

THE UNIVERSITY OF MANITOBA
SCHOOL OF SOCIAL WORK

THE UTILIZATION OF SOCIAL WORK PERSONNEL
IN A DOMESTIC RELATIONS COURT

A THESIS SUBMITTED IN PARTIAL FULFILMENT
OF THE REQUIREMENTS FOR THE DEGREE OF
MASTER OF SOCIAL WORK

BY
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SEPTEMBER 1977



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A dissertation submitted to the Faculty of Graduate Studies of
the University of Manitoba in partial fulfillment of the requirements
of the degree of

Master of Social Work

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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.

ACKNOWLEDGEMENTS

The author wishes to thank Dr. Gerald Erickson whose advice and encouragement were greatly appreciated.

Consultation with Professor Grant Reid was most stimulating and ever to be valued.

I am also indebted to Dr. Elizabeth Feniak for her interest and generous practical assistance.

To the staff of Marriage Conciliation Service, especially Mrs. N. Milne, I express gratitude for their time and concern without which this study would not have been possible.

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 disolution 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