconciliations but even where marital reconciliation is not accomplished conciliation reduces the trauma of divorce and decreases the likelihood of post-divorce litigation.

The salient elements of conciliation counselling are contained in this description of it by Howard Irving, of the University of Toronto School of Social Work.

"Conciliation counselling is a therapeutic process through which the counsellor provides an atmosphere in which the marital pair is free to bring out and examine openly their pain and their disappointments with their own and their spouses failure to fulfill their expectations...the goals of conciliation counselling are: i) to help the clients gain enough insight into their marital and family problems to have a realistic idea of their severity and the possibility for change, and ii) to support the clients and activate whatever emotional resources they have towards making the decisions and accepting the responsibilities which are inevitably involved in either trying to make their marriage work or dissolving it a constructive way if possible."²⁹

Although the delivery of services is not dealt with in the paper referred to above, the implication is that conciliation services could be offered by family service agencies, or by state-operated facilities such as conciliation courts, or specialized services at family courts. Because cooperation with lawyers is required no matter where the service is offered, mention is made that conciliation counselling has advantages for the legal profession. Lawyers can avoid wasting time with unsettled clients if they are channeled first through a conciliation service. Apparently, up to one third of all divorce actions filled are withdrawn prior to court action.³⁰

There are many facets to the matter of where conciliation services

should be offered, to whom, and on what basis. The view is held by many that a large proportion of spouses who initiate divorce or separation proceedings may not truly want dissolution of their marriage as much as to talk in confidence with a sympathetic professional about their matrimonial problems. In New York, when a petition for divorce is made, a mandatory initial conference is required and further marital counselling is offered. Even where mandatory 'screening' occurs as in many divorce courts, the individual's right to a hearing is not inhibited since counselling is never imposed.

The literature on marital counselling seldom includes discussion of child custody issues except as how custody disputes can be avoided by conciliation counselling. The court-related function of preparing homestudy investigation-reports is not regarded as compatible with bona fide conciliation counselling since it is primarily a service to the bench. Custody dispute social work may be associated with post-litigation counselling services, but is not really considered part of a conciliation service. This overview of social work services in various family courts and the description of conciliation counselling makes it apparent that a conciliation service is a specialized mode of practice. It can, and should be associated with domestic relations court social work, but the two are far from being synonymous.

Concepts relevant to social work practice in domestic relations court have been introduced in the first three chapters of this thesis. Planners of human service organizations face many concerns, some of which arise from: fragmented jurisdiction in domestic relations courts and legislation; anachronistic methods of administering conflict resolution in courts which are too broad in their mandates in some respects

and too narrow in others; and the trend to question the adversary system in family law, along with the idea that behavioral science has more to contribute to problem-solving than jurisprudence. These are many obstacles to rational, economical, and humanistic planning, and a major dilemma concerns the deployment of human resources.

The needs of clients to family courts are complex and varied, and the requirements of the service delivery system established to meet them are also problematic at a different level of decision-making.

"Social welfare personnel face a social invention challenge if they would bolster old or offer new institutional outlets for primary relationships. ...In this field where policy and program meet, there must be progress in inventing new forms and winning support for them, while service personnel are attracted to, and are prepared for their tasks."³¹

And so the focus of this research study is to examine the form of the institutional outlet for certain helping relationships.

The research worker was fortunate to have access to a social service organization typifying many issues referred to so far. Marriage Conciliation Service, at the broad-based Winnipeg Family Court, manifests a wide range of service delivery concerns. Analysis of the roles and functions of its personnel addresses the challenge for social work to contribute to service delivery planning for meeting human need.

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CHAPTER IV

RESEARCH PROBLEM AND DESIGN

METHODOLOGICAL CONSIDERATIONS: THE DOMESTIC RELATIONS COURT CONTEXT

A primary task of the research was to design a means of acquiring and analysing information about the roles and functions of social workers at domestic relations court. The basic questions of the study were: What tasks or activities do the social workers carry out in their work and what conceptions are held about these roles and functions? What are the perceptions of legal personnel on the activities of social workers? What are the identifiable issues pertaining to social work in this field of practice?

No attempt was made to confront the issue of social service effectiveness. Determining the outcome quality of social work activities is naturally regarded as a legitimate endeavour, but that approach rests on the assumption that one already understands the nature of the activities under study. As for social work functions in domestic relations court, one notes, in the literature, diversity in opinion and practice about what social workers do or should do in this setting. This study attempts to contribute information useful in clarifying some of this ambiguity. The research is exploratory and formulative, for it describes a situation and identifies critical issues. Evaluative research can only be accomplished after 'groundwork' studies such as this have established an appropriate framework in which to examine outcomes.

The design employed a model that may be termed as an 'open system' and naturalistic.¹ A research design was constructed by eclectically

using elements of descriptive/exploratory techniques and adapting them to the situation at hand. For example, elements of field investigation were employed because field studies may inform policy makers on what practitioners are doing.² One of the objectives of this study was to clarify the roles and functions of social work personnel in the practice setting of Family Court with a view to commenting on the organizational appropriateness of manpower deployment.

It was evident in the preliminary stages of the project that use of observation techniques in isolation, and unstructured gathering of data from personnel could be impressionistic. At the same time, an exclusive use of questionnaires to acquire information on social work roles and functions would have been too confining. There would have been no way of determining whether the questions asked covered the range of activities or issues to be explored. An objective of the study was to identify issues, but one must be intimately familiar with a situation before relevant inquiries can be formulated. Being exploratory, the research required data collection instruments that would allow for admission of unanticipated data, but within a conceptual framework that maintained consistency in the focus of the inquiry. These problems having been anticipated, the task was to utilize a methodology which has the characteristics of both flexibility and internal consistency. The following outline describes the approach adopted and serves to organize the following discussion of methodological concerns:

<u>RESEARCH ORIENTATION</u>	<u>DESIGN</u>	<u>RESEARCH METHODS</u>	<u>SOURCES OF DATA</u>
Qualitative methodology	Exploratory/ descriptive, diagnostic	i) Field study (primary data) ii) Bibliographic survey (secondary data)	- interviews - participant observation - reports - government documents - correspon- dence

Research Orientation: A Qualitative Approach

Because the main purpose of the study was to describe and make statements about social workers in a specific practice setting, the appropriate research design demanded a qualitative, exploratory approach. In Kahn's terminology this is a descriptive-diagnostic study.³ He notes that the objectives of such research commonly include an effort to portray the characteristics of a situation, to formulate objectives for further research, and perhaps to make recommendations about policy and service delivery issues. This study was formulative, and analytical in its identification of sets of tasks, and illumination of the perceptions of social work activities held by the professional groups under study. The focus was less so on the discrepancies between the professional's perceptions of the efficacy of those activities. For example, research elsewhere illustrates that social workers and lawyers tend to perceive social work roles very differently.⁴ The current study, although acknowledging such findings, admitted little expression of subjective, evaluative, attitudes or judgements and while it pursued the identification of activities, opinions and advice arising from practical experience were tapped as relevant data.

The study was governed by concerns with the nature of a service delivery system in operation, rather than a client-centered focus which

necessitates an assessment of 'flow of service' in evaluative terms. The focus was on service delivery as part of a multi-faceted human service organization and so is 'system and procedure' oriented. This frame of reference created special dilemmas in designing systematic approaches to information gathering, classification and analysis.

Research Design: Exploratory, Descriptive and Diagnostic

There are advantages and disadvantages to this approach. A major positive attribute is its flexibility in allowing for a wide range of experimental data. The exploratory nature of the study required an elastic structure for admission of unanticipated information and to allow refining techniques of data collection and analysis while research was in progress. These processes of naturalistic methodology are described in the literature on qualitative analysis.⁵

A major advantage of undertaking a descriptive study is its directness. To discover what people do, and what they and others think about it, one should simply ask them. Assuming the respondents have no reason to distort their reporting of perceptions, the data is reasonably accurate. The academic, non-official nature of this study would encourage candidness on the part of interviewers. Because the overall focus is upon how persons describe work situations, and how others perceive them, in this situation some distortion of facts about social work activities is admissible within the context of the study. Variability and distortion are accounted for within the data content.

A disadvantage of descriptive study is that it can deteriorate from research to mere information-gathering, thus one must guard against overgeneralizing in the data collection and analysis. Another criticism of descriptive research is that sometimes data is selectively acquired,

either consciously or otherwise, which supports the initial views of the investigator. In this study, the research worker went into the field with no pre-formed ideas or commitments except to discover the characteristics of a situation. Another point which may be a disadvantage of descriptive research is that it gives no real evidence of cause and effect. One may say that social workers, lawyers, and judges perceive facets or reality differently because they have different perspectives on it, but precise causal relationships cannot be determined. "At best, a described relationship can be thought of as a necessary condition, but never sufficient reason for inferring causation."⁶

In descriptive research of this kind, the cooperation and sincerity of the respondents is required. The investigator is indebted to those subjects being observed or interviewed for their time and effort. These elements of the study are beyond the researcher's control and he is dependent upon the goodwill of those he wishes to study. Perhaps a long term failing of descriptive research is that it may lead to complacency or support of the status quo. Discovery that a situation is regarded as normal by its participants, and that things are 'basically all right' results in acceptance of things the way they are.

Research Methods and Sources of Data: Field Study and Bibliographic Survey

Bibliographic research occurred before and during the other research activities, the sources of secondary data being published government reports, government internal documents, departmental publications and memos, and correspondence. This class of information was analysed by extracting material relevant to the task-focused and organizational orientation of the study. It contributes to the theoretical and conceptual framework, and some constitutes quantitative data presented as

findings on service delivery issues.

The field study elements of the research design included the sub-methods of i) participant observation ii) subject interviewing, and iii) informant interviewing.

i) The following definition of 'participant observation' as method, is appropriate for the present study:

"The field worker directly observes and also participates in the sense that he has durable social relations in the social system under investigation. He may or may not play an active part in events or he may interview participants in events which may be considered part of the process of observation."⁷

ii) 'Subject interviewing' in the field study part of the research refers to the staff of Marriage Conciliation Service. They provided data about their own activities.

iii) 'Informant interviewing' refers to the legal personnel. They were being called upon to report on how they perceived the activities of other professionals. The lawyers and judges were, in a sense, a step removed from the functions being described. The two terms, for the persons interviewed, subject and informant, recognizes the difference between their conceptual perspectives.

Aspects of 'observational studies' relevant to this study:

The investigator must restrain himself from the tendency to formulate analysis and recommendations too soon. This was seen as a potential problem initially, but was offset by detached, uninvolved observation of activities and interactions. Research workers ought to record data as observation takes place, but in this situation because the researcher was present throughout worker-client interviews, it was necessary to make notes immediately after each session, not during sessions. In

research situations such as this the investigator becomes a semi-participant in the action merely by his presence. Here, the effect upon the content of the situation under study was minimal. Sometimes a research worker may have difficulty retaining a high level of objectivity and aloofness in emotionally laden social worker-client interactions. A situation similar to those encountered by this research worker during semi-participant observation at Family Court is described here:

"While the research worker may not be able to ask intelligent questions without considerable familiarity, becoming too friendly may lead him to become personally involved or to take as commonplace the very behavior he should be carefully describing as relatively unique and interesting. Furthermore, it should be apparent that the success of such a study is often highly dependent upon those personal characteristics of the observer which determine whether he is fully accepted into the group rather than upon his skill as a researcher. Finally, participant-observer studies are generally quite unstructured in nature, because until he has been in the situation, the research worker may not know which variables are most relevant. In general, participant-observation research is likely to be most efficient in exploratory work."⁸

In terms of time efficiency, observation ranks lower than interviewing for data collection. Much less information, particularly of a specific nature can be acquired in this manner than by asking for it directly. A week of observation was necessary in the formulation of the research process because the investigator was unfamiliar with the work of the unit and wanted to be sure of 'asking the right questions'.

Aspects of 'interview studies' relevant to this project:

The most important part of the field study was interviewing the three groups of professionals - social workers, lawyers and Family Court

judges. The interview outline for use with the social workers was designed immediately after the period of observation of their work activities. Those used with the legal professionals were completed after the social workers were interviewed. Selectivity regarding the nature of the questions was exercised to ensure they were applicable to the particular respondents.

The degree of structure to be employed in interviewing is always an important factor. A decision has to be made about the extent to which the interviewer should ask everyone the same question in the same way. This was problematic because the research worker needed to ask social workers about what they do in their jobs and how they viewed the activities. The other groups were asked how they perceived these activities, thus questions asked of the legal personnel reflected a factual description of activities in only general terms to allow for considerable latitude in their responses. The interview outlines for the three groups, social workers, lawyers, and judges, are included as Appendices C, D, and E. Slightly modified interview formats for each group were necessary to account for the frame of reference of each respondent group. The information level of each was different, in terms of their awareness of social work activities, yet all were assumed to share a common interest in the general issues about family law and domestic relations court. The research worker anticipated including elements of comparability of responses so there had to be some invariants built into the three sets of interview outlines. The phraseology and position of the inquiries was different in each, but the basic classification of responses into categories by 'functional genre' of social work activity or 'thematic concern' reflecting issues related to social

services in domestic relations court.

In any interview study, the interaction between the subject and observer-interviewer cannot be regarded lightly. The researcher consciously attempted to be as objective and disinterested in outlook as possible. It was mistakenly anticipated that some legal professionals would be overly polite and non-critical in their discussion of social workers activities because the research worker was known to be a social worker. As it turned out, this was not a problem. Everyone was candid and forthright in their responses.

One pitfall of interview studies to be avoided is the tendency to ask leading questions. The research worker was particularly conscious of presenting inquiries objectively. One must also be aware of the danger of the interviewer influencing responses by interpreting them inaccurately, or by the respondent's words being coloured by his perception of how they will be received. The researcher guarded against this by being non-committal about the content outcome of the research, but at the same time, committed to the overall importance of the topic.

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CHAPTER V

RESEARCH PROCEDURES

DATA COLLECTION

The project was carried out in phases from September, 1976 to May, 1977. A chronologically ordered description of the process is contained below, including a brief discussion of relevant aspects of each phase. The data collection was divided into two stages: (i) informal reconnaissance stage, and (ii) formal information gathering stage with sub-phases. Each was characterized by the set of research tasks required to meet its objectives.

(i) Informal Reconnaissance, or Preliminary Research Phase:

A considerable amount of preparatory or ground-work research was conducted in the formulative phase of the study. To identify the pertinent issues, and to become familiar with the social work practice setting, the research worker undertook a 'content' or 'situational' analysis of the field of study before developing the interview guides and other modes of data collection. Several individuals in government positions and in related settings were interviewed to determine the climate for the proposed research, and to acquire access to the service setting. Familiarity with the situation prepared the investigator to deal selectively with the accumulated information, both empirical and impressionistic in nature. Some of the individuals who contributed information and ideas during the preliminary research were:

- The Chairman of the Manitoba Law Reform Commission.
- The Director of Education and Research, Legal Aid Society of Manitoba.

- A Program Development Officer, Ministry of Corrective and Rehabilitative Services.
- The Senior Judge, Winnipeg Family Court.
- A Program Analyst, Ministry of Corrective and Rehabilitative Services.
- The Chief and Deputy Clerks of the Court, Winnipeg Family Court.
- The Director of Marriage Conciliation Service.
- Two Professors of Family Law, University of Manitoba.

The research proposal was submitted to the Program Directorate, Probation Services, Ministry of Corrective and Rehabilitative Services to acquire permission to study Marriage Conciliation Service.

(ii) Formal Data Collection Stage:

This was an expanding process of acquiring information and establishing direction for subsequent phases. The procedure followed the steps outlined below, each consisting of more specific and concern-focused data collection based on information acquired in the previous stage. This was in keeping with the principles of qualitative research as outlined in the last chapter.

PHASE I - Observation of the activities of Marriage Conciliation Service

This consisted of a week (February 14-18, 1977) of formal observation of M.C.S. counsellors. The researcher attended hearings at Family Court with the permission of the presiding judge, and visited the various locations of service delivery of the unit. Workers were observed as they received and interacted with clients in intake and counselling interviews and related activities while information was absorbed to the greatest extent possible. Clerical staff, other personnel employed at Family Court, and M.C.S. clients were interviewed wherever possible. Throughout the observation period notes were taken, objectively describing

the activities of the workers.

PHASE II - Critical Planning for Further Research

The research worker, as anticipated, began to react to and process the data acquired through observation. Areas requiring more intensive investigation were identified, keeping within the framework of a task-orientation to social work functions. After synthesizing the newly-acquired information with the prior intellectual-theoretical focus, directions for further study emerged. At this point, the interview formats for use with social work personnel were completed, and drafts of those for use with the legal professionals were designed.

PHASE III - Conducting Semi-structured Interviews

To achieve consistency in the professional viewpoint being expressed, attempts were made to interview the groups systematically. Social workers were interviewed first, then lawyers, and finally judges. All of the family counsellors at M.C.S. were interviewed using the guidelines and the sessions took from one to two hours for each person. In four cases, the interviews required two sittings because of time constraints.

Six lawyers in private and six in Legal Aid practice was regarded as a workable sample. The means of selecting subjects involved approaching a number of lawyers who were reputed to engage in family law practice. Five of the names were suggested by a professor of family law. The sample was comprised of individuals reflecting a variety of ages, experience and personalities. The only common criteria was involvement in family law practice, and consent to be interviewed. The sessions lasted from one to two hours and some interviews required more than one sitting.

Five fulltime judges of the Family Court were interviewed. Since there are nine judges in total (also four part-time), the number interviewed represented a reasonable sample. The interviews lasted approximately one hour each. Two judges were interviewed more than once.

During the interviews, the researchworker made notes while the outlines served as a framework within which inquiries were focused. Occasionally the individuals would digress and the guidelines would be used to lead the discussion back to the topic. After each session, the research worker completed the notes, clarifying points and elaborating on the data from immediate recall of the discussion's contents. The interviewing of caseworkers, lawyers, and judges took place over a period of two and one-half months, March to May, 1977.

PHASE IV - Final Information Gathering

During the period when the last interviews were conducted, final attempts were made at secondary data collection. Further statistical material about the Enforcement Office, Legal Aid, and other units of domestic relations court services, was obtained from The Attorney General's Department, government documents, and further discussion with Family Court personnel.

DATA ANALYSIS

Social worker function was the basis of the organizational framework within which most of the data was collected, analysed and presented. Before the research data collection began, it was not possible to design the functional categories of social work activities because it was not known what they would be. Since it was known that social work activities in this setting are directly related to a legislative mandate, a convenient

framework for classifying social work activities was initially available. The interview formats for use with the social workers employed this organizational guideline. It became apparent that the important organizing concept was the nature of the work processes required to fulfil the many responsibilities of the court social worker. Legislative mandate was then seen as a subcategory of activity classification. The interview outlines of the caseworkers were found to be cumbersome and structurally inconsistent with those for the other professionals. That is to say, the descriptions of work activities from the counsellors were obtained in terms of 'legislative mandate' as the organizing principle for describing activities. The concept of 'function' was at that stage, a subcategory. In arranging the data for analysis and presentation, it was more consistent with the work-activity orientation of the study to classify data by function. For example, instead of leaving the descriptions of 'counselling activities' under the heading of each statute (Wife's and Children's Maintenance Act etc.) it was decided to deal with all the 'counselling-related' data together. The information acquired from each caseworker was simply rearranged in terms of the organizational categories.

Activities were translated into categories of 'functional genres' identified as: Intake Services; Counselling Services; Investigation Services; Financial-related Activities; and Non-legal and Miscellaneous Activities. While the division of social work activities into such categories was an arbitrary device, it is nevertheless necessary to classify phenomena to understand them and appreciate their uniqueness and inter-relationships. An intake interview representing a mutually-shared hour for a counsellor and a client may involve information-sharing

of an 'instrumental' nature, and some much needed emotional catharsis of a purely 'expressive' nature. Categorizing the work of the counsellors into instrumental and expressive however would perpetuate a false dichotomy. Ostensibly, the purpose of having social workers take responsibility for court intake is to provide a quasi-technical process within a warm and potentially therapeutic context. When a worker is performing the role of investigator for compiling a homestudy report, he may engage in the activities of observation, assessment regarding child development and adjustment, consolation of a distraught parent, information-gathering and organizing, and other related activities. The actual range of tasks is wide, thus it is necessary to restrict the classes of data collection and analysis, but make them broad enough to accommodate all the work processes. It is here that definitions play an important part. The organizing concepts and categories of 'functional genres' are defined to allow for admissability of all the observable and reported social work activities.

Intake Services: This includes all first interviews, during which may occur assessment of marital situations; decision-making regarding the laying of charges or determining the appropriateness of referral to other sources of assistance.

Counselling Services: This includes fact-to-face contact between worker and client which may involve: i) information-sharing of a nature assisting clients in making decisions regarding legal rights and obligations, ii) individual or marital counselling of a general or specific nature, either dealing with practical matters or with communication concerns, iii) interpersonal interaction with a manifest therapeutic intent. This includes discussion of non-technical and non-legal aspects

of family breakdown such as the effects of separation upon children. Counselling may occur during intake interviews but is of a more expressive content than straight intake functions. It includes all subsequent sessions dealing with the emotional turmoil that often accompanies separation and divorce. Such counselling may be pre-litigation, during litigation or post-litigation.

Investigation Services: This includes all child custody work such as homevisits, interviewing, and report-writing. Also included is preparation of reports to the court on 'consent to marry' cases.

Finance-Related Activities: This includes activities involving liaison with Income Security offices, especially where appointments are arranged for the client by the financial assistance personnel. It also includes all situations involving pursuit of maintenance monies, especially under the Reciprocal Enforcement of Maintenance Orders Act., whether the client initiates the contact with Family Court or is encouraged by Income Security officials.

Non-Legal and Indirect Service: This includes sets of tasks of a non-statutory nature such as family counselling situations in which people request service from staff although they do not intend to petition the court for a remedy. It also refers to such affiliated work as offering a Parent Effectiveness Training Course, and indirect services such as liaison with other community resources to facilitate referrals. It also includes counselling by telephone, and information-sharing regarding legal matters of a factual nature.

In addition to classifying the work activities, it was necessary to account for related issues. This other class of data addressed concerns about social work activities at domestic relations court which

may not be specifically related to actual work in current practice. Some of this data requested in the second parts of the respective interview outlines pertained to related issues and concerns about family law administration and social work practice. This information was classified in terms of 'thematic concerns'. Information, ideas, and opinions of the professionals interviewed were arranged in clusters of issues related by a common theme. Four general themes were determined and the data of this nature was categorized under the headings: Social Work and Quasi-legal Activities; Family Law Concerns; Social Work and Court Settings; Innovations in Service Delivery. Here are basic definitions of each:

Social Work and Quasi-legal Activities: This order of information includes responses to such questions as 'should social workers assist clients in preparation of separation agreements?'; social workers opinions on legalistic paper work, and related concerns which emerged from the content analysis of the interviews with all personnel.

Family Law Concerns: This includes information related to responses to legislative or administrative changes, and their possible effects on the practice of social work in the domestic court setting.

Social Work in Court Settings: The professionals interviewed were asked for their opinions on such related issues as whether social worker should have 'privileged communication' in the courts and whether social services should be under legal administration.

Innovations in Service Delivery: This data relates to issues about the use of volunteers, different modes of social work practice such as groupwork, rather than casework, and other topics suggested by the interviews about novel approaches to service delivery in family law

administration.

All of the information acquired and recorded from the interviews was accounted for in either category of data analysis and presentation, that is, by 'functional genre' or 'thematic concern'. The structural organization of the next three chapters on research findings reflects the arrangement and analysis of the collected information. Chapter six is based on the model of functional genre as it presents the descriptions of activities and the perceptions of the counsellors who perform them. Chapter seven employs the same model to present information from the perspective of lawyers and judges. Chapter eight deals with the perceptions of all three professional groups on the matters organized by thematic concern and is labelled 'additional findings'. This format is also used in Chapter ten where key issues emerging from the critical analysis of findings are presented. The functional genres (activities) and thematic concerns (related issues), are combined to organize the conclusions and recommendations arising from the analysis of data.

CHAPTER VI

SOCIAL WORKERS' ROLES AND FUNCTIONS -
A FOCUS ON MARRIAGE CONCILIATION SERVICEPRELIMINARY DISCUSSION OF FINDINGS

(a) Description of the service unit:

The discussion of social work in family court settings revealed that considerable diversity exists in the range of functions performed by practitioners in different courts. The focus here is on Marriage Conciliation Service at Winnipeg Family Court. Similar to the B.C. Unified Family Court Pilot Project, but unlike the Edmonton Project, the social service personnel perform many tasks for the court and its clients. The historical sketch of the service unit pointed out that M.C.S. has undergone several changes over the years, not only in name and location, but also in composition and functions. The original purpose of attempting to prevent family breakdown has become increasingly augmented by the mandate to use other approaches for meeting client needs and 'system maintenance' requirements. The official objectives of the unit are: 1) reconciliation of court applicants for separation, if possible, 2) where the marriage has broken down, helping with planning for children, 3) some pre-marital counselling and court investigation in 'consent to marry' cases, 4) assisting in 'out of province' maintenance enforcement, 5) involvement with the provincial Financial Assistance program. Refer to Appendix B for a description of the objectives and activities of M.C.S. as formally stated in an inter-departmental program description. Throughout the presentation of research findings, it is worthwhile to recall formal objectives in the light of actual practice

descriptions.

Before proceeding with the analysis of the work activities, it will be useful to present a profile of the service unit and its composition. The sources of information for this analysis of family counsellors' activities arises from direct observation of work situations, from focused interviews, and from an array of secondary material such as provincial government documentation. When the study was conducted, in spring 1977, the unit consisted of a director and eight caseworkers. An extra worker, hired on a part-time contract basis, is sometimes employed to do custody reports. The director occasionally does counselling, but for the most part is engaged in administrative activities. There were three clerical support staff responsible for a wide range of duties, including the processing of the many files, and the important function of receptionist. The unit occupied a set of offices in the basement of the Family Court building which, although it is old and in need of some modernization, is not totally without dignity and some warmth of character. The receptionist area and waiting room are centrally located, and the offices radiate along three corridors. Each caseworker has an office and telephone which allows for maximum privacy for clients and counsellors.

Of the eight caseworkers, one is assigned by rotation to the office at the North Winnipeg branch of Family Court. Since fall of 1976, workers service the north court in two month shifts for a regular five-day work week. The surroundings there are bright and spacious. A waiting room and large office are located off the hall leading to the court room and the judge's chambers. The positive points about serving as family counsellor in the north office are tempered by the fact that

workers tend to feel isolated from their social work colleagues at 'home base' and the workload is heavy. One worker has also been assigned to serve as family counsellor at the St. Boniface Family Court on a two-day per week basis. So far, this has not been a rotating position, but assigned to one worker. This practice began in February, 1977. Essentially the same kind of work activities are required in all three locations of personnel placement.

In addition to the necessity of deploying personnel to various service delivery locations, some staff are assigned to specific tasks. For over two years, one caseworker was designated as the liaison person with Health and Social Development Income Security and attended their offices in the Winnipeg area on a regular basis to do intake and screening with their clients. Until winter 1976/77, two workers did almost exclusively child custody report work. Changes in staff utilization resulted in only one worker retaining a workload of custody reports, while the other assumed a generalized caseload, as have the majority of the caseworkers. The director of the unit is responsible for distributing assignments from the court. A conscious administrative attempt is made to maximize the utilization of each worker's aptitudes and areas of expertise. As for regular intake procedure, whereby clients phone for an appointment, they are assigned by alphabetical classification by the receptionist. The combination of arbitrary assignment of general intake situations with the more specialized matching up of case requirements to caseworker's talents, appears to be a comfortable practice in the unit. There is considerable flexibility in the differential use of staff resources, and consequently the majority of workers have acquired experience in most of the functional sub-fields of practice.

The results of data requested of each worker reveals the following profile of the staff:

Of the fulltime caseworkers there are four men and four women. The men range in age from early thirties to mid fifties. The women's ages range from late twenties to mid fifties. All of the counsellors are married, and have children, some having grandchildren. Six of the workers received a Masters of Social Work Degree from the University of Manitoba prior to 1971. One of the counsellors has a M.S.W. from another western Canadian university and the other has a B.S.W. from the University of Manitoba. Three caseworkers have been employed for more than six years with the unit, four have been employed over three years, and one, less than one year. Five counsellors had worked in other fields of practice prior to coming to M.C.S. This sketch of the age and experience data on the unit suggests it is primarily comprised of experienced workers.

(b) Quantitative Overview of the Unit:

The work done by M.C.S. is intimately linked to the Family Court system and the network of services and government departments of which it is a part. What follows is a general sketch of the workload of M.C.S. in round figures, serving to illustrate overall trends in the flow of service. Accurate relevant statistics were not available at Family Court or from the Attorney General's Department, for records are not kept on such items as sources of referral or other categories of data which would be useful for an analysis of court social services. The research worker utilized available material to devise a quantitative overview of the workload of the unit. The sources of data were: government statistical publications; discussion with departmental

officials; provincial government departmental program descriptions; inter-departmental annual returns; and discussion with staff of M.C.S.

Theoretically, one could estimate the incidence of family breakdown in the province by adding figures for the number of private separation agreements, divorces granted, and the number of judicial separations granted. As for separation agreements, it is impossible to estimate the number of agreements entered into by parties in private. The figures below illustrate the trend to increasing incidence of divorce in the province.

TABLE 1

NUMBER OF DIVORCES GRANTED*

	<u>1971</u>	<u>1973</u>	<u>1974</u>
Canada	26,972	36,704	45,091
Manitoba	1,383	1,620	1,796

*Government of Canada, Marriages and Divorce: Vital Statistics Volume 11, Ministry of Trade Industry and Commerce, April 1, 1976 p. 37.

The Attorney General's Department apparently does not record the number of judicial separations ordered by Family Court. However, it was learned in conversation with the Chief Clerk of the Court, that in 1975 approximately 20 percent of maintenance orders were placed on enforcement. There were 551 orders on enforcement for default of payment, of which 399 were in the Winnipeg jurisdiction. This means that approximately 2,000 court orders were registered at Winnipeg Family Court. This includes some Degrees Nisi from the Court of Queen's Bench but since the majority are Family Court orders, one may estimate that there were approximately 1800 domestic relations court orders in 1975/76.

It must be pointed out that the figures employed in this quantitative overview of domestic relations court social services do not represent an accurate picture in absolute terms. The purpose of introducing numbers into the discussion of flow of service is to illustrate certain trends. Regardless of actual concrete figures, one may surmise that there is a patterned relationship between the number of persons approaching the court, the quantity of applications for litigation, and the eventual number of court orders.

All clients approaching Family Court are assisted in making application by staff of M.C.S. who function as domestic relations court intake service. The figures below quantify Intake services leading to initiation of the litigation process:

TABLE 2

NUMBER OF INFORMATIONS LAID*

Legislation Involved	1975	1976
Wives and Childrens Maintenance	1881	1850
Child Welfare Act	948	1018
Reciprocal Enforcement of Maintenance Orders Act	100	93
Marriage Act	18	15
Totals	2947	2976

*Interdepartmental Memo to the Chief Clerk of the Court, Annual Returns of the Domestic Relations Section of Winnipeg Family Court for 1975 and 1976.

The number of informations laid does not exactly reflect individual cases, since occasionally both the Child Welfare Act and the Wives' and Childrens' Maintenance Act may be used to initiate action. The

domestic relations section of Family Court probably processes approximately 2800 applications to the court as shown above.

Because domestic relations court intake services is such an important function of the unit, its relationship to Family Court requires clarifying in quantitative terms. To arrive at an estimate of the number of intake interviews of the unit one calculates:

$$(7) \times (50) \times (12) = 4200$$

Where:

(7) represents the number of caseworkers. Since one worker does only custody reports and no intake interviews for domestic relations section, seven rather than eight is used here, as the object is to reflect client contacts at court intake.

(50) represents the number of interviews per month per worker. Each caseworker has approximately fifty interviews per month based on an average of twelve per week. This does not include on-going counselling sessions. A description of intake services is presented later in this chapter.

(12) represents the number of interviews months. Vacation time for the staff is accounted for in this equation by the fact that there was another caseworker employed in the unit for the first seven months of the year. These twenty-eight weeks of worker time account for the vacation and sick time of the other fulltime intake-involved staff. Consequently the actual figure of twelve months for the work year can be used to estimate interviews per year.

This rudimentary formula translates into saying that approximately 4200 client contact for intake services occurred in 1975/76.

Regarding the proportion of clients who initiate court action at

intake, one worker said it was 50 percent and another said it was 80 percent. These were the extremes, for a common estimate was that 2/3 of the intake clients start court proceedings by making an application under a statute. This proportion can also be illustrated as:

2800 - informations laid

4200 - interviews

A general impression of the flow of service in general quantitative terms is illustrated by pointing out that out of approximately 4200 intake interviews, there may be 2800 applications to the court, and approximately 1800 Family Court orders made in a year. Roughly two-thirds of intake clients initiate court action and about two-thirds of these cases lead to the granting of a court order.

People change their plans at the intake phase, and after the litigation process has started. It cannot be stated that marital reconciliation is always the cause of cancellation of court proceedings but it is probably a major factor. It also would be impossible to definitely correlate reconciliation with intake and counselling services for, as mentioned, the required data is not available. Whatever the cause, whether it be actual reconciliation, or other reasons, many people who approach Family Court decide to forego the litigation process in dealing with family discord.

Another key function of M.C.S. is conducting homestudy investigations and preparing homestudy reports in cases where child custody and access are contentious issues. The director of M.C.S. provided the following information.

TABLE 3

NUMBER OF CUSTODY REPORTS *

Year	For Family Court	For Queen's Bench	Totals
1974	82	45	127
1975	98	32	140
1976	105	31	136

*Information acquired in an interview with Mrs. N. Milne, Director of Marriage Conciliation Service, June 1977.

It is worth noting that in 1969 there were only 18 requests for custody reports from the courts. Recent years have witnessed a dramatic increase in the frequency of reports being requested by both Family Court and Divorce court.

PRESENTATION OF FINDINGS: The Caseworkers' Perspective on Social Work Activities

The most appropriate manner of data presentation, in this case the content of the subject interviews, was by categorizing work activities in classes of 'functional genres' reflecting sub-fields of practice. The information about work activities and the caseworkers' responses to questions of a subjective or hypothetical nature on them are categorized in the following manner. For each functional genre i.e. Intake, Counselling, and Investigative Services, and Finance-Related and Non-legal Activities, the analysis of findings is in two parts. The first is a description of actual activities, and the second gives the views expressed by the caseworkers on the work functions.

A. Intake Services

(i) Description of Activities: An intake interview with a family counsellor constitutes the gateway to the Family Court for a person

seeking legal solutions to family problems. Only under extreme circumstances can a lawyer have his client lay an 'Information and Complaint' thus setting the wheels in motion for litigation without going through regular procedures. Whether the client is referred by a lawyer, financial assistance worker, or through self-initiative, the process is the same. Clients usually call first, and when the receptionist has quickly determined the nature of the request, the person is given an appointment. Clients are assigned to counsellors according to alphabetical classification, assuming that no preference is requested because of previous contact. Counsellors have appointments set for them at 10 a.m., 1:30 p.m., and 3:00 p.m.

The role of the receptionist is critical, for she assesses the appropriateness of the contact and determines if the caller can be served by the unit. She may refer a caller to the Enforcement Office for example, if it is about a default of payment on a local maintenance order. For the most part though, the wide range of functions performed by the unit means that the caller will be assisted in some capacity by coming in for an interview - whether it be to make application to the court or for counselling only.

There are no statistics on the source of referrals to M.C.S. People come at the advice of a friend or relative, are sent by their lawyer, or their financial assistance worker. Occasionally people are referred by the police or by a judge. By combining the rough estimates of percentage breakdown of referral source by the caseworkers it appears that approximately 50 percent of clients are sent by a lawyer, 30 percent by financial assistance personnel, and the remainder by self-referral or others.

There have been changes in the intake service as it pertains to clients referred by the provincial Income Maintenance offices. From 1974 until March 1977, a system had been in operation which involved one caseworker on a fulltime basis doing maintenance pursuit work with financial assistance clients. Because of a staff shortage in the unit over the winter of 1976/77, it became necessary to reduce this service to the Income Security offices. It was decided to return to the previous method of simply having financial assistance recipients sent directly to Family Court to be processed in the usual intake procedure. It is also meaningful to note that many people coming for intake service have had prior experience at Family Court. A rough estimate of the proportion of people returning for some kind of service is approximately two-thirds of all contacts. One worker said that out of thirty-four interviews, eleven were new contacts, while twenty-three were subsequent to previous contact. Another worker said that out of sixty-five interviews, twenty-one were new contacts. Involvement with Family Court is often an ongoing process. Clients may be required to use the court intake services on several occasions for a variety of reasons, each perhaps relating to a different aspect of family conflict - judicial separation, maintenance payments, or child visitation. The contacts may be spread out over the duration of a number of months or even years.

The content of three intake interviews observed one day in a counsellor's office is presented below.

A woman came in without an appointment and an intake-counselling session ensued from 9:15 to 11:00 a.m. Fortunately, the 10 a.m. scheduled appointment for that morning did not arrive. The client was a woman in her mid-thirties, the mother of five children. She told of

her husband's alcoholism, his increasing physical abusiveness, and mental cruelty which had persisted for several years. Her husband had recently moved out of the home. After considerable discussion about the meaning and consequences of legal separation for herself, her husband, and the children, it was decided that the woman would apply for a judicial separation under the Wives and Childrens Maintenance Act. The counsellor took the client to the office where the court clerk filled out the necessary documents, took the lady's oath, and set a court date for a hearing. The session was emotionally intense, but the counsellor assisted the client to assess her situation and express some of her anxieties about taking such definitive action after so many years. She appeared more relaxed when she left and asked about the possibility of having counselling for herself and the children. She was invited to call for an appointment if she felt the need to do so, but nothing definite was set up at that time.

The first intake appointment of the afternoon was a woman wanting to explore the possibility of obtaining a court order to protect her and the children from her husband who she said occasionally comes and harasses them. The counsellor took down details of the case, and forms were filled out for her to apply to the court for an order of prohibition of entry.

A little later, a young mother of three small children came for an intake interview. It developed into a rather long and intense session, for the client was emotionally distraught and welcomed the opportunity to express her frustration and anger with her husband. He had left her and the children for a second time and had taken up residence with another woman. After discussion of what the process meant in

practical and legal terms, the counsellor helped the client make an application for an order of judicial separation, custody of the children maintenance, and occupation of the marital home. This was accomplished by laying an Information and Complaint under the Wives and Childrens Maintenance Act. In this intake interview, the technicalities of working out details of the court application were secondary to the expressive content which transpired between the client and caseworker.

(ii) Social Workers' Views on Intake Services: Since, according to caseworkers, about fifty percent of their clients have already spoken to a lawyer, most often grounds for court action are established. Some lawyers send the clients with a letter containing instructions for the counsellor on what grounds are to be alleged etc., in starting the litigation process. This practice is seen as a useful one, although occasionally a lawyer may list grounds over-zealously, having not had ample communication with the client for whatever reason. Many lawyers do not give their clients a letter of introduction and consequently it becomes the responsibility of the counsellor to assess the situation and determine the procedure. The counsellors expressed the view that it was a desirable practice for lawyers to send a letter with the client, and wished that lawyers would do so regularly.

The social workers appeared content with the current intake procedures concerning assignment of clients. The arbitrary setting of appointments for certain hours by the receptionist according to alphabetical classification seems to be a satisfactory practice. If a client wishes to see a particular counsellor she is of course accommodated, for there is considerable flexibility in all standard procedures. Basically the caseworkers like the combination of routine procedure and

flexibility allowing for individual discretion in most matters.

B. Counselling Services

(i) Description of Activities: It was mentioned in the section on methodology that arriving at workable definitions for activities was problematic, especially counselling. Used in a general sense as it is at Family Court, almost all of the activities of a family counsellor can be regarded as counselling. The functional category 'counselling' is here used to mean the face-to-face contact between caseworker and client as outlined in Chapter five. At domestic relations court, most counselling consists of a single session occurring during the intake interview. If the client decides to return for further counselling it will likely consist of two or three sessions within a span of about three weeks. The orientation is towards short-term focused counselling, but some caseworkers do have clients who contract with them to engage in five or six sessions over a couple of months.

Counselling is primarily with individuals, especially women applying for separation. Often a caseworker will send a letter to the client's spouse inviting him to call and sometimes a joint counselling session will then occur. Most counselling is not of this reconciliation or conciliation variety, but with helping individuals cope with the set of problems which marital breakdown has engendered. This kind of 'adjustment counselling' of individuals may occur at any stage along the continuum of the legal process - litigation, mid-litigation, or after the court matters are settled but the human ones are not.

Family units are seldom engaged in counselling. The focus is on the marital relationship, and although some of the counsellors fully recognize the necessity of a family interaction approach to counselling,

this is not considered a realistic setting for family therapy. Because lawyers and the Court of Queen's Bench do not refer divorcing couples, and because few husbands will come in for counselling, there is very little true conciliation counselling. The focus is necessarily on individual planning for separation, or post-litigation adjustment for the individual.

A sample of counselling situations follows: A husband feels resentful because he can only visit his children at specified times and approaches the court intending to take additional legal action against his estranged wife. He is counselled by a worker about his legal obligations and rights pertaining to custody, and realizes he must learn to live with the current arrangements as best he can.

A woman deserted by her husband, and on financial assistance to augment the meagre maintenance payments, finds she is increasingly depressed. Counselling may help her to deal with her frustration, her negative self-image, and the fears she has for her children's futures.

Each counselling situation is unique, but certain trends emerge, such as the prevalence of alcoholism and financial mismanagement in marital breakdown. Another is the situation where a middle-aged man leaves his wife of twenty years for a younger woman. Some court personnel see a new phenomenon of young wives leaving their families. Once individuals have initiated court proceedings, they seldom desire counselling sessions to be arranged at that time. The offer is open for them to initiate counselling if they want it and sometimes the client will return with unresolved problems a few months later.

The staff members generally see their counselling roles as short-term crisis intervention. Most do not overtly encourage their clients to

establish a sustained counselling-based relationship with them. There appears to be considerable latitude in worker discretion regarding whether further counselling is offered. One worker may see a need to encourage therapeutic services, while another may feel that the situation does not warrant counselling, or might feel that it would be an imposition to offer it. There seems to be a wide range of assessment skills and counselling styles within the unit and little consistency in diagnostic or treatment orientations.

(ii) Social Worker's Views on Counselling Services: Most of the social workers do not encourage their clients to enter into a contract for counselling because they feel that people basically do not want it and that it will be interpreted as pushing it on them if encouraged. It is ironic that other professionals criticize the unit for 'forcing' counselling on the clients to Family Court, since actually very little long-term, therapeutically-oriented counselling occurs.

When asked what kind of work activities they liked best, most of the counsellors said they preferred counselling over the other functions. One worker expressed this attitude in saying it was "a challenge to meet people in states of crisis and transition." Almost all the case-workers said they wanted to do more conciliation type counselling but the opportunity and time were not available. Referrals for conciliation counselling are not forthcoming from the courts or the community, but even if they were, the variety of other work activities leaves little time or energy for it. Bona fide conciliation counselling with couples rarely occurs at Family Court. Adjustment counselling, helping individuals with the problems of becoming a separated individual, is regarded as an important function. Almost everyone said they wished they

had time to do more of this kind of counselling too.

The perennial issue of whether one can engage in meaningful counselling with unwilling clients is illustrated in this practice setting. Some kinds of potential counselling situations militate against effective helping relationships being possible. If the person is present because of the contingencies of the income security system, it may indeed be unrealistic to offer counselling services beyond the instrumental approach of assisting her in meeting the system's formal requirements. Also, many women on financial assistance already have a personal services worker, thus offering more counselling services may be inappropriate.

The caseworkers pointed out that it is difficult and perhaps unsound to mix counselling with investigative services. Some feel that in situations such as 'consent to marry' cases, the worker should strive to do pre-marital counselling as well as investigate the situation for the court. This dual function issue is problematic, for the point is often made that clients cannot be open to effective casework if their circumstances are being investigated for a court report. This issue is also critical in the area of child custody. In practice, counselling and investigation services are kept separate to the extent that individual marital counselling is done by one worker, and a custody report if ordered will be done by another. The distinction is not so clear-cut around the issue of including counselling input within the investigative process. Should the social worker attempt to engage the parent in an educative process, for example, counselling the parent on helping his child cope with separation or divorce in a non-damaging way, or leave that function to another professional? The view was expressed that this

might be the only opportunity the parent may have to speak with a social worker about the effects of marital dissolution on the children. He may be inhibited from discussing these problems because the role of the worker is seen as investigative only, not therapeutic or educative. Despite some ambivalence about these matters, for the most part counsellors recognize their role to be primarily as an officer of the court conducting an investigation, but they see a need for counselling services to be available in this milieu.

The caseworkers' views on counselling seemed to reflect their individual professional orientations. Some workers regard themselves more as court functionaries and thus put less emphasis on the content of worker-client relationships. Others are more therapeutically inclined and consequently place more emphasis on offering ongoing counselling. There is an enormous scope of counselling situations at M.C.S. and as wide a variety of approaches to them as individual characteristics of the counsellors. The workers said they were aware of a lack of consistency in interpretation and approaches to counselling, but it is seen as an important factor in maintaining individual professional discretion.

C. Investigation Services

(i) Description of Activities: Two kinds of cases require the investigative function of M.C.S. staff - 'consent to marry' situations and child custody report cases. Although the first are not frequent, reports are ordered to assist the judge in deciding whether the parties in question be allowed to marry. There are cases where the bride is under eighteen and can not obtain her parents' consent, or if she is under sixteen years regardless of her parents' views on the matter.

The couple is usually informed by the clergy or personnel at the Division of Vital Statistics that permission must be obtained from the court, so it is at this point that they come to Family Court intake. Although no one person exclusively handles these cases, it has been the practice to assign many of them to a young female caseworker on the basis that the couple, especially the girl, may be more comfortable with such a counsellor. The process of preparing a report to the court involves a series of interviews with both bride and groom, each separately, and with both sets of parents if possible. The objective is to determine if the couple is sufficiently mature, that everyone is fully aware of what is involved in the marriage commitment, and that no one is being coerced into the action. Some pre-marital education input is sometimes attempted if the parties are receptive. If pregnancy is the motivation for the application to marry, alternative solutions to the perceived problem of illegitimacy may be discussed. The report to the judge describes the family background of the parties and the situation. An assessment is made as to whether the parties are sufficiently mature to proceed. Sometimes the caseworkers suggest that the couple postpone their plans to marry, and the judge may or may not concur with this recommendation. It appears that most often the couple receives the court's consent.

Requests for child custody reports are becoming more frequent especially since in the last five years the Court of Queen's Bench has used them more. Regardless of the source of the request, the process of conducting a homestudy investigation is basically the same. Each caseworker has his own particular approach to doing a study and there is no specific format for the report. Interviews are conducted with

each parent separately and opportunities to observe the parent-child interaction are arranged. This often requires the caseworkers to set appointments for the evenings or on weekends to accommodate the clients' needs. The homestudy investigation usually involves a minimum of two sessions with each parent at home or in an appropriate setting. The process may take only a couple of weeks or possibly a matter of months if there is no urgency from the court. Each situation dictates what the caseworkers approach should be. The focus is always on who can best meet the needs of the child.

A report consists of three or four pages synthesizing the worker's observations of the interaction between the child and each parent, respective family support systems, the physical resources for child care of each parent, and other relevant information. Some workers include specific recommendations to the court on which party can best meet the present and future needs of the child. Some hesitate to make definitive assessments so their reports are more descriptive. There is a high degree of individual worker discretion in how to handle each case he may be assigned.

Sometimes a caseworker may be required to attend court to substantiate the observations and/or assessments he has made in his report. Lawyers usually receive copies of the report before the court hearing, so may wish to cross-examine the worker if they take issue with the report's contents.

(ii) Views on Investigative Services: The social workers do not like doing reports for 'consent to marry' situations. Often they are the result of a young girl wanting to escape an unhappy homelife, or of a pregnancy when no alternative plans have been considered. The clients

regard the caseworkers as obstacles to 'true love' and are resentful. Often the worker receives a less than welcome reception from their families. As with all aspects of the investigative function, the social workers expressed the view that they sometimes feel their hours of work may be wasted. Their report is only one element of the information a judge considers in reaching his decision and he may choose to disregard it. Some benefit for the parties may be derived from contact with a social worker however, so feelings are not totally negative regarding this element of social work practice at Family Court.

Workers who do child custody reports expressed some ambivalence towards them. On one hand, they appreciate the principle of being an objective observer for the court, while on the other they realize there is no straight-forward answer to be discovered. The social worker is to ensure that the children's interests are held paramount but they feel almost apologetic about having to 'impose' themselves on people. The research worker was surprised at the attitude of the caseworkers when they expressed the view that their investigation was an invasion of privacy. The workers do not really seem to see themselves as guardians of children's rights and interests. They see it as a service to the bench, and do not usually attempt to do much counselling when conducting an investigation.

When asked about recommendations, some workers felt they wanted to make firm assessments but did not do so because the judge might not regard it as proper. Some prefer to not assume the responsibility for suggesting a specific course of action. The workers said they wished the judges would tell them whether or not they want the reports to contain explicit or implicit recommendations regarding child placement. The

judge may disregard the homestudy but regardless of whether it contains a recommendation, usually its contents are taken into account along with other evidence from both lawyers.

D. Finance-Related Activities

(i) Description of Activities: A great deal of the counsellor's work involves the pursuit of maintenance monies. Several kinds of situations call for their involvement, some common examples being:

A city welfare recipient is advised to obtain a legal court order for separation and maintenance payments from her husband whom she has recently left. (under the Wives' and Childrens' Maintenance Act)

A provincial financial assistance client is encouraged to obtain a court order for maintenance. She may be a deserted wife, or perhaps has a child from a common-law union. (under the Wives' and Childrens' Maintenance Act) She may be a single mother compelled to seek a filiation order for child support. (under the Child Welfare Act)

A financial assistance client is advised to pursue maintenance payments which have already been ordered by the court, but are irregular or in default of payment.

A man wishes to apply to the court for variation of a court order which instructs him to pay maintenance because his estranged wife is now living with another man. (Wives' and Childrens' Maintenance Act)

All Family Court orders and an increasing number of divorce decrees are registered at Family Court and an enforcement system can be evoked if necessary. The onus is on the client to initiate pursuit of payments. In the case of financial assistance clients, the expectation is strong to do so, and until recently the income security clerks set up appointments with the counsellor who visited the office on a regular basis.

Since March 1977 financial assistance recipients are sent to Family Court directly, but the service clerk may call to arrange an appointment for her if she is hesitant to do so on her own.

"All persons who receive an allowance are required to: explore and use any financial resources available to them - where indicated, take the necessary steps to obtain maintenance support possibly through legal action." ("Social Allowances", Education Services of Manitoba Department of Health and Social Development, p. 7).

These principles translate into the situation that many women come to Family Court intake only because they are encouraged by the income security procedures and personnel. The nature of the counsellor-client relationship in such cases is seldom therapeutically-oriented but consists of exploring the possibilities of obtaining money from an estranged spouse. In many cases it is decidedly unrealistic, and so the counsellor sends a memo to the income security office recommending a waiver of maintenance pursuit. The problems around the futility of obtaining a court order, and of pursuing payments from spouses out of province are too complicated to deal with in detail here. It appears that the majority of the referrals from income security offices do not result in the initiation of court action. Often the situation is assessed by the worker as an inappropriate case for legal action. If there is a chance of obtaining an order, and if the client is willing to go to court, the caseworker assists her in initiating court action, and will refer her to Legal Aid. Social work values around client self-determination are called into question if it appears there are strong grounds and a possibility of obtaining maintenance, but the client is loath to pursue the matter for personal reasons.

Defaulted court orders are referred to the Enforcement Office if

the spouse is in Manitoba. This service unit is also located with M.C.S. in the basement of the Family Court building. The relationship between the two units is worthy of study in itself, for there appears to be considerable confusion outside the immediate Family Court environment as to who is responsible for what services. The Enforcement Office is part of the Attorney General's Department and does pursuit of maintenance monies from paying spouses in Manitoba. Where the potential paying spouse is out of province, the M.C.S. counsellors attend to maintenance pursuit, that is, obtaining a first or 'provisional' order, or enforcement of an existing order in the reciprocating province or state. It may also involve contacting the R.C.M.P. to locate the individual and other such investigatory activities. Much counsellor time and effort is spent on communication with enforcement personnel out of province on behalf of clients, many of whom are on provincial financial assistance. Letter-writing and calculating defaulted payments are especially time-consuming and tedious.

(ii) Views on Finance-related Activities: Daily the social workers confront the problems of financial assistance clients and other women struggling to support their families on maintenance payments solely or with a part-time salary. The matter of financial obligations, parental rights and duties, and their interfaces, evoke expression of personal values and beliefs. The issues are complex, and social work professional practice is often problematic. Some counsellors expressed ambiguity and acknowledged role strain when asked about their work with clients who are sent by income security. On the one hand, as a public servant, one is expected to see that the law is obeyed, regulations met, and peoples' obligations to support families are upheld. There

are many facets to protecting the public purse. On the other hand, one sympathizes with a woman who fears physical abuse from an enraged husband if he receives a court notice accusing him of default of payments. The single mother who requires financial assistance to pursue occupational training and prefers to set aside the legal obligations of the child's father is caught in a bureaucratic and philosophical dilemma. Public policy manifested in social allowance regulations compels her to lay charges against him to obtain support payments. This client could possibly encounter different approaches to her situation. A sympathetic counsellor might be lenient in pursuing the letter of the law and insisting upon court action, whereas a counsellor motivated by a strong belief in retribution and enactment of moral duty may press the matter for a legal resolution. Some counsellors appeared uncomfortable with their collective role as part of a quasi-collection mechanism for financial assistance programs. Often times clients are sent for an intake interview and after five minutes it is decided that pursuit of maintenance is unrealistic and has been a waste of time.

There are many clients, though, who independently try to obtain maintenance from their estranged spouses. The woman who applies to the court for a court order, or for assistance in collecting support payments, is exercising her legal rights and requires professional help to deal with the bureaucracy established to facilitate such procedures. These situations appear to evoke less professional role strain since the value of client self-determination is not at issue, as it is with some financial assistance clients. Most caseworkers appreciate the complexity of their occupational situation especially the ambiguity inherent in holding traditional professional values along side responsibilities

to enact bureaucratic system requirements.

E. Non-Legal and Indirect Service

(i) Description of Activities: As illustrated so far by the description of social worker's activities at Winnipeg Family Court, most work is of a statutory nature. Some tasks however are not directly related to fulfilling a mandatory requirement of the domestic relations court system. Sometimes, clients come for sporadic or periodic counselling during times of family crisis especially to workers who have been at M.C.S. for a long time. It may be unrelated to any legal action either current or intended, but occurs simply because the caseworker is regarded as an available counselling resource for the family.

In spring 1977, two of the caseworkers ran a Parent Effectiveness Training course. Very few such ventures have been undertaken in the past, but this was regarded as a successful enterprise and will likely be repeated. An example of another non-legal, non-court related activity was a speaking engagement at a highschool by one of the counsellors.

A considerable amount of work of non-specific nature is engaged in by the counsellors when communicating with clients on the telephone. They respond to enquiries about which Legal Aid office may be most convenient for the client; clarifying misconceptions about family law, for example, people mistakenly think they have to obtain a separation before they can apply for a divorce; referring clients to other services perhaps more appropriate to their expressed need at the moment, for example, to Osborne House for abused wives.

There is little formal inter-colleague consultation, but some informal problem-sharing. There is not a great deal of formal staff development, though workers are not discouraged from attending professional

development workshops or conferences.

The caseworkers at M.C.S. collectively or as individuals are engaged in little indirect social work activity in the larger community, such as active membership in the Manitoba Association of Social Workers. Within the Ministry of Corrective and Rehabilitative Services of which the unit is a part, there appears to be no consultation with counsellor-staff on policy and program issues.

The one miscellaneous-type activity which accounts for considerable time is letter writing, especially for Reciprocal Enforcement of Maintenance Orders Act matters, and case recording outlining the content of intake and/or counselling sessions.

(ii) Views Expressed on the Activity: It is a truism that social workers, regardless of their work setting, perceive clerical-type work as drudgery. Case recording and correspondence at M.C.S. is no exception. Non-court related work such as the P.E.T. course are seen as refreshing change of pace. Some caseworkers said they would like to do more non-legal non-technical social work, perhaps educative-preventive sorts of intervention, but there is no time for it. The mandate of the unit as a court service naturally defines limitations to the kinds of activities which are appropriate. The loosely-defined mandate allows for flexibility but also admits confusion on the part of caseworkers who are not certain what may be considered an appropriate non-legal activity. There was a wide range of opinions expressed on what they regard as appropriate functions. Some feel workers ought to play a larger role in policy and planning matters, while others expressed little desire, or even the opposite view. Interest in contributing to planning for programs in family law administration was indicated by some

workers. It seems a significant point that they feel there is no forum to express ideas and contribute in the indirect service milieu.

The view was expressed that the unit is too isolated and ought to develop a well-defined referral system with other social services in the community. Some feel that as a court service their function is specialized and ought to remain focused on marital breakdown matters only. The isolationist-specialist viewpoint maintains that it encourages a high quality court service. The inclination for more generalized counselling and less legal and technical practice content requires increased communication with other social services and a re-examination of the unit's mandate. Expansion of non-court related programs at M.C.S. is seen to be desirable by those who seem most uncomfortable with the bureaucratic functions and the conflict they engender. Most caseworkers feel that a balance between technical, legalistic work functions and more therapeutically-oriented social work practice activities is desirable and are encouraged by the existence of a broad, loosely-defined mandate for M.C.S.

CHAPTER VII

LEGAL PROFESSIONALS' PERCEPTIONS OF SOCIAL WORK ROLES
AND FUNCTIONS AT DOMESTIC RELATIONS COURTPRELIMINARY DISCUSSION OF FINDINGS

The last chapter presented collected information on social workers' perceptions of their own activities performed at M.C.S. In this chapter a parallel structure is employed to offer the findings regarding perceptions of legal personnel on those same activities. Family Court judges are dealt with separately from lawyers who are subdivided into those engaged in private practice, and those employed as staff lawyers for Legal Aid Manitoba.

The Lawyers

It was thought that there might be a difference in views between lawyers in private practice and those on the staff of Legal Aid. The results of interviews with twelve lawyers, six in each category, shows that any differences in perceptions of activities, or views on them, reflect personal experience more than membership in professional groupings. There was considerable diversity of opinion and a wide range of perceptions expressed on actual social work functions, but this seems to be accountable only to individual personality and experience.

To avoid any possible confusion, it should be pointed out that the term 'legal aid' as it is used here refers to the staff lawyers of the Legal Aid Service Society of Manitoba. Legal aid, per se, means a way of paying for legal services, and the private bar still handles most of the cases. According to the 1976 Annual Report of the Legal Aid Services Society of Manitoba, the Community Law offices, that is, the

staff lawyers, handled about 20 percent of all legal aid cases in 1975 and 25 percent in 1976. That involves fifteen lawyers, and twenty-two lawyers respectively. In 1976 the number of formal certificates issued was 6,900. Of the 54 percent civil cases, 90 percent were in the area of family law including separation and divorce. Of the cases handled in the community law offices, matrimonial cases represents 65 percent of the total civil caseload. Much of the rest of the civil caseload represents a growing amount of 'poverty law' being practised by staff lawyers.

Some private lawyers specialize in family law and those interviewed were recommended as handling a more than average amount of this practice. Many of the Legal Aid lawyers carry a large caseload of family matters. The sample of lawyers interviewed was not intended to reflect any particular trends or characteristics of the profession. The common ground was simply a shared interest in family law. A brief overview of the lawyers in terms of age, education, and duration of practice follows:

Private Bar - There were six private practice lawyers interviewed, three men and three women. The female lawyers were all under thirty years, and are graduates of the University of Manitoba Law Faculty. All had been called to the bar in the last four years. The men's ages ranged from the early thirties to the sixties. The duration of practice for each was, fifteen years, ten years, and nineteen years. Two lawyers have degrees from the University of Manitoba and one from southern Ontario. One has a previous degree in social work, and one in pharmacy.

Legal Aid - There were six Legal Aid lawyers interviewed, four men and two women. Both female lawyers were under thirty years of age and are

graduates of the University of Manitoba Law Faculty. Both had been called to the bar in the last two years. Of the men, three were under thirty and one over forty. One had a law degree from an Ontario university, the others from the University of Manitoba. One lawyer had a previous degree in education. Two of the male lawyers have been with Legal Aid less than two years, one for three, and one for five years. Most staff lawyers are young, recent graduates of law school. Legal Aid Manitoba was established in 1972. Older established lawyers in private practice act for clients whose fees are paid by legal aid but they are unlikely to give up private practice to work for a government legal service. Recruiting for Legal Aid staff is naturally done among local graduates.

In greater Winnipeg, there are three Community Law Offices, the head office on Portage Ave. downtown, and the University Law Centre. The main office was visited on several occasions and the community offices at Ellen Street Community Legal Services and LaSem Community Legal Services in St. Boniface were attended for interviews. The Legal Aid offices have a relatively informal atmosphere about them, more than those of the private firms. The Legal Aid personnel by their manner of dress, and simple surroundings tend to portray a 'common folk' and casual image. The private law firms maintain a more traditional appearance of reserved dignity.

Community service lawyers by definition represent clients who cannot otherwise afford to pay legal fees. All of their clientele fall into the eligibility range as determined by belonging to a lower income range. A lawyer in private practice may have clients whose fees are paid by legal aid, but most of them are self-paying. This means that for

the most part, private bar lawyers represent middle and upper income clients.

The Family Court Judges

The Provincial Judges Act S.M. 1972, c. 61 Part IV establishes the legislative mandate of Provincial Judges' Court (Family Division) and outlines the various powers and duties invested in a judge of this court. Essentially the main legislative tools at the disposal of the court are the Wives' and Childrens' Maintenance Act and the others listed on page 83, and the Juvenile Delinquents Act which is federal legislation. Although we are not here concerned with issues related to adjudication of the J.D. Act, it is important to note that a great deal of the judges' energies are spent in hearing juvenile matters. All of the concerns dealt with at Family Court can be classified into either juvenile; Childrens' Aid, that is, child protection concerns; and domestic relations. Only the last category is the focus of this study, but one must remember that the judges' perspective on the workings of Family Court is broader than that of the people involved in any one of its components.

Winnipeg Family Court employs the services of five fulltime and four part-time judges who preside at courts in three locations in the city, and travel to nearby rural areas on a circuit basis. During the course of the data collection, five family court judges were interviewed. The interview outlines roughly paralleled the divisions of data analysis, i.e., perceptions of social work activity, and views expressed regarding the activity. As with the other informants interviewed, some basic descriptive information was requested of the judges. All of those interviewed were men, although there were at the time, two female judges.

All are married and most have families. The average age of the judges is late forties. All of the judges received their law education at the University of Manitoba. Three of the informants have been Family Court Judges for more than five years and the other two, less than three years.

PRESENTATION OF FINDINGS: The Legal Professionals' Perspective on Social Work Activities

A content analysis of the data acquired in the interviews with the twelve lawyers and five judges is presented in this section. The categories of 'functional genre' of social work activities introduced earlier are also employed here to organize the research findings. For each functional category, there is a discussion of the lawyers' perceptions of social work activities and their views on them, followed by an analysis of the judges' perceptions and views. Wherever possible distinctions between the modes of practice, either Legal Aid or private, are indicated.

A. Intake Services

(i) Lawyers' Perspective: When asked how they perceived the current intake procedure, all of the lawyers in private practice said they sent their clients to the counsellors for the sole purpose of making application to the court. Two of the six Legal Aid lawyers indicated they too sent their clients for primarily a technical task, but they recognized counselling would accompany the instrumental function of intake. None of them send clients to M.C.S. for intake interviews with a view to encouraging reconciliation. The major purpose of the unit is to act as the mechanism for domestic relations court intake, a technical or administrative chore to which a certain group of social workers has been assigned. Each of the twelve lawyers interviewed had a

slightly different perception of the intake process. Some thought the social workers actually took the client's oath in laying the 'Information and Complaint' and set the court dates. Most said they were not aware of what the counsellors actually did with the clients, but some saw it as an interrogation, a checking up on the lawyer's assessment as in the letter of introduction if there was one, or some other form of routine-type bureaucratic activity. Of the private lawyers, one said he disapproved strongly of the current procedure, while the others appeared unconcerned or had not really questioned the process. It is a routine matter some take for granted - just another technicality. Of the Legal Aid lawyers, two said the current system of intake interviews is harmful to clients and lawyers, while three others were in favour of the current practice. They indicated they appreciated the social workers doing the intake work because it ensured that clients were given an opportunity to express their feelings about taking legal action. One lawyer's understanding of domestic relations court intake was very vague - clients are sent to the court building to be met by a social worker or somebody as merely a part of the routine of getting into court. All but two Legal Aid and two private practice lawyers felt this practice was an imposition on the client.

The view was expressed several times that domestic relations court intake was 'just a lot of paper work' and that it seemed wasteful to pay social workers to do it rather than clerks. Two lawyers in Legal Aid practice and one in private were vehement in expressing the view that they found it an offence to their profession to have a social worker performing the legal function of assisting the client make application to the court. One lawyer said that he found it 'demeaning'.

Some lawyers want to look after all the legal technicalities themselves, without inconveniencing the client by having to go to the court in person to make application. The point was mentioned by both a lawyer in Legal Aid, and one in private practice, that it slowed down an already tedious process. Family Court was originally established to be a 'people's court' for quickly dispensing justice with a minimum of technicality or delay. Some feel that the current intake process runs counter to this principle.

An opposite point of view was also expressed however by lawyers (in both practices) who maintain that the longer people have to reconsider their legal action, the better. Some feel a 'cooling off' period is desirable. It was pointed out by three of the Legal Aid lawyers that many women who come to them with the intention of obtaining a separation from their husbands, reconcile, and consequently cancel litigation proceedings. Because of the high rate of withdrawal of applications, some feel that the current intake service is a needed safeguard. The extra 'hurdle' of the intake counsellor acts as a check to ensure that court action is not initiated in a flurry of anger and then regretted and withdrawn. Some lawyers pointed out that this same check is also a check on peoples' right of access to court. Two private lawyers and two Legal Aid, stressed the view that the client's right to 'due process' is inhibited by having to see a counsellor as a condition of approaching the court. They believed this to be true in principle, even if the intake interview may last only ten minutes and consists of nothing more than completing the required legal documents. The other four private lawyers felt that the advantages of offering the client a chance to discuss their problems out-weighed the disadvantages

of inconvenience and did not see it as an infringement on personal rights. The other four Legal Aid personnel also expressed this view and two of them were positive about the existence of an intake procedure which ensured clients an opportunity to discuss the non-legal aspects of their applications.

A view expressed by all lawyers is that social workers, in doing whatever it is they do, should not attempt to give legal advice to clients. Also they should not change or otherwise reassess the legal instructions sent by the lawyer if his client had them. The major point emerging from discussion with all lawyers is that domestic relations court intake service is regarded as a basically bureaucratic, technical function.

(ii) Judges' Perspective on Intake Services: One judge described the overall attitude of his colleagues aptly when he said that when he was a practicing lawyer, he always resented the system of clients having to see a counsellor to make application to court, but now as a judge, he was glad that this system exists. As a judge he wants the assurance that the people before him have had ample opportunity to explore the possibilities of an amicable resolution before they arrive in court. Most judges value the screening function of intake services for it safeguards against cases coming to court which are inappropriate. Because intake is established the way it is, the judge, in theory, can be fairly sure he is adjudicating on a situation where every effort has already been made to settle the matter out of court.

They appreciate the fact that lawyers are impatient to get their client into court to achieve the legal resolution of the dispute. Often lawyers will try to circumvent the established intake procedure by

appealing to the judge directly for a temporary emergency court order. The onus is on the judge to exercise his discretion cautiously in these situations. He must maintain the viability of the existing intake mechanisms but at the same time not be too rigid in insisting upon proper procedure at the expense of the client. Adherence to formal intake procedure through M.C.S. means a delay of about two weeks before a case is heard, but extreme urgency is not required in most cases. One judge expressed the view that because the intake social worker is regarded by clients as a clerk, and obstacle to access to court, he must be hampered in his function as a counsellor. Because this judge put emphasis on having effective counselling services, he felt he had to be critical of the intake function since routine contact, in his understanding, is anathema to a therapeutic relationship. This judge tended towards the lawyers' viewpoint which takes at face value the client's expressed desire to settle family affairs in court. This position maintains that counselling services at intake simply slows down the domestic relations court process and is thus an inappropriate location for social services. This is a minority opinion held by judges. Indeed the opposite view is maintained by some who regard the placement of family counsellors at the gateway to the court as the cornerstone of humanitarian family law administration. Their position rests on the notion that people are to be encouraged again and again to reconsider their actions and reevaluate their relationship. The opinions of the other judges appear to lay between these interpretations of intake services, though both concepts are acknowledged intellectually, by everyone.

B. Counselling Services

(i) The Lawyers' Perspective: Section 7 of the Divorce Act states:

7(1) It is the duty of every barrister, solicitor, lawyer or advocate who undertakes to act on behalf of a petitioner or a respondent on a petition for divorce under this Act, except where the circumstances of the case are of such a nature that it would clearly not be appropriate to do so,

(a) to draw to the attention of his client those provisions of this act that have as their object the effecting where possible of the reconciliation of the parties to a marriage;

(b) to inform his client of the marriage counselling or guidance facilities known to him that might endeavour to assist the client and his or her spouse with a view to their possible reconciliation; and

(c) to discuss with his client the possibility of the client's reconciliation with his or her spouse.

Since M.C.S. at Winnipeg Family Court assists the Court of Queen's Bench in contested custody cases, and because some post-divorce counselling is done by the workers, it seems logical that individuals engaged in divorce actions would be referred for counselling. Of the twelve lawyers interviewed, only three of them (two Legal Aid and one private) said they regard divorce or separation counselling as even a secondary function of the social workers at Family Court. Any kind of counselling is seen as peripheral to the administrative intake activities. Not one, actually refers clients to M.C.S. for the express purpose of obtaining counselling.

Lawyers assume that whatever counselling happens at M.C.S. is strictly aimed at reconciliation, and consequently they have little use for it. They do however see a definite need for counselling services for individuals and couples who are experiencing difficulties adjusting to their situations. Two lawyers said specifically they sometimes feel badly because they do not have the time or the patience to listen to

their clients talk about emotional problems. Two of the private lawyers indicated they attempt to do some counselling themselves if the situation warrants it, but they recognize that they do not have the therapeutic skills and are not comfortable in that role. The research worker was left with the impression after interviewing the lawyers, that they are skeptical of social services because counsellors will cloud the legal issues and divert the client from pursuing his legal rights and benefits. If the lawyers were convinced that the content of counselling was focused on individual adjustment or on conciliation of corollary matters between spouses simultaneously pursuing legal remedies to their problems, then they would probably refer more clients for service.

When asked if they differentiated between reconciliation and conciliation counselling, most lawyers said yes but they were unaware of any true conciliation-type services available locally. They seemed unaware that any post-litigation adjustment counselling transpired at M.C.S., although most see a need for this kind of service to be available. As for reconciliation counselling, or individual counselling for distraught individuals, three of the private, and four of the Legal Aid lawyers said they occasionally send clients to community family agencies such as Family Services of Winnipeg, or the Y.W.C.A., or Psychological Services Centre. The six lawyers who specifically mentioned Family Services Inc., said a major reason why they tell their clients of this agency is because of its central location downtown. Two of the private lawyers said they never send clients anywhere, since no one had ever asked for advice on counselling aside from legal matters.

One lawyer (private) made the point that it was against the client's interests to have a social worker's notes from counselling sessions

available to the judge on the legal file of the court. The lawyer was surprised to learn that there are two sets of files on clients at Family Court, a legal file, and a social file, which are kept separately. It is likely that other lawyers also harbour this misconception of what happens with the counsellor's notes.

Considerable ambiguity was expressed by the lawyers as to what constituted counselling. One Legal Aid, and one private lawyer seemed well-informed about social work's emphasis on human inter-relationships and communication. For the most part, lawyers seem to regard the case-workers at Family Court as either intruding on legal territory by giving legal advice as counselling, or, at best, encouraging a downtrodden wife to return to a bad marital situation for the sake of reconciliation.

Three lawyers (two Legal Aid and one private) expressed very negative views of M.C.S. They said they had no confidence in the social workers because they were at the disposal of the judges and were thus committed to convincing clients that reconciliation was to be sought at all costs. This attitude is prevalent, though often in a less critical form.

Whether the social counselling services should be located at Family Court or elsewhere was regarded as an issue by the lawyers. Two private lawyers expressed the view that conciliation counselling and individual adjustment counselling should be available, but not directly related to court services. Counselling services should be easily accessible in the community, widely publicized. Lawyers would be encouraged to refer clients in need of therapeutic, non-legal assistance with problem-solving.

(ii) Judges' Perspective on Counselling Services: Opposing views on

intake services are paralleled by differing perceptions of what ought to be the focus of counselling services. Judges were asked whether they distinguished between reconciliation and conciliation counselling, and if so, in what way. One judge said that social workers ought to devote their time and energies to exclusively trying to keep marriages together - that reconciliation was the legitimate objective of counselling services. He felt that the current Family Court service was attempting to provide such services. Another judge responded by saying that he thinks reconciliation counselling is usually unproductive and that counselling efforts are more wisely spent on helping couples and individuals deal with separation.

The other three judges responded in a variety of ways, but the common view was that they see a need for having both kinds of counselling services at the court. As far as they are aware, most counselling services available now are of the reconciliation variety, which they regard as worthwhile. They also see a need for services to be expanded to accommodate persons who may require post-litigation counselling. Most judges seemed unaware that any post-divorce counselling was going on currently. Because divorce matters are dealt with in the Court of Queen's Bench, and the judges are of necessity concerned only with what pertains to Family Court, they assume that no divorce-related counselling transpires in this setting. Basically the judges appeared positive about social work's counselling functions in so far as they are aware of what is involved. Two judges mentioned the legal profession's point of view that whatever else it does, counselling must not presume to include giving legal advice to clients.

A point about counselling was raised by two of the judges which the

research worker had not anticipated. Apparently, sometimes a spouse will tell the judge he wishes to engage in counselling and request an adjournment of the hearing for the motive of postponing the granting of a court order. The judge must be sensitive to whether or not the individual is honestly experiencing an 'eleventh hour conversion' or is just stalling for time. Some judges will adjourn for counselling only if both parties want it. Others may take sympathy on one of the parties and grant a postponement for purposes of reconciliation counselling, for a week or two. The family counsellor may feel caught in the middle in such a case, for the judge appears to want a miracle reconciliation, the two lawyers are anxious to get back into court and settle the issues, and the spouses are probably so filled with ambivalence and guilty confusion, that the social worker becomes a symbol of their torment. This kind of situation does not occur everyday but as rare as it may be, Family Court has a reputation for halting the due process of law to allow for social worker intervention. This makes lawyers very angry and at least partly accounts for the disdain which some legal professionals hold towards social workers.

Most judges expressed the view that counselling probably cannot be meaningful if it is enforced. The negative connotations attached to 'judge-ordered' counselling are, it seems, often ascribed to counselling per se and especially to that supposedly 'imposed' during intake interviews. This fact helps account for the confusing attitudes of some legal professionals who support having counselling services, but do not want them at the court itself. One judge held the view that there should be no counselling services actually in the same building as the court. The majority though are definitely in favour of having

counselling services readily available on court premises.

C. Investigation Services

(i) The Lawyers' Perspective: From the lawyers' perspective, the only investigative function performed by the social workers at M.C.S. is the preparation of homestudies for contested custody cases. Because reports for 'consent to marry' cases are a statutory, internal function of the court, lawyers are almost never involved and so are not aware of what is done in these situations. All the lawyers interviewed discussed their perceptions and opinions on the matter of homestudies, but it was pointed out that contested child custody is not a frequent occurrence in either Family Court or Queen's Bench but access provisions are more often problematic. The judge orders that a homestudy report be prepared either at his own initiative (more often in Family Court), or at the request of one or both lawyers. Lawyers said they would only request a study if they were certain it would be favourable to the client's interests. Because winning the client's case is top priority, all other considerations are viewed in this light.

Most of the lawyers said they regarded homestudies to be of dubious value because the caseworkers had such limited contact with the individuals and situations being investigated. "How can someone assess a parent-child relationship in one visit at which everyone is on their best behaviour?", is the essence of the comments made by several lawyers. They are not aware of the practice regarding the preparing of a homestudy report, that a minimum of four visits are usually required. Four of the Legal Aid lawyers said homestudies are often irrelevant, containing opinion based on hearsay, and full of innuendo. The other two were not so condemning, but said there was a great deal of room for improvement

in the quality of the reports. It must be noted that not all the recent law graduates have had direct experience with homestudies, but expressed opinions based on what they regard as common knowledge among legal professionals. Of the private practice lawyers, no one expressed particularly strong views about the utility of homestudies. Two have had requested them and said the usefulness of the report depended upon the reputation of the caseworker who prepared it. The same view was expressed by two of the Legal Aid lawyers who had a negative impression of the reports. Although they feel reports currently have limited value, most lawyers see them as potentially helpful to the judge in reaching his decision. They see the social worker's report as merely one of the many pieces of evidence with the judge may take into account in his deliberations. It is noteworthy that not one lawyer said the social worker was acting in the capacity of a protector of childrens' interests in offering information to the court on the appropriateness of child placement plans.

One major criticism of homestudies is that they are too vague and 'wishy-washy'. When asked if social work reports should contain explicit recommendations, four said 'yes' (three private); four said 'no' (one private). Of the others, three were against reports regardless of content and one had no opinion. The lawyers expressing the view that reports should not presume to make recommendations did so on the grounds that it is the judges' prerogative to draw conclusions from evidence. Also they felt that no one could make an accurate assessment of a parent-child relationship based on brief visit in the artificial atmosphere created by an investigation. This view was expressed more strongly by those who opposed the idea of having homestudies at all. Lawyers who

said that reports should contain recommendations felt that the caseworker ought to openly express his/her professional opinions. Then, if a lawyer wishes to take issue with the report, it is easier to question a specific observation and conclusion than a vague description of events supposedly relating to that parent's capabilities.

Five lawyers (three private) said they have had the experience of cross-examining a social worker in court on the content of a homestudy report. The others had not yet encountered such a situation in their practice. One lawyer (private) has used expert witnesses such as psychologists or private agency social workers to counter the position supported by a court-ordered report.

(ii) Judges' Perspective on Investigative Services: The role of the social worker as information-gatherer for the judge is a familiar one. There was a variety of opinions expressed by the judges on the social workers' investigative functions as each spoke from his own personal experience with reports prepared by counsellors. Though some comments were more favourable than others, the overall view was that it is a necessary function at domestic relations court.

It appears that the preparation of a report as described on page 96 is automatic when a 'consent to marry' situation arises. By the time the judge sits before the young couple to hear their application he has probably read the report by a social worker who has already had considerable contact with them. After talking to the parties, the judge will arrive at his decision. He may choose to disregard the recommendations of the report, or his decision may concur with its findings. All of the judges said they didn't mind receiving specific recommendation and professional opinions in these 'consent to marry' cases.

The three judges who were asked whether or not caseworkers ought to attempt counselling at the same time as doing an investigation said 'yes'. One judge said that a skilled and experienced counsellor should be able to engage the parties in counselling while gathering information and insight for the report.

The judges brought up the issue that they regard some social workers as possessing more credibility than others. This point is critical, for it seems that much of current practice is influenced by judges' perceptions of the professional qualities of the caseworkers. The degree of credibility attached to a report by virtue of its author's professional image is particularly true in child custody cases according to three judges. In contested custody situations, the judge required the family counsellor to act as his eyes and ears in providing information for a very important decision. Some judges view the actual practice though with less enthusiasm than the underlying principle. One judge said some homestudies are 'next to useless'. Another one takes the view that any sensible judge would not dream of adjudicating on a custody matter without a thorough investigation and indeed, the onus would be on the judge to explain why, if he disagreed with the counsellor's recommendation. These are extreme views on custody matters, the other three judges' opinions are a combination of these. They see the negative factors such as vague and meaningless jargon. The majority of the judges feel that a helpful homestudy is one which describes the parent-child relationships, presents facts on the respective home environments, and makes appropriate comparisons where they are warranted by the situation. Four of the judges said they welcome explicit recommendations, but two of them qualified their opinion by mentioning the

fact that they value the professional opinion of some caseworkers more than others. They all re-iterated that they need not follow the social worker's advice and would treat the report as any other evidence. Each must rest on its own merit. The judge who does not favour explicit recommendation said he would prefer descriptive data and attempt to fit the pieces together and draw his own conclusions. He would only welcome explicit professional judgements if he was assured that there had been a great deal of contact with the parties over a long period of time.

Discussion with the judges^{on} contested custody cases revealed an issue about which the researcher has been unaware. Not all requests for homestudies are justifiable. Sometimes child custody becomes a contentious issue in court, not because both parents sincerely want the child, but because one spouse is using his custody application as a bargaining tool. Even though the contesting spouse may know his application is unrealistic, and insincere, his legal counsel may be using it as a stall. The judge must be sensitive to whether or not the request from counsel truly reflects a custody issue or just a legal conflict. Sometimes a judge may refuse a request for a study if such appears to be the case. More often than not, the referral will be made in response to a request from a lawyer, but sometimes the judges will order a report on his own initiative. The judges try to ensure that all their referrals for homestudies arise from bona fide disputes over child placement. The more genuine the contested custody situation is, the more difficult will be the investigation and reporting. This is because if both parties are truly desirous of caring for their child, and can both offer good homes, the placement-custody decision will be

all the more tenuous.

To summarize the views of the judges interviewed on the investigation services of social workers, it appears that:

- i) Judges support the practice of having court social workers prepare reports for their use in reaching decisions, especially in contentious child custody matters.
- ii) Though the custom of investigation and reporting by family counsellors is accepted, the actual practice is often criticized on the basis of the perceived techniques of conducting studies and preparing reports.
- iii) Caution must be exercised by all concerned, especially the judge, that the custody case is indeed a legitimate dispute.
- iv) Most judges do not feel that the social worker is overstepping the bounds of legal decorum by making explicit recommendations. Judicial discretion prevails on the extent to which the report influences his decision.
- v) The judges seem to place much emphasis on the social worker's individual professional competency as they perceive it.

D. Finance-Related Activities

(i) The Lawyers' Perspective: Pursuit of maintenance can be either through initial application of a court order for alimony and/or child support, or in the form of enforcement of orders in default. As described, the personnel at M.C.S. are involved primarily in the first form of maintenance pursuit but also devote considerable energies to others. The research worker found that most lawyers were unaware of the extent to which M.C.S. social workers are involved in these matters. Because of their function as intake workers for Family Court, the

counsellors are associated with maintenance pursuit in that capacity only, that is, initial application for court orders. Most of the lawyers were not aware of the special relationship that has existed between Health and Social Development Income Security and M.C.S. regarding intake services for financial assistance recipients. The lawyers in Legal Aid were more cognizant of the fact that such clients are encouraged to seek legal action for pursuit of maintenance than were the private lawyers. This is because few of their clients are financial assistance recipients. The Legal Aid people see themselves as part of a system which processes clients, especially women, from the public assistance office, to family counselling-intake services, to Legal Aid, and to the court if possible. Two Legal Aid lawyers expressed views similar to that of social workers on problems dealing with the issues of independent client initiative to pursue maintenance, contrasted to applications resulting from the pressures of public policy. Like social workers, the legal personnel do not see any easy answers and seemed uncomfortable with their role in these situations.

None of the lawyers interviewed were aware that M.C.S. staff are responsible for looking after cases covered by Reciprocal Enforcement of Maintenance Orders Act. They assumed that the Attorney General's Enforcement Office did all the enforcement work, both within and without the province. Legal Aid lawyers send the person to Family Court, assuming they will receive service from whoever does enforcement work, when a client seeks legal assistance in an enforcement of maintenance payments case (regardless of whether the client is on financial assistance or not). The lawyers say they have neither the time nor inclination to become involved in this kind of work, for it would be a costly

expenditure of public funds for them to do so. It is more economical and practical to send the client to Family Court for enforcement assistance because it is a public service there.

Private practice lawyers do not automatically refer their clients who have a court order in default. If the client requires straight forward enforcement services she will be sent to Family Court to obtain assistance for 'free'. If the client is wealthy or considerable sums are involved, the lawyer may initiate proceedings for enforcement. They have means at their disposal such as obtaining a 'garnishing order'. Because private law practice is a business, the lawyer will usually only be involved in enforcement matters if it is to the immediate benefit of his client. Otherwise the client has at her disposal the public enforcement service which is regarded as being as efficient as possible under the circumstances.

Everyone expressed the view that in general we need a better system of enforcement of court orders, both provincially and nationally. Most individuals, regardless of practice mode, think that we require automatic enforcement of defaulting orders by a government data system which monitors payments to Family Court. A dissenting view was expressed by a Legal Aid lawyer though which points out that the practice of leaving the onus on the woman for enforcement guards against potential injustice since an automatic system could result in a man being pursued and harassed even though his ex-wife may have dropped charges against him. It is a complex issue, one impossible to deal with here. The lawyers see it as a legal, or technocratic problem at any rate, not a social work concern.

Not only were the Legal Aid lawyers more aware of the relationship

between financial assistance offices and M.C.S., but they were more knowledgeable about the activities of the Enforcement Office than the others. Both groups however were under the impression that the Enforcement Office does all pursuit of defaulting orders. Some Legal Aid lawyers were negative about enforcement officers saying they were too punitive with defaulting husbands. The Enforcement Office seems to be regarded as a necessary evil. Perhaps it is to the advantage of the family counselling unit that legal professionals are unaware of the involvement in pursuit of maintenance under the Reciprocal Enforcement of Maintenance Orders Act, because it is regarded as such distasteful work, symbolizing all that is undignified and futile in family law.

(ii) Judges' Perspective on Finance-related Activities: The judges were invited to comment upon their perceptions of, and views on, the role of the social workers in enforcement matters, and on their relationship with financial assistance authorities. The judges did not say much about the relationship between domestic relations court social workers and the income security office. They appeared to be generally unaware or unconcerned about the referral system both past and present. When discussing the issue of clients referred from Income Security, that is, the issue of individual initiative for litigation versus that on behalf of public interest, the focus was a broad one. The judges spoke of the relationship between Family Court and the public purse in general.

From where the judge sits, he is usually unaware of who is on public assistance or whose fees are being paid by Legal Aid. From the judicial viewpoint, source of income is supposed to be irrelevant in deciding the marital dispute. When it comes to maintenance issues, the judge is concerned with the validity of the alleged grounds and subsequent to

that, with the ability to pay of the respondent spouse. The judges are quite aware however that a great many clients of Family Court are there because obtaining a court order for maintenance is a quasi-condition of receiving financial allowances, as outlined earlier. One judge spoke extensively on the subject of young women applying to the court for a filiation order to entitle them to child support payments. He said that the majority of women in this position were taking action only at the insistence of the Income Security office. This, he said, is tragic since the proceedings are distasteful and psychologically hurtful to everyone involved. The judge must uphold the law however, and his first obligation is to ensure that his decisions are in accordance with public interest. The role of social workers in these cases is peculiar since it is social workers at the public assistance office who are sending these reluctant clients to court. Even though the referrals may be made by service clerks, in the minds of others, they are thought of as social workers, and it is M.C.S. social workers who must half-heartedly take their applications.

Another situation where individual desires must be set behind public policy is in the awarding of maintenance under the following conditions:

The Wives' and Childrens' Maintenance Act RSM c.294, s.16 states:

16(1) Where the husband and wife have separated by mutual agreement, (and where) the wife has agreed in writing to release her husband from liability for her support and maintenance; no order shall be made under this Act for her support and maintenance.

Limit of application of section:

16(2) This section does not apply
(a) where, in a separation agreement, the husband has agreed to contribute to the support and maintenance of his wife and is in default therein under this agreement.

(b) where, in a separation agreement, the husband has not provided suitably therein according to his circumstances for the support and maintenance;
(c) where the wife has become, or is likely to become a public charge or in need of public assistance.

This last clause emphasises the judge's responsibility to ensure that wives and children do not become dependent upon public assistance, and this consideration overrides any other agreements between private parties. The judges share with the social workers the unfortunate task of implementing public policy at the expense of individual determination at times. For judges, this is an occupational hazard, for social workers, such role strain could be unnecessary if regulations and procedures were designed differently.

Four judges were unaware of the extent to which M.C.S. social workers are involved in the enactment of the R.E.M.O. Act. They seemed to assume that the Enforcement Office has out-of-province maintenance pursuit as part of their mandate. These judges said that it was logical that the family counsellors assist clients in obtaining a provisional, i.e. temporary order from Family Court against an out-of-province respondent. After the order was confirmed, and if in default, they thought then the Enforcement Office would assume responsibility. The one judge who was fully aware of the current system said he thought it worked well and was the best arrangement possible currently. Two of the judges were somewhat critical of the Enforcement officers for being too punitive towards defaulting spouses. Another judge said they take on a counselling role sometimes which is inappropriate. This judge felt that the Enforcement Office should be given more power to do their job, such as the use of The Garnishment Act.

Because they seem to think that family counsellors have little involvement in maintenance pursuit work, beyond the court intake function, judges said they probably should not be doing that kind of work. Judges do not see enforcement-type activities such as preparing "Declarations of Arrears" as an appropriate use of social work personnel. One judge said he sees a need in domestic relations court for staff personnel to determine with clients such matters as the respondent's ability to pay so that the judge can make realistic orders. This, and other financial and budgeting matters which are an important part of Family Court could be looked after by para-legal personnel he said. This judge, and another, noted that it is important to ensure that social workers do not assume the work roles of para-legals.

E. Non-Legal and Indirect Service

(i) Lawyer's Perspective: As one might expect, the lawyers interviewed in the course of the study were not aware of the total gamut of family counsellor work roles. Intake services, some reconciliation counselling, and custody report preparation were named as the activities associated with domestic relations court social work. There was no appreciable difference in response between private practice and Legal Aid lawyers. When asked if they felt whether social workers have a part to play in policy and program planning for services in the family law field, most lawyers said 'yes'. One lawyer in the Legal Aid service said that social service training was more suited to policy analysis and planning than was legal expertise, thus social workers should take more of a leadership role in the field of family law administration. Two private practice lawyers expressed the view that social workers were conspicuous in their absence from planning in family law service delivery.

They said that social workers experienced in the domestic relations field should contribute to modernizing the administration of court-related services.

Another two lawyers (private) brought up the issue that social workers in general should address matters of prevention of social problems. They specifically mentioned that family counsellors have a role to play in offering educative programs to the community. One lawyer referred to Family Life Education while the other said family counsellors should inform the public about the social aspects of family law. The lawyers here were talking about social work in general, and not necessarily the specific social workers employed at Family Court. As for M.C.S. which is perceived as primarily intake services for domestic relations section, it was mentioned that there should be more community involvement especially of an educative nature. One lawyer made the suggestion that these social workers should be invited to speak to law students about the non-technical aspects of family law. For the most part, the lawyers interviewed expressed the view that social workers could be doing many more activities in their work settings and the larger community than are now manifest.

(ii) Judge's Perspective on Non-Legal and Miscellaneous Activities:

Judges have most contact with the family counsellors through their function concerning court intake, occasional counselling, and report preparation, so were unaware of the non-court related activities. When asked if social workers had a part to play in the family law field, they all answered affirmatively, although with varying degrees of commitment to the concept. Two judges added that since government planners did not see fit to include judges expertise in their planning resources,

why should social workers be granted more credibility and input?

The judges felt uninformed on their activities outside of direct service to the court. One judge did say he would like to see social workers engaged more in preventive work such as community education in family matters. He was speaking of social work in general however, not specifically of M.C.S. staff.

In interviewing the judges, the research worker was continually reminded of the other elements of Family Court by their frequent references to probation officers and child welfare workers. This was expected, for as noted, the role of the social worker in Family Court has been generally associated with juvenile corrections and child welfare despite the existence of domestic relations court social work organized in their own unit. Although there have been caseworkers at the court for many years, there is a tendency to forget that they are social workers first and court counsellors second. The concept of social work functions in Family Court is first equated with probation services.

The role of the social worker in the domestic relations court has not been critically examined by the judges. This is not to say that the services they perform are not appreciated - in fact, the statutory-type services are so much an expected part of procedure that the role of the counsellor is seldom questioned. It is taken for granted that a social worker will be available when needed for some assignment. Collectively little critical analysis of appropriate utilization of casework personnel has been undertaken by the judges. Most approve of having social workers present and appreciate their assistance and expertise when called upon, but the judges have not addressed the larger issues about who social workers are, and what they should be doing.

Judges are very busy people, and it seems the onus ought to be on social workers to elucidate the issues around utilization of expertise which require clarification.

CHAPTER VIII

FINDINGS ON RELATED ISSUES

The interview guidelines employed with the three professional groups were divided into roughly two parts, the first addressing work activities and the second inviting opinions and ideas from the interviewees on issues relating to family law administration and social work's contribution. The preceeding two chapters presented the content of the first order of information while this contains a synthesis of the data on the theoretical and subjective professional views. Though the interview outlines were designed to be appropriate for each professional group engaging in the focused discussion, the substantive information acquired was classified under four common categories relevant for presentation of data from each perspective. The thematic categories of Social Work and Quasi-legal Activities, Family Law Concerns, Social Services in Court Settings, and Innovations in Service Delivery were outlined in the methodology discussion. The structural organization of this chapter employs the four areas of concern for which social workers', lawyers', and judges' views are presented.

F. Social Work and Quasi-legal Activities

(i) Social Workers' Views: Central to discussion of utilization of social service personnel in domestic relations court, is the extent to which caseworkers ought to engage in quasi-legal activities. This includes the range of legalistic work from the technical task of preparing documents, to the more esoteric legal function of advising

clients on their rights and obligations. There is considerable diversity of opinion on this topic emerging from discussion with the different professional groups.

The caseworkers at Winnipeg Family Court currently are responsible for some legalistic technical tasks associated with intake services, and with facilitating maintenance pursuit in its several forms. Filling out case 'disposition forms' that is, instructions to the court clerk on what action is to be taken, during intake procedure seems to be regarded nonchalantly by most counsellors as necessary drudgery. Two social workers said it was unfortunate that filling in forms was a necessary part of an intake interview because it sometimes interrupts the natural flow of communication. The view was also expressed however that an experienced counsellor can incorporate data-gathering for technicalities into discussion with the client so it need not be inhibiting. In some situations the necessity to use legal forms and terminology may even be used creatively to help the client organize their thinking about problem-solving.

Another major area of social work involvement with legal technicalities is work under the mandate of the R.E.M.O. Act. The counsellor assists the client in preparing a 'statutory Declaration of Arrears' stating, under oath, for the reciprocating court, how much money is in default on a court order. Some caseworkers do more than others, but it appears that almost all of the caseworkers have some involvement with this activity. Most said they disliked it because it is mechanical and time consuming. All the interprovincial correspondence in these matters is processed through the Attorney General's Department who directs it to the appropriate reciprocating jurisdiction. "It is strictly legal

paperwork" was the view expressed by six of the caseworkers, one did not seem to mind, and the other is not responsible for them.

In some domestic relations courts in Canada caseworkers carry responsibility for quasi-legal functions relating to money matters. As pointed out in Appendix A, the counsellors in the B.C. Pilot Project have the following as part of their functions: "assisting clients with the preparation of separation agreements in matters of spouse maintenance child maintenance custody and access." The counsellors at M.C.S. have no comparable function and when asked for their views on social workers doing separation agreements with clients, there was a mixed response. Most were not sure what would actually be involved in such work. Because it could have significant consequences on family financial arrangements and possibly property matters, they said such functions should be left to lawyers. All felt that money and property concerns are best handled by legal professionals in the current system. Expressed one way or another, most concurred with the view that 'a little bit of knowledge can be a dangerous thing' and clients would be better served on material matters by legal counsel.

Two caseworkers emphasized the point that they felt inadequate and ill-informed as the main reasons why they would not want to be involved in drawing up separation agreements. Two other counsellors said that debating about money and possessions is not a legitimate role for a skilled marriage counsellor. His time is better spent on discussing communication, sexual, in-law, or parenting problems with the couple. Another counsellor said that if there were radical changes in family dispute resolution, then perhaps social workers would specialize in incorporating such elements of marital dissolution into a total package

of conciliation services. This hypothesis rests on the assumption that resolution of marital conflict would be relieved of the adversarial procedure, and legal professionals would only be called upon as a last resort if adjudication became necessary. Our current adversarial system, even in its most informal manifestation at Family Court, requires that its clients have legal representation if they want to use it to their advantage. The social workers who have given the issue consideration expressed the view that the current system is the proper bailiwick of legal professionals and is best left that way, until wider changes alter the whole climate and practice family law administration.

(ii) Lawyer's Views: During the interviews, lawyers were asked to respond to the description of the Unified Family Court Project counsellors' preparation of separation agreements with clients. Four Legal Aid lawyers said they would welcome the practice of social workers doing income budgeting and maintenance counselling with clients. They could in fact lay out the terms in rough drafts of separation agreements and this would be helpful to lawyers. Two private lawyers shared this opinion. They think of social workers in this capacity as working for lawyers, and thus they could be trained to specialize in doing budgeting and maintenance counselling in order to meet clients' needs and save time and effort for the lawyer. The other two Legal Aid lawyers were not so enthusiastic about having social workers become involved in maintenance work of this kind.

Most felt that property issues should be handled by legal professionals but these lawyers extended apprehension about lack of knowledge on material issues to include all such aspects of marital breakdown. Three private practice lawyers too felt that social workers should not

presume to do legalistic separation work for a variety of reasons which came up either singly or in combinations: social workers should concentrate on the interpersonal relationships, not money matters; counsellors may give poor financial advice with disastrous effects for the parties; social workers will come to be regarded as para-legals and consequently sub-professionals, if they do separation agreement work.

Two lawyers (one in each practice) expressed the notion that should the adversary system in family law be replaced by conciliation proceedings, then social work personnel would have to assume responsibility for most aspects of marital dissolution. Financial matters would be a major concern to be handled, although in cases involving property disputes, legal representation and adjudication would still be necessary. Another lawyer (Legal Aid) said he anticipated a time when social workers and lawyers would work together in a team environment to assist people with the various aspects of their family problems. Each professional would offer the service functions that he was trained to perform.

(iii) Judge's Views on Social Work and Quasi-legal Activities:

As noted, the Family Court judges interviewed did not appear to be well-informed on the variety and range of social work activities at M.C.S. Because the judges assumed the primary role to be marital and individual counselling aside from intake services, their response was 'social workers should not be involved in doing separation agreements' when asked about this quasi-legal activity. Lawyers should handle all property and financial matters according to the judges. The research worker was left with the impression that if the judges were more aware of the legalistic paper work which is performed at M.C.S., they may disapprove on the grounds that it would be an inappropriate use of

manpower.

Although the judges collectively hold the view that social workers should not try to do the work of legal professionals, the point was raised that a court social worker requires special indoctrination. One judge said, for example, that caseworkers usually make very poor witnesses in court because they have no training in the laws of evidence. Family Court social work is a specialized function requiring specialized personnel. It was stressed by two judges in particular that social workers ought to maintain professional autonomy and independence from the judiciary. They said it is important for social workers to advance their professional identity in the court setting.

G. Family Law Concerns

(i) Social Workers' Views: An area of questioning with caseworkers concerned legislative and administrative changes which they feel should be implemented, and how these would affect the roles and functions of social workers in the Family Court. All eight caseworkers mentioned that there needs to be wider access to court for men. As illustrated so far, the key legislative tool of domestic relation court is the Wives' and Childrens' Maintenance Act. There is only one section of this statute which allows men access to Family Court for separation and it is rarely used.

"Where the wife of a married man is an habitual drunkard, the man may make application either to a County Court judge or a magistrate for an order under Section 18 and this Act, mutatis mutandis, applies in such as case, for separation, custody, and maintenance". (Wives' and Childrens' Maintenance Act. R.S.M., c. 294. s.7)

More than one caseworker said that 80 percent of the clientele of Family Court are women. That widespread legislative changes in family law are

required is a truism. One way to reduce the double standard operating against men and women in the legislation, is by elimination or drastic alternation of the concept of fault. It is too complex an issue for discussion here although most of the counsellors at M.C.S. mentioned it at least briefly. The main point emerging from their responses was that legislative changes will profoundly affect counsellors' roles. With elimination of the necessity to prove the grounds of cruelty, drunkenness, and so forth, the chances of encouraging spouses to calmly discuss their marital problems will be vastly improved. As it now stands, even where a couple wish to part amicably but want a judicial separation, they must go to court in the usual manner and the judge will grant a 'consent order'. The respondent spouse consents to the validity of the grounds alleged by the petitioner and in so doing, admits to accusations of non-support, desertion, cruelty, etc. The legal terminology and procedure prevailing now, inhibits bona fide conciliation counselling for it all rests upon the philosophy of fault and its corresponding adversarial system. Most of the caseworkers anticipate engaging in more counselling when the fault principle is altered.

The topic of contested child custody and the issue of who protects the interests of children in domestic relations court is also problematic in terms of family law legislation. In order to focus the discussion, the caseworkers were asked for their views on the role of the 'family advocate', a lawyer who is assigned to safeguard the interests of children in the court. The example of the Family Advocate at the British Columbia Unified Family Court Project was used. Their Unified Family Court Act states:

8(1) The Attorney General may appoint a person who is a member in good standing of the Law Society of British Columbia to be a family advocate.

(2) A family advocate appointed under subsection (1) may, notwithstanding any other Act,

(a) attend a proceeding in a court respecting a family matter or a matter respecting the delinquency of a child,

(b) intervene at any stage in a proceeding under clause (a) for the purpose of acting as counsel for a child, who in the opinion of the family advocate or the court, requires representation by counsel; and

(c) upon request of a court, assist any party to a proceeding under clause (a) who is not represented by counsel (1974, c.99.s.8).

No one interviewed knew just how a lawyer functions in the capacity of advocate but all eight caseworkers said that, in principle, social workers rather than legal personnel, are by their training and experience more suitable guardians of children's rights and interests. The research worker was surprised at first that none of the counsellors felt that changes are required in current provincial legislation pertaining to children in domestic relation affairs. One caseworker said it would be a mistake to make custody reports mandatory because they would soon become routinized and lose validity as a mechanism to assist in effective decision-making. Another caseworker cited the example of Ontario's system of requiring a study to be prepared by the local Children's Aid Society in contested cases. This system appears to be rather arbitrary and potentially meaningless to this worker, and so he supports current Manitoba practice where judicial discretion determines whether investigations will be undertaken. Two workers expressed the views of the unit when saying that insofar as children's issues are concerned, our current legislation is adequate, and any improvements in the administration of domestic relations law will evolve from interpretation and daily

practice.

(ii) Lawyer's Views: The lawyers were asked 'what legislative and, or, administrative changes would you like to see to enhance peoples' rights and to promote the fulfillment of duties in family conflict situations?' All of the lawyers responded affirmatively with varying degrees of elaboration to the need for wider access to Family Court for men, alteration of the grounds for separation and divorce, (most favouring 'no fault'), and more effective laws and enforcement for maintenance pursuit. Two lawyers (Legal Aid) were adamant about the need for practical reform in the enactment of the legislation already in effect but not practiced, for example, the police's reticence in enforcement of court orders in domestic disputes. What is needed is not new legislation but proper and complete utilization of the provisions already in existence. This concept of making better use of current legislation was brought up by several legal professionals. For example, when asked for his views on the role of the family advocate, one lawyer said we already have legal mechanisms for a Family Court judge to appoint counsel for the child if the situation warrants it.

Some lawyers were in favour of having a legal advocate in Family Court for children. (Two Legal Aid, one private) for they said our current system inadequately represents children's interests. One lawyer (private) was against the use of such lawyers since it perpetuates and intensifies the adversarial procedure in domestic relations matters. The other lawyers basically shared the opinion that the advocate, as described earlier, sounded fine in principle but quite untenable in practice. More than one lawyer said, "How can you take instructions from a three year old?" which captures the essence of the majority

opinion on this topic.

The lawyers were also asked 'who are the protectors of children's interests in domestic relations court?' Although two said no one, most suggested it was the judge through his interpretation of the doctrine of reaching decisions which are 'in the best interests of the child'. No one included social workers in their discussion of safeguarding children's interests.

When they were invited to comment generally on social work in family law, most added nothing, but two said that no matter what, counselling should never be made mandatory in legislation. Three lawyers (two Legal Aid) who foresee a time when domestic relations problem-solving will be relieved of the adversary system, said counselling will become more viable than litigation. One said specifically, "family problems are human relation matters not legal issues."

(iii) Judges' Views on Family Law Concerns: The judges were asked 'what legislative and, or administrative changes would you like to see to enhance the safeguarding of children's interests?' The substantive kernel of each varied response was that we ought to make better use of the legislation we have now rather than introduce more laws. The judges sincerely attempt to apply the principle of deciding 'in the best interests of the child'. Legislating mandatory custody reports is regarded as less desirable than the current practice of judicial discretion. One judge also mentioned the example of Ontario's official guardian system which he feels may be routinized thus over-used.

The judges' response to the description of the family advocate in B.C. was similar to that of the lawyers. Most said it sounded fine in theory but unworkable in practice. Two judges pointed out that we

already have sufficiently flexible legislation to accommodate the establishment of an ad hoc child advocate position. Counsel can now be appointed to represent a child when ever the need should arise, in the opinion of the judge.

H. Social Services in Court Settings

(i) Social Workers' Views: A critical issue pertaining to social services attached to a court is whether the counsellors enjoy 'privileged communication'. Although Manitoba legislation does not explicitly grant it to the counsellors, apparently in actual practice few situations have called attention to the matter. Theoretically, a family counsellor could be called upon to give evidence at a hearing and be compelled to disclose the content of counselling sessions. Two of the social workers said if ever this happened to them they would refuse to reveal information which had been shared in confidence even if it meant being in 'contempt of court'. Two other caseworkers were incredulous that such a travesty of the client counsellor relationship could ever occur. One counsellor insisted that they were immune to being called as a witness by virtue of section 21 of the Divorce Act which states:

21(1) A person nominated by a court under this Act to endeavour to assist the parties to a marriage with a view to their possible reconciliation is not competent or compellable in any legal proceedings to disclose any admission or communication made to him in his capacity as the nominee of the court for that purpose.

(2) Evidence of anything said or of any admission or communication made in the course of an endeavour to assist the parties to a marriage with a view to their possible reconciliation is not admissible in any legal proceedings. (1967-68, c.24,s.21.)

This clearly grants counsellors involved in a divorce proceeding privileged communication but such protection is nowhere stated in

provincial legislation pertaining to the counselling services at Family Court. Although some caseworkers were more concerned about the issue than others, all held that counsellors need the exemption from being a compellable witness. As long as the client-caseworker relationship is valued, and thus protected in practice at Family Court, such concerns are not regarded as critical.

In daily practice, the social work unit relates to the court which is run by the Attorney General's Department. Administratively, M.C.S. is accountable to the social service bureaucracy, that is, the Ministry of Corrective and Rehabilitative Services. Whether court-related personal services should be under social service administration or judicial-legal administration was regarded by the research worker to be a relevant issue. All eight caseworkers discussed the matter saying that from their perspective it does not matter what government department they come under. Some advantages and disadvantages for service delivery associated with each emerged during the interviews.

Advantages of Judicial-legal Administration:

- All court, and court-related, services would be under the same administrative mandate so inter-unit communication would be enhanced.
- The close relationship existing between Income Security and M.C.S. could be reduced because they would no longer both be part of Health and Social Development.
- It would encourage a clearer role definition of counsellors as court personnel, for example confusion around whether the counsellor is an officer of the court would be clarified.

Advantages of Social-service Administration:

- The counsellor's professional identity as a social worker first and

court personnel secondly would be advanced.

- Communication and referral services with other social service providers in the community could be encouraged by stronger identification with a common practice content.

- Keeping legal records and social files separate, as now occurs since M.C.S. was separated from the Attorney General's Department, is regarded as a positive practice by the counsellors.

None of the caseworkers expressed strong preference for either form of departmental administration, whether dominated by the legal profession or social service bureaucracy. Justifiably or not, they seemed to feel that such matters have little consequence for daily practice.

More than one counsellor pointed out that, although M.C.S. is under the auspices of the Ministry of Corrective and Rehabilitative Services, in the 1976 Annual Report of the Department of Health and Social Development no mention at all was made of the unit's operations at Family Court.

(iii) Lawyer's Views: When the lawyers were asked for opinions on whether counsellors at Family Court ought to have 'privileged Communication' there was a diversity of responses. Some were not prepared to comment definitively, but six said 'yes' (three of each practice) and two said 'no'. (one of each) The negative view arises from a fear that privileged communication can be abused in the court, and that too many people will be immune from having to give evidence. Lawyers who agreed in principle that the social worker-client relationship should be protected said so on the basis that effective counselling is inhibited if the client fears possible disclosure of the content of counselling sessions. Two lawyers said it is unethical for counsellors to inspire

an unwarranted trust in confidentiality under the current system.

Regarding more general matters around social services at the court, the overall impression was that lawyers have little contact with counsellors because they are isolated, and poor intercommunication prevails. Lawyers feel, for the most part, that Family Court judges tend to protect the social workers in the process of their making family law more informal than in the higher courts.

On the issue of departmental placement and administration of a counselling unit, of the lawyers who offered opinions, three in Legal Aid and two in private practice, said that counsellors should come under social service administration. No one said they should be under the same administration and supervision as the legal court services since they feel the counsellors should be autonomous from judicial influence. Three private lawyers expressed the view that social workers should be entirely separated from the court but linked by an effective referral system.

(iii) Judge's Views on Social Services in Court Settings: The issue of whether social workers should be granted privileged communication evoked responses from the judges which, though expressed differently, amounted to a shared opinion. The viewpoint was enunciated by one judge who said, "It is understood in law that communication made in confidence is not admissible as evidence." All five judges said that in actual practice counsellors have not been called upon to give evidence which could be damaging to either party. The counsellor-client confidential relationship is protected in the court's transactions. The judge quoted above said that since privileged communication prevails in practice, the issue need not be complicated by creating legislation

to state what is already in existence. The other four judges expressed the view that it would be a good idea to clarify the point in law so that counsellors would be immune in theory as well as in practice. One judge pointed out that it would take only one case to drastically alter the current situation regarding the special status attached to the content of marriage counselling sessions.

When asked whether a counselling unit should come under judicial-legal administration, or social service, three judges said that all court, and court-related services, should come under the auspices of the legal administrative body, which would mean the Attorney General's Department. They feel it would improve inter-departmental communications and facilitate cooperation. As it stands now, according to one judge, "the left-hand does not know what the right is doing." Another judge believed that a counselling unit should be independent from the legal personnel but attached to the court. He said this could be accomplished by having family counsellors under social service administration but located on court premises, basically as now exists in principle. The one other judge said that social services should be completely independent and separate from court services. He said that a smooth running and complete referral system must be included in such a network however to ensure that the court would send clients for personal services.

I. Innovations in Service Delivery

(i) Social Workers' Views: Earlier chapters mentioned some of the approaches to social service delivery employed in domestic relations courts elsewhere. The staff of M.C.S. were invited to comment on what kinds of novel approaches to practice and family law administration they consider applicable. Six caseworkers felt that using group-work techniques

would be appropriate as a counselling mode in this setting. It seems that no one has tried to implement a group-oriented program at the service unit in the past, but it is regarded by most as a desirable and possible option. One counsellor said that some self-help groups could be based at Family Court too.

In some domestic relations court, attempts have been made to use volunteers as a secondary manpower resource. At the B.C. Unified Family Court Project some ideas were put forth to use volunteers to sit as lay panelists with judges; to assist family counsellors supervising access cases; to sit on the Family Court Committee interpreting the needs of the court to the public; and assisting by visiting depressed women or driving people to court. It is not known how this project has been evaluated. At any rate, caseworkers were invited to comment on these practices. One counsellor said that the matter of confidentiality would be jeopardized. Another said that a new Native Court Worker Program will meet some of the needs implied in the above description of volunteer use. As for the committees, or citizen advisory boards, the principle of citizen participation is held to be a valid concept but the practice is problematic. One counsellor expressed a commonly-shared view when he said that they would attract the same quasi-professional do-gooders who sit on agency boards already.

When invited to add any suggestions for augmenting service delivery, one caseworker said counsellors should be placed in the Legal Aid offices. As far as using the present establishment at domestic relations court in new ways, a counsellor said they thought M.C.S. would be an excellent location for a social work education field instruction placement. Another caseworker introduced the idea of establishing some mode

of follow-up service especially for monitoring the long-term outcomes of contested child custody cases. It appears that the current mandate of the unit does not exclude follow-up services, thus as they are not restricted, such approaches to delivery of personal services could be probably implemented.

(ii) Lawyer's Views: The lawyers interviewed were also invited to respond to the idea of use of volunteers, as in the B.C. Project. Though no one had given it much consideration before, most were very skeptical. One said, "no - volunteers in most settings are more trouble than they are worth." After a moment's consideration most lawyers expressed some version of the view that citizen participation and volunteerism are fine in theory, but they are often unworkable in practice. Some lawyers have had experience with advisory committees and have found them to be impractical. One lawyer brought up the point that the actual work of the court has such a profound influence upon the lives of its clients that it should be left to experienced professionals who are held accountable for their actions. Three of the Legal Aid lawyers said they would welcome having a family counsellor based in each Legal Aid office. This innovative approach to administration of family law was not mentioned by the others. Most lawyers said they had not really considered novel ways of administering family law, aside from the institutional changes which have been debated in public forums on law reform. Two private practice lawyers felt strongly that social work professionals should be more assertive in proposing changes and implementing alternative modes of service delivery.

(iii) Judge's Views on Innovations in Service Delivery: Because of time pressures, only four of the five judges shared opinions on use

of citizen participation and volunteerism. One judge said citizen participation in any of its forms is a luxury we can not afford yet in the field of family law until the 'bread and butter' issues are looked after. The other three said advisory committees and the like, are fine in principle but they do not work in practice. People on such boards or committees are often ineffectual and even those who want to work are not aware of the relevant issues, as are professionals who deal with them daily. Two of these judges said that perhaps volunteers could assist the counsellors in some capacity at domestic relations court with social work supervision.

As for an overall view of innovations in service delivery at Family Court, one judge said that the introduction of para-legals to do ground-work could be very beneficial. Judges spend much time determining a client's assets and expenditures so that his court order reflects one's ability to pay. Such maintenance and budgeting work could be handled by para-legal personnel.

One judge who has given the topic of innovative approaches to family law administration, considerable thought suggested that there could be established advisory panels of experts, in child development for example, to act as consultative resources to the judges. Family Court judges could participate in continuing education programs in family-related studies and family law development. A far-reaching alteration in the philosophy and practice of family law was suggested by one judge who supports the adoption of the Japanese practice whereby a domestic relations court judge, before adjudicating a dispute, must receive a certificate from a family counsellor stating that there is no hope of an amicable settlement.

CHAPTER IX

DISCUSSION OF RESEARCH FINDINGS WITH THE
THEORETICAL FRAMEWORK

Specific conclusions and recommendations about social work practice arising from critical commentary on each functional genre and thematic category are presented in chapter ten. This chapter however contains a drawing together of the finding's descriptive data with theoretical material outlined in the literature review and conceptual framework. Descriptions of social workers' roles and functions and the perceptions of them held by legal professionals illustrate many of the concepts. For example, theoretical approaches to social work in organizations suggest explanations for several phenomena observed in the empirical research on domestic relations court.

Referring to the initial discussion of Canadian family courts, one recalls that the Law Reform Commission of Canada pointed out disparities in provisions of social services and, with a view to future improved systems, emphasized the notion of 'local conditions' as a determining factor of service delivery. Legislation concerning domestic relations is a provincial matter except for divorce and juvenile delinquency but their administration falls under provincial jurisdiction. The importance of 'local conditions' reflecting the historical development of courts and their ancillary services is manifested in Winnipeg Family Court. The presence of professionally-trained social workers separate from probation officers since 1947 makes it unique in the Canadian scene. Furthermore, it has remained the only unit attached to a family court in Manitoba. In northern communities, programs which

are provided in the city by Children's Aid or M.C.S. are performed by personal services workers of the Department of Health and Social Development, if at all. In social welfare, not only does need determine establishment of services, but sometimes availability of services determines the perceived need. For example, since M.C.S. is available to family and divorce courts in the metropolitan and surrounding areas, its resources for child custody reports are utilized. In remote non-urban jurisdictions, it appears homestudy reports are rarely ordered, and marital counselling is seldom suggested by the judges since the facilities are not readily available.

Another manifestation of this 'local conditions' phenomenon is the close inter-relationship between M.C.S. and the local offices of the Income Security Division of Health and Social Development. A high degree of cooperation between income security personnel and court service personnel was established by functionaries in the past and consequently the inter-relationship between services continues. Procedures may be altered by factors such as manpower constraints, but the liaison and referral system between them is highly developed. It appears that in other provinces financial assistance offices do not rely so heavily on the intake services of Family Court as is the practice in Winnipeg.

Another aspect of the 'local conditions' concept is the effect of 'geography' upon the service unit. The fact M.C.S. is situated in a sizeable metropolitan center means it serves a large and varied population. However, because its actual location is in a semi-suburban area, away from the city center, complaints were heard that it is too remote to be accessible to the total community. This point was raised as a

reason why downtown lawyers (both Legal Aid and private) do not refer clients to M.C.S. for counselling. The fact of the matter is that existing downtown court facilities are reserved for the exercise of the 'higher jurisdictions', while Family Court and its attendant services are relegated to locations in various old buildings in three different parts of the city. A centrally located, spacious, dignified, and modern building would do much to improve 'local conditions'.

Dissensus in opinion within the legal profession is illustrated by discrepancies in the perceptions of family court social services held by the Federal and Manitoba Law Reform Commissions. At the policy and planning level, some legal professionals favour implementing social services to assist and in some cases, supplant traditional approaches to family law administration. Such is the stance of the federal commission, although the motive is that the legal profession and justice administration is to be assisted, not replaced by social services. The Manitoba Law Reform Commission appears to be more conservative in its views and is skeptical of the benefits of expansive social services. While elements of the legal profession in influential circles, and in daily legal practice, debate the usefulness of social work services, units such as M.C.S. go about their business. The establishment and subsequent development of M.S.C. has largely resulted from the encouragement of individual judges, influential at Family Court. Under the aegis of judges, sympathetic to a conciliatory approach to family law, the service unit has expanded and acquired an array of responsibilities, perhaps not all of which ought to have been so readily accepted. Historically, no doubt, M.C.S. owes its existence to legal professionals in positions of authority for whom a 'jack of all trades' counselling service

was a desirable addition to the court.

Judges for the most part, appear to be supportive of conciliation procedures rather than adversarial litigation in domestic matters. Lawyers on the whole remain skeptical of social work's contribution and collectively hold a wide range of views on the subject as observed in the research findings. Much of the legal professions ambivalence about social work functions results from misunderstanding of actual practices and from stereotypes and false reputations which persist. This situation is not unique to Winnipeg for as mentioned in the literature on social work and law there are fundamental sources of conflict. Some major areas of difference between law and social work were outlined as professional methods, diffuseness of social work, and agency setting.

The adversary system on which legal methods are based requires the elucidation of facts to prove innocence or guilt and accordingly to determine who pays how much to whom. Though social workers currently are compelled to function within the framework of adversary procedures, they attempt conciliation whenever possible. The counsellor aspires to have both persons in his office to discuss the sources and consequences of their conflict. The lawyer requires the 'facts' of the situation from his client and may not communicate with the other spouse at all except through his respective solicitor. Not only are the basic methods different in theory and practice, but as Sloane's and Smith's research (cited in Chapter three) illustrated, social workers and lawyers hold negative attitudes towards one another. The stereotypes of the hard-headed, calculating lawyer and the soft-headed, ineffectual counsellor are still prevalent.

The diffuseness of social work practice is evident at domestic

relations court. Counselling, custody work, enforcement of maintenance, court intake services, and other duties constitute a broad base of practice functions. The M.C.S. caseworker resembles the new British divorce court officer were it not for our emphasis upon pursuit of maintenance monies on behalf of clients and the financial assistance bureaucracy. With separation of strictly finance-related activities from the conciliation counselling function, there would be less diffuseness in the caseworkers' practice. Increased specialization of functions may tend to reduce the confusion observed among legal and social service personnel around the multiplicity of tasks. Also, there exists considerable incongruence in perceptions of certain social work roles. Both groups of professionals held a variety of views, for example, on social work's real or potential role in policy making and planning services in family law. Some of each profession were positive, while more social workers than lawyers were negative or indifferent about indirect service. There is also incongruence in perceptions of certain functions within each profession. For example, caseworkers define counselling very broadly, comparable to Smith's research mentioned on page 41 which illustrated disparity in that task's definitions. The perpetuation of a high degree of diffuseness in social work practice contributes to misunderstanding between the legal and social work professions.

Another source of interprofessional antagonism suggested was 'agency setting'. Lawyers criticize the social service unit partly because they do not understand how a social service agency operates. Those who regard the caseworkers as bureaucratic functionaries perhaps do not appreciate the multitude of constraints upon professional practice

in a technically-oriented establishment. It was observed that adherence to formal procedure is essential to avoid chaos. Lawyers lack of awareness about bureaucratic agency functioning is also illustrated by their emphasis on the power of the judge. Lawyers seem to think that because judges possess decision-making authority in the court room, they must also have administrative and inter-organizational influence. Within the total bureaucracy or agency of Family Court he is undoubtedly a key figure, but nevertheless functions as another staff member in the larger administrative system. Many lawyers mistakenly assume judges to have inordinate power and administrative influence over social workers and other personnel in the organization.

As discussed earlier, in literature on inter-professional differences, the legal profession has not concerned itself intensively with the structure of organizations, or service delivery systems, as has social work. This must partially account for why legal professionals tend to overlook considerations of professional practice in bureaucratic settings when contemplating court-related social services. The interplay of professionals and service organizations, specifically social workers in bureaucracies, is a crucial consideration in family law administration. The results of bureaucratization, exemplified by 'routinization of activity' and 'formalization of relationships' are readily apparent at Family Court. As observed, intake services manifest these phenomena, not because the personnel are automatons, but simply because bureaucratic practices are necessary to ensure smooth operation of the system. It is necessary to process the cases of thousands of people with efficiency and fairness, thus routine, rules, and formal procedures are adapted to this particular setting. Case disposition

forms, court applications, affidavits, court notices, are all instruments of a complex bureaucracy for processing human problems. The legalistic paraphernalia exists for a justifiable purpose, but can become dehumanizing if its implementation becomes the 'end' rather than the 'means' to fulfilling a human need.

The theory that a combination of professionalism and bureaucratic orientation has a conservatizing effect among personnel has some validity at Family Court. When a social worker must interact with several emotionally distraught clients during intake and counselling interviews each day, it is essential to maintain a 'strictly professional' stance in the worker-client relationship. The compatible elements of professionalism and bureaucratic orientations serve to protect the caseworker's mental health and promote what can be a positive aspect of conservatism. Clients may benefit more from encountering structured interaction when they approach the formidable court setting than if the climate was casual and informal. There is a certain comfort in a conservative and formal atmosphere when that is what most people expect. The other aspect of this theory was that professionalization in combination with a client-orientation tends to be radicalizing. An example, feasible though unlikely, would occur if a caseworker refused to accept a referral from income security for a client reluctant to take action for maintenance pursuit. It would be difficult to justify client self-determination over adherence to public policy regulations in most cases of potential conflict, but as previous researchers have pointed out, workers usually opt for the agency orientation when in doubt.

The caseworker at Family Court is potentially faced with a multitude of sources of conflict between service goals dictated by administrative

structure and goals or values arising from his professional culture. The research findings indicated that the court's function of ensuring that financial assistance recipients attempt other legitimate sources of income can cause incongruence between organizational goals and professional values. Social work's commitment to individual self-determination is, on one level, incompatible with encouraging someone to engage in litigation against their will due to bureaucratic constraints. At another level of interpretation, the practice may be justified if one readjusts the value hierarchy to subordinate personal preferences to public responsibility. The concept of 'discrepancy in value orientations' as a source of conflict for professionals was mentioned in the earlier discussion of breakdown in role complementarity. This inconsistency between the organizations' expectations and work activity of the staff has several facets but the most critical concerns value orientation.

An aspect of value conflict is apparent in the disparity of methods of problem-solving between the legal and social work profession. That of conciliation as opposed to adversary proceedings is obvious. At another level, the lawyers and social workers conceive of clients' rights differently. One upholds his abstract legal rights, the other strives to ensure his right of access to services and to self-determination through personal development in conflict resolution.

Most significant though is the potential conflict between social work and the court itself. In so far as the objectives of the court are regarded in general terms such as 'helping families resolve problems' or the goals of M.C.S. are enunciated as 'helping individuals and couples cope with marital conflict', then there is little scope for dissensus. If the goals and value orientation were stated in terms such as 'advancing

individual self-determination in acquiring coping and problem-solving skills' they could conflict with the public policy enactment aspect of the court. Rules, and procedures resulting from organizational constraints may not always be in the best interests of a particular client, such as for the wife of an abusive husband who wants to avoid laying charges against him for maintenance.

Some lawyers implied that social workers were rigid in their insistence upon reconciliation as the goal to be achieved with clients. This view is congruent with the theory that ideological commitment to overly vague high level goals can result in dogmatism. Extremism in devotion to salvaging marriage was not in evidence at M.C.S., although there appeared to be considerable commitment to some public policy aspects of the unit's functions on the part of some workers. It is entirely consistent with professional values to strive for the mending of broken marriages, and at a more concrete level, to assist clients manage their way through the technicalities of the bureaucracy. Organizational goals expressed in client-centred terms elicit commitment from personnel it seems, while the finance-related public policy objectives of the court, because of their vagueness, do not evoke a high level of commitment generally. An overall impression acquired from study of practitioners' activities at Family Court is that the structure of the service setting allows for both compatibility and conflict between organizational goals and social work professional orientations depending on the level of analysis. From this pragmatic viewpoint, aspects of practitioner functioning benefit from examination in the light of how service goals and professional values and expertise may be increasingly coordinated.

CHAPTER X

SUMMARY AND RECOMMENDATIONS

Analysis of the research findings on social workers' functions, legal professional's perceptions of them, and related matters, led to the formulation of critical comments on the situations observed and the issues identified. A number of research conclusions emerging from consideration of the descriptive data combined with theoretical approaches are presented in terms of summary remarks including where appropriate, recommendations concerning practice.

A. Intake Services

From the research observations about intake services, and the perceptions of this function by relevant personnel, certain issues are evident. Lawyers regard mandatory interviews by M.C.S. staff as either an obstacle to the client's right to access to court, or as a helpful administrative task. It appears that lawyers strive to get people into court, while social workers attempt to impede their passage. Indeed, where litigation appears to be uncalled for, or premature, they do attempt to divert cases. Service to clients would be considerably enhanced if lawyers had more faith in caseworkers and assumed their interventions are justified when conciliation-type counselling, rather than court action, is recommended. Unfortunately some lawyers associate both intake services and any form of counselling with coercive attempts to effect reconciliation. A further manifestation of lawyers' often inaccurate comprehension of social work is illustrated by their ambivalence concerning counsellors doing quasi-legal technical

functions for clients at intake, such as assessment of grounds for litigation. Observation of the inter-relationship between the legal community and domestic relations intake services leads one to suggest that attempts must be made to clarify the nature and function of the intake process to lawyers. As for the mechanics of the procedures, lawyers should be advised to provide a letter of introduction for the client to take to Family Court intake. This will promote inter-professional coordination of perception of client needs.

The intake service for domestic relations court is probably the most significant function of M.C.S., certainly from the organizational perspective. Most judges agree that the screening and diversion function of intake is necessary in conserving court system resources. From a less pragmatic view, it benefits the client who may have a different set of needs met by encountering a counsellor before, or perhaps instead of, a clerk of the court. Unfortunately, intake work may sometimes be regarded as routinized and technical, but that is an occupational reality common to many social work practice environments where intake and screening functions are immensely important.

Adapting programs to meet service consumers' and system maintenance needs requires constant monitoring of relevant data. Indicators of the 'who, why, when, and where's' of service must be readily available. Recording relevant data in viable categories is crucial to all service delivery milieus. Analysis of intake processes is always especially significant. In this setting, statistics should be recorded on the sources of referrals to Family Court - from private lawyers, Legal Aid, police etc. This, among other things, may indicate where education regarding availability of services is required.

The misunderstanding and disagreement observed concerning the roles and functions of intake social services could be reduced if all relevant personnel perceived a higher degree of consistency in the process.

If intake situations were approached in essentially the same manner by all caseworkers, myths about fanatical attempts at reconciliation and other sources of interprofessional antagonism might be eliminated. That rests upon the mandate and specific procedures of this aspect of the unit's work being clearly delineated for all relevant professionals. The screening function especially requires clarification as procedures need to be outlined, and the philosophical position enunciated.

Although this may be challenged by some elements of the legal profession, the principle and practice of utilization of social workers at court intake ought to be advanced. The experience of other Commonwealth and American courts supports the practice of having professionally-trained court social workers at the gateway to domestic relations court. It is ideologically legitimate in that alternative modes of conflict resolution should be explored prior to litigation, and economically justifiable in its ensuring appropriate use of court services through the screening and diversion function.

B. Counselling Services

Issues pertaining to this function are also related to the need for clarification of the unit's mandate. If counselling-treatment services are considered a primary work activity, then caseworkers must have more time available to devote to therapeutic relationships. The concepts of 'requirement and allocative discrepancies' potentially contributing to role strain for staff are illustrated where caseworkers want to engage in counselling-based relationships but are constrained

by other system demands. Also, the concept of 'instrumental means discrepancy' is manifested when caseworkers expect to be called upon to engage in conciliation counselling but no referrals are forthcoming. This situation appears to be the result of misunderstanding on the part of legal professionals of what constitutes the counselling function. Lawyers will have more understanding of and more respect for, casework services if methods and objectives are clarified.

At Winnipeg Family Court, as everywhere, it seems counselling is too loosely defined. Several varieties of worker-client interaction occur along the continuum from instrumental, technically-oriented information sharing to expressive therapeutic interaction. Differentiation of types of counselling such as marital conciliation, family therapy, individual adjustment, post-litigation conciliation should be specifically operationalized to the unit's mandate. It may promote consistency in the caseworkers' approaches if everyone operated from a common interpretation of the characteristics of various counselling modes. Perhaps more opportunities for staff development in the area of diagnostic and treatment skills would promote consistency in dealing with clients' needs. Individual worker discretion and counselling styles are not to be discouraged, but clarification of counselling types and treatment orientations would promote consistency in casework.

On the one hand there needs to be common approaches to clients' problems, but on the other, diversity in variety of counselling services should be promoted. Proven approaches to service delivery in this field such as specific group counselling methods might be practiced by workers inclined to do so. This may result in a further degree of specialization in counselling expertise as workers develop skills in

specific counselling modes.

Conciliation counselling, the mode which gives the unit its name, should be promoted. The wide range of service functions performed by M.C.S. means that strictly speaking it is not a conciliation counselling unit like the specialized ones described as existing elsewhere. As noted, referrals for conciliation counselling are not forthcoming from the legal establishment. Most counselling at Family Court centres on individual adjustment therapy, and, with couples, marital reconciliation or post-litigation conciliation counselling pertaining to corollary issues. The courts and law firms must be informed of the objectives and methods of various modes of counselling both actually and potentially available. They need encouragement to refer divorce cases as well as domestic relations intake cases to M.C.S.

It is important to stress the difference between mandatory intake assessment or screening and bona fide counselling of whatever variety. The first is a justifiable requirement of any Family Court system as illustrated in the research findings. Confusion of counselling per se with intake conferences has given counselling an unfavourable connotation as a form of enforced court procedure. The rare occurrence of court-ordered marital counselling must also be differentiated from regular client-initiated counselling services. Clarification by M.C.S. of the purpose and methods of counselling genres and distinctions between this and other court-related functions would promote its professional image and use of the unit by other social and legal services.

C. Investigation Services

'Consent to Marry' situations are relatively infrequent but never-

the less constitute part of the investigative and reporting functions of M.C.S. The mandate is quite clearly defined as assisting the judge in his decision-making. An important practice principle is to introduce as much educative premarital counselling into the primary investigative function as possible. It appears this is already the practice.

Child custody and access disputes require investigative services designed to assist the court in making child-oriented decisions. The M.C.S. mandate and professional expertise for fulfilling it requires definition and explication for both the social service and legal professionals associated with courts handling custody disputes. Requests for court-ordered homestudies must be appropriate, not just a stall or bargaining technique. The focus of all concerned must be on determining and responding to the child's present and future needs. The caseworker's role needs to be clearly defined and developed to reduce confusion over the degree to which the investigating social worker is acting as judge's information-gatherer, child advocate, or child welfare counsellor. The investigative function should embody all these elements and must be understood by everyone concerned with child-related disputes.

As the information-gatherer for the bench, it is important that the expectations of the judge regarding investigative reports are clearly delineated. Collectively, judges are inconsistent in their understanding of the social workers' function, in their expectations of them, and in their utilization of services. The concept of 'cognitive discrepancy' is illustrated in situations where caseworkers evidence ambivalence over whether or not they should make specific recommendations in custody matters. There appears to be some inconsistency between the organization's expectations or lack thereof, and the social work staff's

professional orientation towards diagnosis and assessment functions. It appears that emphasis on individual casework discretion in custody cases may have contributed to lack of role specificity for those preparing homestudy investigations. This uncertainty around caseworker role can be easily rectified. The judiciary, in collaboration with social services personnel, could delineate policies outlining their expectations of child custody reports. Do judges require specific recommendations arising from professional assessments of a situation or simply a descriptive elaboration on the facts, or a combination of empirical and impressionistic information?

The 'child advocate' and child welfare counsellor aspects of this court-related function require clarification. In the discussion of 'family law concerns' attention was devoted to the practice elsewhere of employing a lawyer as child advocate. The opinions of most professionals interviewed indicates this is considered too rigid and not child-welfare oriented. The judge and the social worker are seen as the natural allies for implementing the 'best interests of the child' principle. This is sufficient reason for retaining the principle of judicial discretion in ordering investigations. If reports were made mandatory by legislation, or if a legal advocate promotes their inordinate use, reports become meaningless and routinized. Emphasis should be on the 'child advocacy' role of the social worker conducting investigation homestudies. The child welfare counsellor elements of the investigation function would be promoted, though counselling parents remains secondary to the judicial-related service.

Investigative services for child custody and access situations ought to be a priority function in domestic relations court. Legal

professionals require education concerning the advantageous use of social work expertise for assisting decision-making concerning children. The social workers need to feel more confident, secure, and assertive in their role as 'child advocate' as with that of court investigator.

D. Finance-Related Matters

Many legal professionals were unaware of the degree of M.C.S. involvement in maintenance pursuit work and this contributes to confusion about the unit's mandate. The research findings describe basic aspects of this function such as assistance to clients seeking a court order or subsequent enforcement of an order under the R.E.M.O. Act, and applications to the court for financial assistance clients where the possibility of obtaining maintenance exists. The maintenance pursuit function of the caseworkers is a source of role strain and perceived goal disensus for those whose orientation is overly 'social work and client' and less bureaucratic. This is regarded simply as an occupational hazard by workers in that situation. One is reminded of the concept of 'allocative discrepancy' which means that staff consider assigned tasks to be inappropriate or undesirable. Some evidence of this phenomenon was observed in situations where caseworkers have to deal with financial assistance clients sent by service clerks to make applications for a court order. Also, it was observed that maintenance pursuit work under the R.W.M.O. Act is too technical and quasi-legal in content. Despite a lack of complaint from staff, the importance of this function tends to detract from the other less technical activities of the unit.

The reputation of a treatment service is naturally undermined by association with technical, money-related tasks. Not only is the

professional image harmed by such functions, but in actual practice, time and energy is expended on finance-related activities which could be spent in counselling by those so inclined. This discrepancy between the unit's mandate, as is reflected in its name, and some of its practice functions could be reduced. With more emphasis put on the conciliation counselling services it would be necessary to redirect staff work energies away from finance-related, quasi-legal tasks to the more expressive functions. Work resources could be conserved for reassignment from at least two sources. Income Security should assume responsibility for screening their clients if maintenance pursuit is a high priority. Only those clients who have already been from the financial assistance office to Legal Aid, would then approach court intake service after grounds are established and a court case is possible. Such procedure would save time and energy for everyone. Health and Social Development's Income Security could implement a program similar to Ontario's Parental Support Program offering counselling and maintenance pursuit to their clientele. This response to client need is more consistent with their mandate than that of M.C.S. The system of maintenance pursuit, enforcement and related concerns ought to be examined and systems and procedures clarified. Even if only^{for} the sake of centralizing service delivery and reducing confusion, the Enforcement Office of the Attorney General's Department should probably assume responsibility for all default of maintenance orders. Application for 'provisional orders' and related matters would remain with M.C.S. since it is a form of an application to the Family Court. Para-legal personnel may be utilized appropriately in an expanded enforcement service. Close collaboration and referral procedures with M.C.S. would be necessary

to ensure comprehensive, though specialized service delivery.

E. Non-legal and Indirect Service Activities

Descriptions of social work roles and functions at M.C.S. reveals that almost all tasks are court-related to some extent. The kinds of social work activities which are 'miscellaneous' in nature can be seen in terms of the unit and its larger organization, and the unit's relationships with the community in general.

Robert Vinter, some of whose ideas were presented in the theoretical framework, said that workers in small units evidence wide breadth of role conceptions and commitment to the ethics of social work. These observations were borne out to some extent in this research since personnel have adapted to a wide range of activities and most expressed a generally positive attitude towards their profession. Small unit size also usually accompanies a higher degree of collegial supervision and case conferences than was observed at M.C.S. The unit's relatively small size would seem at first to promote uniformity in practice. Actually, informality in collegial relationships, also a correlate of small size, leaves considerable room for individual approaches to practice to develop unimpeded by collegial or group controls. For example, individual discretion was evident in such matters as whether or not on-going counselling is encouraged with clients, or what approach is adopted in a problematic situation. The wide range of assessment and diagnostic skills must relate at least in part to a lack of formal collegial supervision and case consultation. Theoretical approaches to indirect social service activities suggest that staff meetings and case conferences promote staff solidarity and commitment to professional and organizational goals. There are few such forums for inter-colleague

formal interchange and this, as noted, may partially account for lack of uniformity in diagnostic and therapeutic approaches. A higher degree of conformity in practitioner methods should be promoted, thus more use of formal collegial supervision and related mechanisms of service control are indicated. Resources would be well spent on furthering staff development in various capacities, inter agency consultation and collaboration, case conferences, and other such secondary functions of indirect service.

Corollary to the above points, collegial consultation and staff interchange would promote caseworker contributions to modes of indirect service such as policy and program planning. Staff appear to engage in minimal input in decision-making at the unit level, and have not been involved as a resource for planning and analysis at higher administrative levels. At all levels of decision-making in provincial government social services, direct service workers should be invited to contribute ideas and expertise to ensure, especially in this setting, that casework services are appropriately utilized. Social workers' absence of experience in this area was illustrated by the fact that more legal professionals evidenced a higher level of confidence in the legitimacy and ability of caseworkers to contribute to family law administration than did social workers. More unit conferences and formal collegial consultation would promote staff solidarity and probably increase the unit members' confidence and ability to contribute significantly in broader decision-making processes.

Minor emphasis upon inter-agency and inter-personnel communication parallels minimal inter-agency and inter-professional consultation and referral. It appears that relationships with other family-oriented

services and the larger social service community are not well-developed. M.C.S. remains very 'low profile' and lack of communication with other helping professionals in the community accounts for some of the misunderstanding about the nature of M.C.S. As generally noted, to advance the necessary clarification of the unit's mandate, and methods, and to promote public relations, M.C.S. could become more active in community education. Staff might engage in public speaking on various aspects of their work, or preventative approaches to family breakdown. For example, schools, church groups, community clubs and charitable organizations often invite professionals to speak on social problems and institutionalized responses to them.

F., G. Quasi-legal Activities and Family Law Concerns

Questioning of the adversary system in family law along with discussion regarding the elimination or reduction of the fault principle leads one to surmise that changes will occur in the administration of domestic relations conflict. Adversary proceedings based on the fault principle and over-concern with the protection of women against men militates against bona fide conciliation services. New legislation and administrative systems will profoundly affect social work roles and functions.

Some legal professionals want social workers to assume responsibility for drafting separation agreements, determining maintenance and such legalistic functions, while others are adverse to such practices. Most social workers' views, along with the majority collective professional opinion is that such legal-technical work is an inappropriate use of social work expertise. Lawyers are trained to handle property and money matters and para-legals may do ground work for them. Social workers do

counselling, though it may be related in part at times to financial and material concerns. It is difficult to comment realistically on this aspect of social work practice at domestic relations court because new legislation will bring widespread changes in procedures concerning separation and related matters. The roles and functions of social workers in such strategically located services as M.C.S. may be radically altered. As long as the legislation and procedures are based on the adversary system, social workers should do counselling and leave material disputes to lawyers. When a conciliatory approach to family conflict resolution is incorporated into the legislation and administration of family law, then social workers may play a more diversified role in dispute resolution.

A unified family court would place all family law matters under one administrative roof and presumably make counselling and other court-related social services readily available to its clientele. Conciliation counselling services must be accessible in divorce court 'intake' as well as at what other levels of domestic relations court exist. Legislation and court practices should encourage the establishment and utilization of counselling services whether reconciliation or post-litigation in all levels of domestic relations conflict resolution. These and other court-related functions should be available on court premises. This is most practical for all concerned and promotes the concept of court personnel, both legal and social service as operating in a team, for the benefit of troubled families. Currently these objectives can be advanced by ensuring that the mandate and service functions of M.C.S. are known and understood throughout the present family law establishment.

H., I. Social Services in Court Settings and Innovations in Service Delivery

An aspect of social services in court settings which was discussed with professional personnel concerned elements of the practitioner-client relationship, particularly confidentially. Social workers acting in the capacity of counsellor should be granted 'privileged communication' to protect the confidentiality of the therapeutic relationship. Legislative clarification of the issue, or clearly defined judicial policies would eliminate confusion regarding the extent a counsellor is to be considered an expert witness and immune to being compelled to disclose confidential communication.

Regarding novel approaches to service delivery at domestic relations court, social workers, lawyers and judges all tend to be essentially conservative in their view points. Perhaps this is justified as they are professionals dealing with change processes continually and so may be skeptical of innovations seemingly for the sake of change. Almost everyone was critical of use of volunteers and citizen advisory boards and committees since most professionals reported negative experiences with volunteer input in various capacities. Some personnel would like to try innovations and ought to be encouraged. Inter-disciplinary staff development, such as workshops for lawyers (particularly Legal Aid) and social workers would promote inter-professional communication and cooperation. On-going education for judges, and establishment of an advisory panel of child development experts would maintain a high quality judicial service. Collaboration with other agencies and services such as the Native Court Worker Program, implementation of a Parental Support Program, single parents groups, and other such projects would advance the principle and practice of coordination of relevant

helping professionals in the field of services to families.

Crucial in considering social work practice in the court setting is the necessity for delineation of the service unit's mandate and specifically role definitions for its personnel. The consequences of vaguely defined service goals and objectives and lack of role complementarity in caseworkers' functions are widespread and detract from effective and efficient service delivery. Family counsellors should be considered social work professionals first, and court personnel second. It was discovered that whether counselling and related services fall under the aegis of social service administration or judicial-legal administration, is of secondary concern to that of professional identity. In daily practice, it makes no difference to caseworkers whether they are employed by the Attorney General's Department or the Ministry of Corrective and Rehabilitative services, and as noted there are advantages of each. Regardless of who administers the social services, they must be readily available to clients and court authorities despite the views of some legal personnel who feel they should be physically separate. From examination of this 'service location' aspect of social work practice, it appears that since cultivation of professional identity usually has positive consequences for service delivery in secondary settings, social work practitioners are most appropriately administered by a social service bureaucracy. This means that a unit such as M.C.S. should maintain a dual affiliation with Health and Social Development, the main department for administration of matters relating to the the 'process' of service delivery, and with the Attorney General's Department relating to the 'content' of daily practice. Coordination between the components of each department is of utmost importance and

is probably best accomplished through the office of the director of the unit.

In order to appropriately deploy professional expertise in human service delivery systems many factors must be considered. Concepts such as compatibility between organizational goals and professional culture, and incongruence in perception of practitioner activities between professional groups admitted considerable scope for analysis of work activities. The current study revealed problematic concerns regarding inter-professional conflict between social workers and legal professionals, the necessity to further coordinate bureaucratic goals and value orientations with professional norms and expertise, and the promotion of consistency between the service unit's mandate and practitioner tasks. Diffuseness of social work functions is especially critical since too broad a service mandate results in confusion and misunderstanding regarding utilization of services, sometimes causes role strain for personnel, and may result in inappropriate deployment of staff resources. The overview of some of the unified family courts in Canada illustrated the fact that each service delivery unit is a product of local legislation, administrative structures, and individual ideologies and service policies. For example, compared to the B.C. Unified Family Court Project, the work activities of M.C.S. are less diffuse. Here, family counsellors and probation officers are quite separate in contrast to B.C.'s workers' mixed functions. That system also appears to place more emphasis on community involvement in family law matters. A significant difference also results from the legislative mandate allowing social workers to perform such quasi-legal tasks as drawing up separation agreements. Manitoba's new family-related

legislation may have an impact upon the functions of M.C.S. counsellors in this regard but it is premature to speculate on it presently. It was noted with interest that the Toronto family law administrative bureaucracy isolated their Conciliation Counselling Project and the Parental Support Program into two distinct public services, even under different government ministries. It is too soon to compare this trend to a more specialized service with systems elsewhere, but it is probably generally applicable.

It was also pointed out that a narrowly-focused, highly specialized service existing separate from routine court social services such as Edmonton's Conciliation Project, is in contrast to Winnipeg's M.C.S. Any conciliation counselling service which does not have responsibility in the areas of child custody work, maintenance pursuit work, or court intake and screening services can not be justifiably compared to M.C.S. which is responsible for this range of functions. Careful delineation of the functions of caseworkers at M.C.S. guided by the principles of appropriate resource utilization will further enhance the development of a specialized service delivery unit assisting families and children both directly, and through the larger mechanism of the Family Court.

Suggestions for Further Research

(i) An Out-come Effectiveness Evaluation: The focus of this research being exploratory and formulative, it did not address the issues of service effectiveness. Evaluative research however employs techniques to determine practitioner effectiveness. One method of data collection for assessment of service content in qualitative terms might be a survey of client's attitudes and opinions. The outcomes of practitioner-client interaction are difficult to measure and assess but current evaluative

technology could be fruitfully employed in this setting.

(ii) The Relationship Between Legal Aid and Domestic Relations Court:

Since many applicants to Family Court are clients of Legal Aid, it would be worthwhile to study the utilization of community legal services for litigation pertaining to marital discord. Does the availability of public legal service have an effect upon the volume of applications for separation and divorce? What is the proportion of withdrawal of applications to those resulting in granting of orders, and how does it correlate to similar ratios for other client populations? Such questions may lead to an analysis of the use of public legal services for family conflict resolution and might indicate a need for the placement of counsellors in community law offices.

(iii) The Impact of Custody Investigations: One could conduct a follow-up study determining the outcome of a sample of contested child custody cases. Such a study would be multi-dimensional but the focus should be on the aspects of the social worker's role in the investigative process rather than on the effects of marital breakdown upon the child. What do parents feel about the investigative procedure and does their opinion change over the span of one year, or two? What are the long term effects of the homestudy process if any?

These research suggestions arise from the same commitment to understanding the principles and practice of human service delivery organizations that has inspired this thesis on utilization of social workers at domestic relations court.

APPENDIX A

BRITISH COLUMBIA UNIFIED FAMILY COURT PILOT
PROJECT: ROLES OF FAMILY COUNSELLORSINTAKE AND REFERRAL

On intake, and at any point in a client's involvement with the Court, offering crisis counselling, information and referral advice for members of the public seeking assistance with a wide range of family-related problems.

Advising clients of their right to legal assistance and of the availability of the services of the Family Advocate, Legal Aid Clinic, Legal Aid Society and private bar.

JUVENILE PROBLEMS

Conducting pre-court enquiries for juveniles referred for prosecution by the police.

Supervision of juveniles on voluntary and Court ordered probation.

Supervision of volunteer and paid child care staff providing direct service to juvenile probationers.

MARITAL PROBLEMS

Short-term conciliation counselling and family counselling for people seeking help with court-related problems.

Assisting clients with the preparation of separation agreements in matters of spouse maintenance, child maintenance, custody and access.

Conducting investigations and preparing reports in matters of child custody and access for the provincial and supreme courts.

Providing of maintenance counselling as an alternative to Court enforcement where possible.

At the request of the client or the court, assisting clients with problems arising out of orders and agreements enforceable by the Family Court.

PUBLIC INFORMATION

Interpreting the work of the Unified Family Court to the public, providing information about services and encouraging the interest and involvement of local people in volunteer programmes, panels and the

Family Court Committee.

ORGANIZATION OF PROFESSIONAL PRACTICE

Making contributions to policy formulation and participation in internal management decision affecting Family Counselling services.

In co-operation with other community agencies-assessing the need for programmes and designing, organizing and evaluating programmes oriented to the needs of Unified Family Court clients.

Participation on interagency coordination committees for case discussion and resource planning.

APPENDIX B

Program Description of Marriage Conciliation Service, Manitoba Department of Health and Social Development, Ministry of Corrective and Rehabilitative Services, 1976.

Objectives of the Unit:

- Where the court is petitioned for legal separation, the objective is an attempt to effect a reconciliation.
- Where reconciliation attempts are unacceptable to the persons concerned, the objective is to assist them in bringing the matter before the Court and in planning for the children involved and for life apart, including:
 - (a) where necessary, assistance in the enforcement of maintenance orders where the respondent lives out-of-province,
 - (b) where custody of children is contested, to ensure that the person best able to meet the on-going needs of the children is awarded custody, with reasonable privileges to the other person.
- Where persons under legal age marriage seek permission of the court to marry, the objective is to offer counsel to the persons involved and assistance to the court in reaching a decision.
- A further objective is involvement in the Income Maintenance Program.
- The objective of the Probation Directorate relative to this program is, through the establishment of standards and the development of staff and programs, to meet the needs of clientele and to ensure that the objectives of Marriage Conciliation field services are met.

Activities:

1. Assistance to those persons who seek counselling to improve the quality of family relationships, without court involvement.
2. Pre-court counselling - As part of the family court process, all persons seeking separation are interviewed and an attempt is made to have the persons review their relationship and, where some willingness is indicated, to assist them in working through their differences with a view to preserving the marriage.
3. Custody reports - Including reports for the Queen's Bench Court in divorce matters. Through interviews, home visits, etc. an assessment is made of the relative abilities of persons concerned to provide for the care and up-bringing of the children and to establish visiting

privileges for the person not awarded custody.

4. Pre-court counselling of young people seeking to marry - The law provides that under-age children not having parental consent to marry may apply to a family court for permission.*

5. Reciprocal enforcement of maintenance orders - Through interviews and contact with reciprocating courts out-of-province or out-of-country.

6. Involvement in Maintenance Security - In 1974, the Maintenance System became an integral responsibility of the Winnipeg District Offices and Family Court. Marriage Conciliation personnel provide assistance to women in obtaining maintenance orders when they have been separated from, or deserted by, husbands who have legal responsibilities to the family and are able to contribute financially to the support of the family but are adverse to doing so.

*Note that children under the age of sixteen require the permission of the court to marry regardless of whether the parents are in agreement. A child under the age of eighteen requires the consent of the court if the parents will not give their consent. Marriage Act section 21 (1) E.N.S.M. 1970, c.11, s 15; Am.S.M.1976.

APPENDIX C

INTERVIEW OUTLINE FOR MARRIAGE CONCILIATION SERVICE:
THE CASEWORKERS' PERSPECTIVEBackground Information on Worker:

Name of social worker: Approximate age: Marital status:

Educational background:

Experience:

How long have you been with this service unit?

Specialization if any?

Part A

The social worker in the service of the domestic relations component of Family Court fulfils a broad range of functions both in the direct service of the client, and indirectly through the services he performs for the court. The activities of the counsellor could be categorized by a variety of methods. Because the purpose at hand is to describe an actual work environment, and not to evaluate service delivery, the emphasis is on "activities" not "outcomes". For sake of inclusiveness, the work of the unit can be classified by legislative mandate. The broad categories are subdivided into kinds of general tasks. Here is a visual model of how one can approach a description of your work activities.

ACTIVITY	Information-	Counselling	Investi-	Paper-work
LEGISLATION	Sharing,	(More	gation	report-
	Intake	Expressive)		writing etc.

Wives' and Childrens'
Maintenance Act

Child Welfare Act

Marriage Act

Reciprocal Enforcement
of Maintenance Orders
Act

Legislation for Court
of Queen's Bench

Non-legislative Activity

We can use this as a framework for the first part of our discussion about your roles and functions as a counsellor at Family Court. Please elaborate on the basic activity categories.

Wives' and Childrens' Maintenance Act

How much time and energy do you devote to this set of activities relative to your total work load?

Information-sharing - This basically constitutes Family Court domestic relations section intake services, is that correct? Roughly what percentage of contact actually leads to taking an application for court action?

Counselling - Individuals? How much long-term as opposed to Short-term crisis intervention do you do? Families? What else? What criteria do you use to determine if you offer on-going counselling to clients?

Investigation - Homevisits? What do you look for in community contacts? Doing a custody investigation? Why? Interviews with spouses? Interviews with children?

Reports to the Court - Do you do many reports? How do present your findings? Have you ever had to go to Court to substantiate a report you have submitted? What is the 'rule of thumb' regarding making recommendations?

Are investigations and reports ever required for other matters such as pertaining to maintenance or occupation of the marital home? What other activities are significant parts of the responsibilities of a counsellor under the mandate of the Wives' and Childrens' Maintenance Act?

Child Welfare Act

How much time and energy do you devote to this set of activities relative to your total work load?

Information-sharing - This includes applications for custody or guardianship. What else? How often do women apply to the Court for an order of filiation for child support?

Counselling - What is the nature of counselling when dealing with matters under this legislation? (Child-rearing concerns, referrals to other agencies?)

Investigation - Homevisits? Community contacts? Please describe your activities in this aspect of your work. Interviews with spouses? Interviews with children?

Report-writing - Is there a set format that you use? How detailed is the study? Who gets the report, just the judge? What is the usual outcome of these cases?

Reciprocal Enforcement of Maintenance Orders Act

How much time and energy do you devote to matters under this legislation?

Information-sharing - What is involved in these matters? Declaration of arrears? Confirmation of orders? What else?

Counselling - How much counselling is called for in these cases? What is the nature of the finance-related work?

Investigation - What is the nature of the financial investigative work if any?

Report-writing - What is involved in the paper-work aspects of this legislative mandate?

Activities required for Court of Queen's Bench

How much time and energy do you devote to matters under this legislation?

Information-sharing - What is involved in this sphere of activity? Do you talk to people about divorce-related matters?

Counselling - Do you do very much divorce counselling? Work with family problems and with children of divorce?

Investigation - What is required in this aspect of your work? Home-visits? Interviewing spouses? Community contacts? and children?

Report-writing - Please describe the report-writing process in these matters? Have you ever had to go to court relating to these matters?

For both the pieces of legislation above, the Wives' and Childrens' Maintenance Act and the Child Welfare Act, there is a certain amount of work required which arises out of the liason of the unit with the Provincial offices of Income Security. How much of your work is associated with the Social Allowances Act? i.e., maintenance pursuit work? filiation orders? etc.?

Marriage Act

How much time and energy do you devote to this set of activities, relative to your total work load?

Information-sharing - What is the procedure that you follow when a client is referred to you? From whom do the referrals come?

Counselling - What is the nature of the interaction with: The individual? The couple? The parents? How important are the elements of family counselling and pre-marital counselling?

Investigation and Reporting - What are the activities of this kind involved in consent to marry cases? Please describe them.

Part B - General Questions

With what government or community departments and agencies do you communicate and what is the nature of this interaction?

Does the current practice of judicial discretion regarding custody reports ensure that children's interests are protected? Who are the protectors of children's interests in domestic relations court? How? What do you think of having Family Advocates as in the B.C. Unified Family Court system? What administrative and/or legislative changes would you like to see to enhance the safeguarding of children's rights?

In the B.C. Family Court Project, social workers guide clients in drawing up separation agreements. What are your ideas on this? Should social workers be performing more para-legal functions?

In some courts, counselling staff are granted "privileged communication". What are your thoughts on this topic? Do you warn clients that anything they tell you could be disclosed by you in court if you were called upon to give evidence? Does it inhibit your counselling function?

What is your opinion on the following novel approaches to ways of augmenting service delivery on the family law area?

- use and training of volunteers
- use of citizen advisory boards
- any other suggestions

Should court-related counselling services be under judicial supervision-administration or under social service administration?

What issues do you feel require further examination for purposes of this description of social work practice in domestic relations court? Any other comments or ideas are welcome.

APPENDIX D

INTERVIEW OUTLINE FOR LAWYERS

Background Data:

Name:

Marital status:

Private practice or Legal Aid:

Academic and professional background:

Age:

How long have you been practicing?

Part A

Social workers in the service of the domestic relations court perform a wide range of functions. Some activities are in the direct service of the client, while others affect him/her indirectly as they comprise services performed for the court. As a legal professional, how do you perceive the actual roles and functions of domestic relations social workers in our current system of administering family law? What is the nature of your interaction with the Marriage Conciliation Service at Winnipeg Family Court? What are the work activities of this service delivery unit? To help guide our discussion, these questions may be helpful to focus on general areas of social work involvement.

Intake services

How do you perceive the present intake services at Family Court?
(in matters pertaining to separation, filiation, child custody etc.)
What do you perceive to be the goals and objectives of Marriage Conciliation Service?

What proportion of your clients avail themselves of their services beyond the intake phase?

Counselling

Do you refer clients for marriage counselling when they are contemplating separation? Divorce?

Do you utilize other community-based social services?

Do you distinguish between reconciliation counselling and conciliation counselling? What are your views on this function?

What other points would you like to add to this description of how you perceive the work of the Family Court social workers.

Investigating and Reporting

Social workers prepare homestudies for the Family Court and the Court of Queen's Bench in contested custody matters. Are most reports at the lawyers' request or at the judge's discretion initially? Is there any difference in source of request depending on the court?

What criteria determines whether you request a custody report?

Do some judges give more weight to homestudy reports than others?

Have you ever cross-examined a social worker regarding his homestudy report?

Should homestudy reports contain explicit recommendations?

What other points would you like to add to a description of lawyer's perceptions of this aspect of social work in domestic relations court?

Maintenance Pursuit Work

What is involved in this aspect of practice from the lawyers' perspective?

Do you use the services at Family Court for the enforcement of orders?

What is your view on the role of the Conciliation Counselling Service in enforcement of R.E.M.O.s?

What is your understanding of the relationship between family court and provincial and municipal financial assistance programs?

Part B

Your experience as a lawyer practising family law has no doubt lead you to certain ideas and opinions about the use of social workers in court settings. Please share with me some of your impressions on the current and potential utilization of social service personnel in this field of practice. Here is an outline which identifies some points for discussion. Please add any other concerns, ideas, bits of advice, as you feel are appropriate.

Interests of Children

Does the current practice of judicial discretion regarding custody reports ensure that children's interests are protected? In Manitoba today who are the protectors of children's interests in domestic relations court? How?

What do you think of having Family Advocates as in the B.C. Unified Family Court system?

What legislative and/or administrative changes would you like to see come about to enhance the safeguarding of children's rights?

Marital Breakdown

What legislative and/or administrative changes would you like to see to ensure people's rights and to promote the fulfilment of duties in family conflict situations?

- eg. - wider access to Family Court for men?
 - changes in grounds for separation and divorce?
 - obligatory custody reports in contested custody cases?
 - more effective means of enforcement of orders? etc?

With a view to the future, and the possible establishment of unified family courts, what do you think would be appropriate roles for social workers (if at all)? (divorce counselling, para-legal court services? etc.)

Ought social service staff to be granted the protection of "privileged communication"?

In the B.C. Unified Family Court, social workers: "assist clients with the preparation of separation agreements in matters of spouse maintenance, child maintenance, custody and access" and "provide maintenance counselling as an alternative to court enforcement where possible". What is your opinion on this?

What is your opinion on the following novel approaches to service delivery in the family law field?

- use of volunteers?
- citizen advisory committees?
- any of your own ideas?

Should court-related counselling services be under judicial supervision or under social service administration?

Do social workers have a part to play in policy formulation and program planning in the Family Law field? What could be their contribution?

What issues do you feel require further examination for purposes of a description of social work practice in domestic relations court?

APPENDIX E

INTERVIEW OUTLINE FOR FAMILY COURT JUDGES

Background Data:

Name:

Marital status:

Full time or part time:

Approximate age:

Location of courts where one is judge:

How long have you been a judge?

How long did you practice law?

Part A

Social workers in the service of the domestic relations court perform a wide range of functions. Some activities are in the direct service of the client, while other social work functions affect him/her indirectly as they comprise tasks performed for the court.

From the vantage point of a Family Court Judge, how do you perceive the roles and functions of domestic relations social work staff in our current system of administering family law? Please describe your relationship with Marriage Conciliation Service at Winnipeg Family Court. To give a framework to our discussion, it will be helpful to focus on some general areas of social work involvement.

Intake Services

How do you regard the present intake system at Family Court's Domestic Relations component?

What do you perceive to be the goals and objectives of Marriage Conciliation Service?

Counselling Services

How do you distinguish between reconciliation counselling and conciliation counselling?

How do you use the counselling service at Family Court?

What are your views on "consents to marry" situations (is the social worker's role primarily one of counselling or investigation in these cases?)

Investigation and Reporting

Are homestudy reports ordered because lawyers have requested it of the bench, or are they at the judges' initiative?

What criteria are used to determine whether a study will be done?

How frequently are they ordered (what proportion of contested custody cases have reports ordered?)

As a judge, do you prefer homestudy reports to contain explicit or implicit recommendations regarding child placement?

What are the elements characterizing a helpful homestudy report?

Maintenance Pursuit Work

It appears that social workers are quite involved in matters concerning pursuit of maintenance monies for both Family Court and Divorce Court orders. What are your views on the roles of the Enforcement Office and Marriage Conciliation Service in this area of court services?

What are your views on the relationship between Family Court and the provincial and municipal financial assistance programs?

Part B

Your experience first as a lawyer and now as a judge, has no doubt lead you to hold certain ideas and opinions about the use of social workers in court settings. Please share with me some of your views on the current and potential utilization of social services personnel in this field of practice. Please add any other concerns, ideas, pieces of advice, etc. as you feel are appropriate.

Does the practice of judicial discretion regarding custody reports ensure that childrens' interests are protected?

What do you think of having Family Advocates (lawyers) as in the B.C. Family Court Project?

What legislative and/or administrative changes would you like to see to enhance the safeguarding of children's interests?

Marital Breakdown

With a view to the future, and the trend to establish unified family courts, what are appropriate roles for social workers? (divorce counselling, family counselling, para-legal court services)

In the B.C. Family Court Project, social workers (family counsellors):
"assist clients with the preparation of separation agreements in matters of spouse maintenance, child maintenance, custody and access" and

"provide maintenance counselling as an alternative to court enforcement where possible". What is your opinion on this?

Ought social workers to be granted "privileged communication"?

Should court-related counselling services be under judicial supervision or under social service administration?

Do social workers have a part to play in policy formulation and program planning in the Family Law field? What could be their contribution?

What is your opinion on such issues around service delivery in the family law field as:

- use of citizen advisory committees
- use of volunteers, lay panelists

What points would you add to a discussion of appropriate social work functions in domestic relations court?

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