

THE UNIVERSITY OF MANITOBA

THE SOCIAL WORKER IN THE LEGAL SETTING

by

Eleanor J. Payne

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A practicum 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

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People in need of legal assistance are often in need of increased emotional support, counseling regarding self and/or family problems, and counseling during a time of crisis. Lawyers are not trained in this aspect of their profession. As such this practicum studies the various aspects of a social worker working in the legal setting as a professional, trained in the area of counseling those clients who are emotionally distraught by their legal experience. Broad conclusions indicate that the addition of a professional social worker can reduce: the client's emotional trauma, the time the lawyer spends on each individual case, and the court costs. Different models for social work practice are formulated. It is concluded that the establishment of a professional team is a viable approach to the practice of social work in the legal setting.

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## CHAPTER ONE: Introduction

"The average client seeking assistance from a legal attorney is beset by a multitude of social problems, one or more of which has precipitated the legal problem the attorney is asked to handle" (Ferruggia 1978:134). For example a client seeking a divorce has not usually determined this course of action in a cold calculating manner. The divorce is sought following the culmination of a series of social and personal issues with the spouse which cannot, in their eyes, be satisfactorily resolved. Thus a client, discussing the legal matter of divorce with a lawyer is bringing to the discussion a background of social problems, which, from the purely legal standpoint, have no bearing on the request at hand. From the lawyer's point of view, his responsibility is to receive instructions from the client as to which legal issue is to be tackled, and to proceed in this direction until he is otherwise instructed. It is not his responsibility to question his client as to why he wishes to proceed in this manner, except of course, to offer various legal alternatives to the client which may better serve his purpose or intent. The Divorce Act (1968) did require that the lawyer discuss with the client the section of the act dealing with the possibility of

reconciliation. Subsequently, the new Divorce Act (1986) requires the lawyer to discuss mediation and the advisability of negotiation before reaching the actual court hearing.

The legal profession serves the purpose in society of understanding and interpreting the "rules and regulations" laid down by that society in the form of Laws, Acts and statutes. It is the interpretation of these "rules" that is the basis for the presentation of the client's case. The court system, as presently organized, encourages the use of the adversarial method in deciding whether or not these "rules" have been broken, and, to decide how they may be interpreted differently by opposing parties. The client's emotional needs are not clearly identified in these "rules" and are often ignored within the adversarial method of presentation. The social worker is trained to observe and identify the client's emotional needs. Their training is designed to help the client to solve their problems through counseling that involves the encouragement of self awareness and conciliation between opposing parties. While both the lawyer and the social worker are working towards similar goals for their client, their ways of interpreting and reaching these goals are often different, as established by their professional training.

The purpose of this practicum is to examine the relationship between lawyer and client in order that the

social and personal issues may be identified. The intent is then to show how a social worker and a lawyer can work together as a team of professional equals to further enhance both the client's well being and the lawyer's practice of law. Three broad areas of study are initially apparent, although other issues become more visible within these areas as they are studied. The three areas are identified in the questions: Can a social worker facilitate the lawyer's practice of law? Can a social worker ease the emotional trauma to the client? And, Can a social worker achieve effective mediation? Each of these questions will be discussed in more depth in this introductory chapter.

#### Can a Social Worker Facilitate the Lawyer's Practice of Law

A lawyer, while he is personally a social being, is not trained professionally to handle that part of his client's life that involves an understanding of social and personal relationships. His training is in the art of gaining something--a court order--that establishes his client's legal right or lack of right to that which is pursued. Any "feelings" on the part of his client or that of his client's "opponent" is rarely considered as part of the process. However, should a lawyer consider the effect of the stress, the legal and social problems, and the feelings that are currently influencing his client, he may well feel that his task is not only formidable but

impossible to undertake given his legal training and experience. Lawyers are often used by their clients to force the issue in resolving the domestic problems they may be having. The client's intent is not necessarily to gain a divorce but to show their spouse "that they mean business". Thus while a lawyer may be approached and he may begin work on the legal procedures, in actual fact his time is wasted when the divorce is "called off". It is when the lawyer is first approached that the use of therapy/counseling can be brought into play within the legal setting, through close collaboration with social workers who are well trained to deal with these very issues. In doing so a lawyer may use his time more efficiently and the client receives the appropriate service for the problem, saving time and anguish that may have occurred if he were to have followed through on his initial course of action.

#### Can a Social Worker Ease the Emotional Trauma to the Client

"Therapy at a time of one's life crises can lead to maximize opportunities that the state of flux offers and attain new levels of functioning." (Wiseman and Fiske 1975:444). As therapists, social workers tend to rely on the individuals to contact them during times of crisis or acute stress. It is often assumed that any given individual will be able to, or take the time to go for therapy, or, will consider therapy as a viable resource for

consideration. This assumption is often erroneous, particularly at times of acute crises, or at times when a course of action is being taken that does not appear to lend itself to therapy. Thus the service that a social worker may provide is not always readily available to all people at a time of crisis and not always associated with varying problems related to a great variety of life areas that can develop into a crisis.

In particular, the legal setting is one area of life experience in which social work intervention appears to have been generally ignored until recent years. As it stands now there are such social workers as conciliation counselors, probation workers, and child welfare workers, etc., who may be called upon to work with clients as requested by the court. While the people who see these various workers may be receiving therapeutic services at the appropriate time, there is another group of people which must also deal with the legal system who may be in a state of crisis, or near crisis, that are not yet being reached. These people are those, who for any number of reasons, must seek the services of a lawyer and are possibly (although not always) faced with the prospect of having to appear before a judge in a court of law.

Many of these people, who are in a state of stress or distress, have the capacity to take the initiative and make an appointment with a therapist when a referral is made

to a counseling agency. However, there is another group of people which may already be in a state of stress and/or crisis before entering the legal system, and whose anxieties may be further amplified by the fear of having to deal with the unknown quantities that the legal system represents. It is on this group of people that I will be focussing in this project.

Many lawyers tend to present their profession surrounded by a certain amount of mystique. They have acquired a body of knowledge that the lay person does not usually obtain. As such, people go to lawyers when they require legal services in the lawyer's particular area of specialty. Frequently, especially within family law, the lawyer's services are sought as a last resort following other attempts to solve the problem. Given the unknowns of the profession and the presumed high cost of the services, lawyers are often used "when all else fails". That is when all other known coping mechanisms have been tried and have failed. Thus when a client reaches a lawyer's office, they are often already in a state of crisis.

While lawyers may be fully qualified to handle legal issues, they are, for the most part, not trained or qualified to handle emotional crises brought on by stress or distress. In fact, it is quite possible for a client to approach a lawyer seeking legal advice, and leave the lawyer's office in an increased state of stress or crisis,

rather than a reduced state. This state may come about through various means. A client who is not in a state of crisis may approach a lawyer seeking legal advice. The lawyer will respond to the request by explaining the available options from a legal stand point. This all appears to be very reasonable. However, the client may have come to the lawyer seeking a "simple" solution to his/her problem but may end up hearing a complicated set of options, none of which appear totally satisfactory at that particular moment. Thus the client may leave the lawyer's office feeling more confused than when they went. This confusion may lead to a state of stress or distress, which may also trigger a crisis situation. The confusion may also lead to increased thought processes, on the part of the client, that may lead to a greater clarification of the problem at hand and as such, relieve what stress there may have been. The two different end products, suggested here, as the result of the state of confusion, are usually only differentiated by the ability of the client to cope with the information he or she has just received. A client who has difficulty in coping with confusion, will in all probability respond as in the first way suggested. Whereas, a client who has some ability to cope with confusion is more likely to respond positively as suggested in the second example of response.

Another scenario of a client approaching a lawyer for legal advice might involve someone who is already in a

state of crisis before they talk to a lawyer, someone who may be going there out of "desperation" because all other "solutions" to the problem have failed. This type of client may feel that a lawyer "should" have an instant solution to his or her problem. In this situation, if the lawyer cannot satisfy that need of an instant solution, the client's state of crisis may increase. On the other hand this type of client, while in a state of crisis, may feel that a lawyer will know what to do and may be more accepting of an approach by the lawyer that does not necessarily give an instant solution, but instead sets out a "plan of action" in which the client can see what steps will be followed and an eventual "solution" to the problem. While there may be many interruptions and changes in the "plan" as initially outlined, the immediate effect of setting out an acceptable plan may reduce the client's state of crisis for that point in time.

While the previous scenarios are described from the point of view of the client entering the lawyer's office for legal advice, each scenario can also be turned around to represent a client seeking counseling or therapy for a problem that may, in fact, be solved legally. In this instance a social worker is certainly not qualified to give any legal advice beyond the point of recommending that a lawyer be seen. It is my intent, in this project, to concentrate on the issues arising from the point of view of



the client initially visiting a lawyer's office, although the converse will be discussed at varying points throughout.

These few descriptions as to possible reactions of people when they visit a lawyer's office and the converse of seeing a therapist, obviously are not all inclusive. However, they do represent some idea of the scope of the issues we are dealing with here. While a social worker cannot expect to be a practising lawyer, neither can a lawyer expect to be a competent social worker. Thus in order for the two needs, of many clients, to be met, the lawyer and the social worker must join forces and work together to fill the gap that is left by each profession.

#### Can a Social Worker Achieve Effective Mediation

Family law is a field in which there are often no clearly defined limitations. It is a field that can be fraught with emotional actions and reactions from the parties involved on both sides of the legal issue. While it is a lawyers duty to do the best for his/her individual client this may be difficult to achieve under circumstances in which both clients are so emotionally motivated that their requests become exaggerated. Under such circumstances the lawyers on both sides of the 'argument' are caught in trying to mediate an agreement that in essence has no basis for reality. Much unproductive time can be spent in this sort of dispute until one, or other or both parties involved

can begin to be more objective and less emotional about their demands or requests. If this should occur a social worker who is not representing either side may be able to help both parties reach an equitable agreement by responding to some of the emotional needs of the clients, thus leaving them freer to recognize the other aspects of the case. Thus the involvement of a social worker under these circumstances could assist both the lawyer and the client in achieving their objectives in a shorter space of time with less emotional trauma. This is a further example of how the relationship between social workers and lawyers can be enhanced.

#### Summary

It is the purpose of this practicum to test out ways in which the relationship between social workers and lawyers may be strengthened and enhanced. By placing a social worker within a legal office in association with lawyers, it is hoped that a practical model can be established that would bridge the gap between the legal and the social work professions and provide a more comprehensive service to clients.

As time goes on social workers continue to have more and more clients who have legal problems. In addition, lawyers are becoming more involved in the social areas of welfare, juvenile courts, etc. The need for

interdisciplinary team work is increasing, however, the two professions must resolve their professional differences as to the methods that are used to solve their clients problems. The social worker counsels a client or clients from the point of view of the "best interests" of the client. When working with an interdisciplinary team, social workers resolve their differences by case conferences and consensus. On the other hand, lawyers are trained in the adversary system where conflict is used to resolve differences. In addition, the lawyer is bound by a canon of ethics to use every legal technique and device to fulfill his/her client's wishes. Because of his training and the legal system within which he must work, a lawyer may find himself in the position of presenting a case for his client which, even he as an untrained therapist, knows to be detrimental to the client's best interests from a therapeutic stance. Thus there is a definite need for establishing a working relationship between lawyers and social workers when one considers the interrelatedness of legal and social problems.

Social worker's skills knowledge and expertise can be useful to a lawyer in areas of research, problem solving, group work, community organizing, counseling, intervention and prevention strategies and social problems in general. In addition, "for social workers to act as legal paraprofessionals is misleading to the client who may

believe he is being represented by a qualified lawyer, and for a non-lawyer to give legal advice is not only illegal but dangerous" (Stein and Golick 1974:43). A solution is to have social workers working as equal partners as a team, on the same goals, adding specialized skills, knowledge and expertise wherever necessary.

## CHAPTER TWO: A Literature Review

### Introduction

In today's social work and legal literature there is little written of an 'interdisciplinary team' between the two professions. These 'human services' teams are usually composed of members of professions related to medicine, psychiatry, psychology and social work. Rarely does one find reference to members of the legal profession as part of an interdisciplinary human service team. Within legal literature, there is an increase in reference to the need for lawyers and medical practitioners to work together for the benefit of the patient/client. However, the relationship between the professions of law and social work appears to have been slow in developing, although there is some increase in the social work literature with reference to the need for a better working relationship between them.

At present, both professions regard each other with some reluctance surrounded by confusion as to each other's roles and objectives. In addition there appears to be "uneasiness and even outright antagonism" (Smith 1970:155) which seem to perpetuate barriers between the two. Audrey Smith in her study of "Social Workers in the Legal Setting," attributes these feelings to differing methods. That is,

"social workers attempt to resolve differences by case conference, and consensus; lawyers use the adversary system of conflict resolution which includes the right to confrontation and cross-examination." (Smith 1970:155) Authors Stein and Golick feel that the difficulty that the social worker experiences in legal aid settings is due to different approaches. They see the social worker's approach as being "therapeutic and framed by considering the 'best interests' of the client and of society as a whole. This sometimes may result in a social worker determining that what should be done is not what the client himself wants (or says he wants), and makes the social worker into a judge who determines what is wrong with the client that needs adjustment." (Stein and Golick 1974:43) On the other hand, they feel that a lawyer acts as an advocate, bound by a canon of ethics, to use every legal technique and device to fulfill his client's wishes.

Whether or not their difficulties and/or differences can be stated so simply is questionable. Stein and Golick's statement is ironic. If social workers do act as the client wishes they are frowned upon and dubbed 'wishy-washy liberals and bleeding hearts', etc. and if they know what may be the best route for the client they are labelled 'judges'. Thus we are often left with the impression that it would be impossible for lawyers and social workers to work together as a team that would be beneficial to both the

lawyer and the lawyer's client.

This chapter is an attempt to identify different aspects of law and social work; how they view each other; how they each work in various similar situations; and how Family Law and the Court System has made a particular effort to alleviate the problems as they see them. While there is no one reference that discusses the particular aspect of the relationship between lawyers and social workers that I studied, many references strongly hint at the need for such a working relationship.

#### A Brief Historical Perspective

While lawyers and social workers working as an interdisciplinary team is a recent development, the need for such a team has been discussed, referred to, rejected, applauded, etc for a number of years. In 1959 W. Friedman in his book Law in a Changing Society, referred to the need for the law to respond to social change, "...law must, especially in contemporary conditions of articulate lawmaking by legislators, court and others, respond to social change if it is to fulfil its function as a paramount instrument of social order." (Friedman 1959:ix) While discussing the need for law to respond to social change, Friedman expresses the need for professional associations to be developed on a more sophisticated level than just through elected representatives and legislative assemblies.

In 1960, in a Report of the Committee on Lawyer-Family Agency Co-operation by the Family Service Association of America, the need for an interdisciplinary relationship is clearly stated: "When a lawyer's client presents a problem that calls for social as well as legal counseling, interprofessional co-operation not only is the most sensible and practical course, but also offers the best guarantee of success." (FSAA 1960:9) The Committee on Lawyer Family Agency Co-operation perceived that, "Lawyers and social workers share a common interest in helping their clients solve problems...Legal difficulties that have their roots in the intimate relationships of the family or in personal behaviour--matters that may involve divorce action, custody of children, indebtedness, and so forth--are inevitably intertwined with social difficulties. Both the legal and the social work professions, therefore, have an interest in obtaining each other's co-operation." (FSAA 1960:9) In addition, the Committee discussed several aspects to the co-operation between lawyers and social workers. These aspects will be identified later in this chapter as the literature surrounding the lawyer and social worker as an interdisciplinary team is discussed in greater depth.

Sociologists have also presented their views on the relationship between law and society in terms of lawyers as individuals who view people, problems, and their roles as



professionals in a variety of different ways. "Whereas all lawyers theoretically share a common body of technical knowledge and special skills, as well as a dual commitment to serve the client...and the public,...in practice there is an enormous amount of variation not only in what particular types of lawyers do but also in how they view their professional roles." (Schur 1968:164) Schur goes on to refer to Talcott Parsons's statement that, "the lawyer is expected to be "both permissive and supportive in his relation with his clients," and yet at the same time he must often "resist their pressure's and get them to realize some of the hard facts of their situations." (Schur 1968:173)

As we can see there has been a need identified from other disciplines, for the legal profession to in some way, accommodate the emotional needs of the client. This could be through an interprofessional relationship with social workers, and/or by the lawyer as a person and a professional, taking the time to recognize this need and to relate to the client as a person who has more than a legal issue that requires his/her attention. "In coping with a matrimonial dispute a lawyer must some how come to grips with disagreements of varying emotional intensity and legal complexity." (CBA 1974:35)

### Code of Ethics; Code of Conduct

Both social workers and lawyers have a professional code to which they adhere in their professional work. The Code of Ethics for Social Workers (see Appendix A) was approved by the Board of Directors of the Canadian Association of Social Workers on June 13, 1970. For lawyers, the Code of Professional Conduct (see Appendix A) was developed by the Special Committee on Legal Ethics and approved by the Canadian Bar Association in 1975. Each of these Codes provide guidelines as to the values and principles of each profession and how they are to be maintained in the practice of their profession. In addition, the Code of Ethics for Social Workers provides a list of behaviours that are deemed unethical and guidelines for dealing with alleged violations of the Code.

In comparing the two codes, there are some Obligations (social workers) and Rules (lawyers), (listed in Appendix A), that are very similar in nature, while others are quite specific to each individual profession. For example Obligation No.1 and Rule No.1 are very similar. Both establish the professional's primary duty as to their clients, both individual, group, and institution/community. Obligation No.2 can be compared with Rules No.12 and 14. While the Code of Professional Conduct is very succinct in Rules No. 12 and 14 as to a lawyer's responsibility to the administration of justice and to the profession generally,

the Code of Ethics for Social Workers is more lengthy in its similar statement. However, in being more lengthy the Code of Ethics for Social Workers includes the different aspects of participation in, "social action and social intervention designed to effect change consistent with the values, goals and objects of the profession." (CASW 1970:1)

In being "candid and honest, when advising his client," (CBA 1975:8) the lawyer essentially is being asked to do the same as the social worker. That is, "to hold himself personally responsible for his professional conduct." (CASW 1970:1) As such Rule No.3 and Obligation No.3 can be seen as closely related in the intent to establish a professional conduct. Obligation No.4 and Rule No.15 are also compatible in that they both express a need for protection against the unauthorized practice of each profession. Rule No.14 can also be seen as relating to both Obligation No.5 and No.6 in that they are all presenting the professional requirements of participation in the individual improvement of the practitioners and the development of the professions. Rule No.2 also relates to Obligation No.5 in the aforementioned ways. Finally, Rule No.4 can be seen as compared to Obligations No.9 and No.10. These sections of the Codes refer to the confidentiality and the proper use of the information the client provides to the professional.

As we can see from the preceding discussion, there are some similarities between the statements in the Code of

Ethics for Social Workers and the lawyer's Code of Professional Conduct. However, there are several differences in the direction of some of the statements made in each Code. The greatest difference noted here, particularly in reference to the overall topic of this practicum, is the encouragement of interdisciplinary co-operation in the Code of Ethics for Social Workers. The Code of Professional Conduct, in its remaining Rules, continues to define more specifically such issues as, impartiality, conflict of interest, fees, the preservation of the property of the client etc. It is this lack of encouragement of co-operation between different professional disciplines that can often deter the formation of a productive and positive relationship between lawyers and social workers.

#### The Relationship Between Law and Social Work

Within the fields of law and social work, there are areas in which each professional can complement the other. Many social workers work with individuals and families who may eventually be in need of legal services. In addition, social workers are often required to testify in court, particularly in the field of Child Welfare. On the other hand, lawyers are dealing with people who as individuals, have come to them for help in solving their problems. While it is assumed that a lawyer is well versed in the legal

aspects of his client's case, he may not be as well informed as to the emotional needs of his client. Some lawyers do have a natural affinity for giving emotional support where needed, however, there are many who, while they may be aware of the need, may not be able to meet the emotional needs of the client.

An excellent discussion of the areas of interface and the areas of conflict between lawyers and social workers is presented by Judith Alphson Lau in her article "Lawyers vs Social Workers: Is Cerebral Hemisphericity the Culprit?" She views the "general areas of overlap...as family law, delinquency, and crime." (Alphson Lau 1983:24) Areas of conflict were seen as, "training...ingrained values, beliefs about outcome, and approaches...Law with its emphasis on the Socratic case method, the development of logic, and the proliferation of the adversary method, bears little resemblance to the social work emphasis on dignity and worth of the individual, the development of worker self-awareness, and the client's right to self-determination." (Alphson Lau 1983:24)

Schroeder points out, there are similarities and differences in terms of the individual professionals viewed as counselors, but they are set in quite different contexts. "The lawyer is a counselor...The lawyer helps the client identify the legal problem, search for the facts needed to clarify and begin to work on it...Intellectual capacity to

grasp the problem, mental and physical energy available to work on it, and objectivity about the problem exist to greater and lesser degrees in each client. Social workers are familiar with this and have developed their [counseling] skill in helping clients identify problems and marshal resources to begin work on them." (Schroeder 1982:17) While Schroeder identifies these two different applications of counseling, she continues to view the issue mainly from the lawyer's point of view in determining the legal issues involved in the client's problems. Alphonso Lau, also emphasizes how the differences in the use of counseling can create conflicts in a lawyer-social worker relationship. "When a lawyer thinks of "counseling," it is what he or she does in the practice of law: "advice-giving, conciliation, mediation, or arbitration...When a social worker defines counseling as therapy, with all of the technical expertise that that implies, the fact that conflict erupts between lawyer and social worker is no surprise ." (Alphonso Lau 1983:23)

Conflicting attitudes are also emphasized in the way in which both professionals are seen as advocates. "Lawyers are also advocates. They must muster their client's best arguments to vindicate their rights...Social action by professional social workers shows they recognize that accommodation to an unsatisfactory social system is not always the best solution to a client's problem...Social

workers must understand enough of the lawyer's role and the methods used to win cases in order to work effectively with attorneys." (Schroeder 1982:18) Here the lawyer is portrayed as the "leader" of the team and the social worker is the professional who must fit themselves into the lawyer's role rather than both lawyer and social worker working together as equal professionals.

Homer Sloane views the relationship of law and social work as a need to identify the areas of friction and misunderstanding between them. (Sloane 1967:87) He questions, in fact, that there is a, "fundamental clash of values and standards." (Sloane 1967:86) He points out how social workers can be just as rigid in their view of lawyers, as lawyers are them. "Social workers...saw law primarily in terms of (1) settlement of disputes between private parties on the basis of rigidly applied rules have no room for individualization, and (2) community protection against those who commit antisocial acts." (Sloane 1967:87) Sloane viewed the problem between social workers and lawyers as stemming from a difference in the methods of problem solving. Social workers are trained to use conference and consensus as a problem solving method and lawyers are trained in the adversary method of problem solving, Richard Gaskins, however, has identified that, "on a conceptual level,...the two systems are not only compatible but mutually enriching." (Gaskins 1981:396) As such, Gaskins is

suggesting that "the judicial system alone cannot supply answers to the problems of human services," (Gaskins 1981:387) but that the two systems must understand their alternative approaches and how they can work together to form a productive relationship.

#### The Lawyer and Social Worker as an Interdisciplinary Team

Much of the literature that presents lawyers and social workers working as an interdisciplinary team, presents the team approach as mainly applicable to the divorce arena. While divorce mediation does represent a valid and much needed use of an interdisciplinary team, there are other areas in which social workers and lawyers can work together. James L. Scherrer shows how the team approach can be invaluable to interviewing, evaluation, crisis intervention, negotiation, and referral. For example, Scherrer notes that, "for the lawyer, the purpose of the interview is to ascertain all the facts of the case in as clear and unambiguous a manner as possible...he frequently leaves out what may be hearsay or opinion...Although legally sound, the lawyer's narrow definition of fact may lead to problems in the interview itself. The client may be uncooperative and resist giving any information because he senses the lawyer's impatience with anything but concrete reality...the social worker, on the other hand focuses on a different set of facts that have



more to do with the reality of the client's emotional state and therefore will be even more descriptive of what actually occurred. What the social worker discovers through his interviewing techniques often puts reality into a totally different perspective." (Scherrer 1976:280)

Vayda and Satterfield present a similar viewpoint. They contend that conciliation/mediation, "provides a natural climate for lawyers and social workers to develop a working relationship on mutual respect for each others expertise." (Vayda and Satterfield 1984:5) While there is no denying that lawyers and social workers are trained and view themselves in differing/conflicting ways, there is a movement towards seeing the possibilities of lawyers and social workers working together as a team with mutual respect for each others professional capabilities, and a combined focus on the client's "best interests." As Howard Irving points out, "a major goal of divorce mediation is to help the couple become rational and responsible enough to co-operate towards making compromises which are acceptable to both people. Divorce mediation makes the family the central focus." (Irving 1980:23) he goes on to suggest that divorce in itself involves too many complex issues to be dealt with by a single profession. He supports the co-operative effort of law, social work and psychiatry. He notes that, "a major difficulty of family law is that the problems brought by the clients are frequently not primarily

legal problems; they are deep human problems in which law is involved." (Irving 1980:147)

An additional approach to working as an interdisciplinary team is in terms of the initial contact with a client in a state of crisis. "The client who walks into a clinic and requests some kind of legal assistance is frequently in a crisis state. His feelings may be so overwhelming that he is unable to participate effectively in the interview or to present the information needed by the lawyer to help him. The social worker who has developed skills in dealing with people will begin by getting the client to calm down. Only then can he work effectively to resolve the client's crisis and provide the lawyer with the information he needs." (Scherrer 1976:281) This statement implies that both social worker and lawyer need to be in close contact in order that the social worker be available for crisis interventions. While Scherrer does not identify the specific setting in this instance, one could be lead to assume that the two professionals were sharing offices within the same building/clinic. Bernstein, on the other hand, while agreeing that the two professions acting co-operatively rather than independently can provide even better services to their clients, also states clearly that lawyers and social workers should not contemplate sharing joint facilities. He views the team approach as being employed through referral by either the professional or the

client requesting an interrelated approach concerning his problems. (Bernstein 1980:416,421)

Wiseman and Fiske present a mediation model that constitutes a different approach from the ones suggested by Irving and Scherrer. They view the, "traditional adversary system [as fragmenting] the family...the mediation process forces the husband and wife to concentrate on their children's interests as well as their own." (Wiseman and Fiske 1980:443) The process they describe involves a designated lawyer-mediator who encourages communication between the husband and wife and guides them to agreement in their mutual interests. The distinctive difference in this model is that the mediator is not a social worker, but the social worker is available to the lawyer-mediator for consultation. Conversely, Scherrer sees the social worker as actively involved in terms of casework used to help a client work through their trauma, and to help the individual maintain an adequate level of functioning until long term treatment can be set in place or the crisis is alleviated." (Scherrer 1976:281)

### Family Law

A complete annotated bibliography of Family Law has been provided as an Appendix to this practicum. The bibliography provides a range of material from very legalistic terminology to books and articles which are

written in "lay man's" terms. This literature provides a broad overview of the Canadian Legal System; the background of our family and divorce laws; family law in Canada; divorce in Canada; and family law in Manitoba.

Until 1968 when the Divorce Act 1967-1968, c.24 s.1, was passed, Canadian divorce and separation law was based on the British Matrimonial Causes Act of 1857. As such, there passed a period of 110 years in which the laws relating to divorce and separation did not appropriately reflect the social changes that occurred during this time. Specifically the laws were British and did not reflect the special or particular needs of Canada as a developing nation. The Source Book of Family Law by P.R.H.Webb and H.K.Bevan provides the reader with as much of the relevant legislation as reasonable, and is useful in establishing the basis for British Family Law in understanding the background of our Canadian Law.

A variety of literature has been written on Canadian Family Law. There have been more than 130 Federal, Provincial, and Territorial statutes and ordinances passed relating to the field of family law in Canada. All of these are included in and continued to be covered by the Canadian Family Law Guide. In addition, Malcom Kronby in his book, Canadian Family Law writes in terms easily understood by the general population. He explains in simple language the rights, obligations and remedies of family law and includes

an appendix which outlines "what your lawyer will probably want to know."

Julian Payne in Selected Articles and Working Papers on Family Law, 1969 presents the reader with a selection of working papers which provide extensive background information to the final product of the Divorce Act 1968. In reading the Divorce Act 1968, Reville's Divorce Act Annotated by T.W.Hainsworth is useful in interpreting its enactment and the subsequent amendments. Penelope Jahn, and Charles Campbell write about the pitfalls of legalities and the initiating of legal actions, in their book, Divorce, Children, Welfare: an up-to-date handbook on Canadian Family Law.

The Manitoba Government has prepared booklets, eg. Family Law in Manitoba 1985 which are available to the general public, through the Attorney General's Office in the Manitoba Legislative Building. These booklets are an attempt to explain the various aspects of Family Law as it is presented and used in Manitoba.

Many attempts have been made to clarify family law, its legalities, pitfalls and uses. Family law is an area of law which the individual lay person may need to understand most fully in terms of how it affects their personal life and daily living.

## Alternatives to the Adversarial System in Family Law

In family law, the adversary system is not necessarily the most productive or beneficial to the client. Often the client is under such emotional stress that the lawyer is unable to obtain the information required to establish the legal needs of the client. In addition, the Family Court System has been such that, depending on the legal issue at hand, the lawyer and client were required to appear in as many as four different Courts. Appendix C presents a chart that identifies these courts and the legal issues handled by each court in Manitoba. This system was found to be confusing to many clients and in many cases would add to their emotional confusion and stress. In an attempt to deal with this situation, two approaches have been taken. One approach was to develop a Unified Family Court System in which all family law matters would be dealt with by one specialized court. The second approach was to establish Conciliation Counseling Services attached to the family court. This service provides short term counseling in crisis situations, mediation and negotiation between marital partners, and referral services to other agencies for services more appropriate to the client's more long term needs.

#### A. The Unified Family Court System

In 1970, a study of the Family Courts in Canada prepared by David Fudge showed that, "great confusion, and for some, frustration, surround family courts." (Fudge 1970:32) He suggests that this situation arose from the fact that family courts are ill-defined, and that they are received with mixed emotions. He goes on to point out that the name "family court" was, in fact, a mis-nomer, "because of federal legislation on divorce, we must conclude that measured by the theoretical definition, no family courts exist in Canada." (Fudge 1970:33) As such the concept of a Unified Family Court System is an appealing one, where family issues can be dealt with as a whole rather than in parts. Bala and Clarke in their book, The Child and the Law, discuss this system. "The concept of a "Unified Family Court" is very much at the centre of what is hoped to be a new legal approach to problems of families in crisis...Married people with serious family difficulties should have--and do not now have--viable alternatives provided by the legal system for avoiding the adversary process. This means access by spouses to a court that is capable of dealing with social problems without requiring their translation into legal issues before anything can be done about them. The Unified Family Court is a new concept in courts, offering a broad spectrum of dispute-resolution techniques and having at its disposal a wide range of

solutions." (Bala and Clarke 1981:25)

Several Provinces in Canada have instituted "projects" which are attempting to rectify the problems in dealing with Family Law. In 1975 British Columbia developed a pilot project to test the efficacy of a Unified Family Court System. At about the same time Manitoba began discussion regarding a similar type of proposal to establish a unified system. However, while it was approved in principle in 1974, it was not until 1984 that the Family Division of the Court of Queen's Bench was established to provide a unified family court system for Manitobans. In British Columbia, the Berger Commission, established in 1973, chose as its first priority, a pilot project designed to test the efficacy of a Unified Family Court. A Unified Family Court Act was enacted. "In addition to authorizing the provincial cabinet designation of court registries to be used exclusively for family law matters, this legislation contains provisions to facilitate out-of-court resolution of dispute and creates two new positions attached to the Court, the family advocate and the family counselor ...the family advocate is a lawyer whose chief function is to ensure that the interests of children are properly represented in matters before the court...The family counselor is in essence a social worker employed to provide casework and social control services under the auspices of the court." (MacDonald 1975:14) MacDonald notes the progress made by



this system after two years as, an "increased use of out-of-court settlements in both custody and juvenile delinquency matters...[and]...counselors also collaborated effectively with police in dealing with minor delinquencies on the spot and providing casework in domestic disputes, thereby reducing the number of cases referred to court." (MacDonald 1975:14) Thus MacDonald is describing how the addition of a family advocate and a family counselor, to the unified court system has a positive effect on the number of cases actually brought to court, and their outcomes. The Berger Commission highly recommended the expansion of the project into an established unified family court within each judicial district.

In Manitoba in 1974, much work was put into the concept of the Unified Family Court. A pilot project was approved in principle to be established in the St. Boniface Court District. "Once instituted, the pilot project would empower a single, unified family court to hear all family and matrimonial legal disputes in the St. Boniface Court District." (Manitoba Government 1975:np) In 1984 the Family Division of the Court of Queen's Bench was established to provide a unified family court system for Manitobans. This new division is designed to specialize "in family law and has the power to hear all family disputes within its geographical jurisdiction. It concentrates on resolving these disputes in a quick and orderly manner and has

introduced procedures, such as pre-trial conferences to encourage the parties to settle their disputes without the need for a long, bitterly fought trial." (Manitoba Government 1985:32) This booklet, provided by the Manitoba Attorney-General's Office, describes in clear terms how Manitobans in different parts of the province can deal with these marital and family problems.

#### B. Conciliation Counseling

While the Unified Family Court System has been seen as a way to handle the confusion of the legal system regarding family law, every project developed has included with it, an identified need for conciliation and counseling services to be made available to the clients of the system. In British Columbia as previously noted, the Berger Commission recommended the institution of a family counselor in the project. Manitoba has also identified the need for conciliation services and has established the Family Court Conciliation Service. This service is briefly described in the booklet Family Law in Manitoba 1985. "Family conciliation is a professionally staffed counseling unit which helps individuals and families going through marriage breakdown or a breakdown of the family relationship, resolve issues of custody or access outside of the courtroom...The program provides a mediation service which offers parents an opportunity to sit down with a trained and impartial

mediator to work out an agreement that is satisfactory to both parents and recognizes the best interests of their children." (Manitoba Government 1985:32) Bala and Clarke also support the view of conciliation services being attached to a unified family court. They point out that conciliation allows the use of counseling for families who will live apart. They state that, "with the advent of conciliation services, a corresponding...reduction in litigation has occurred." (Bala and Clarke 1981:31)

The Edmonton Family Court Conciliation Project has been established by Judge Marjorie Bowker. Within the first 18 months of its institution, a surprising number of reconciliations occurred, of couples whose disputes were already over the litigation threshold. This project has provided a detailed description of the objectives of the projects, the philosophical and realistic rationales for its conception and the different ways in which it can be used by the clientele. Almost immediately a statement is made that this project is "intended to fill a gap within the legal system." (Alberta Government 1975:1) In addition, this volume identifies other similar projects established around the world in Japan, the U.S.A., New Zealand, and Australia. They outline how this project is different from a conventional counseling service in that, "it is primarily a service to courts and the legal community, and only secondarily to clients and litigants referred by them."

(Alberta Government 1975:22) This conciliation service is seen as a service only available to the client once the client is within the legal system. The provision of a conciliation service is an attempt made by the legal profession to employ the knowledge base and professional skill of social workers to alleviate the various stresses within the family law system.

#### Social Work Services in a Legal Aid Setting

The one area in which social workers have been seen as an aid to legal services is in the legal aid setting. Legal Aid is seen as a program that is used by people who are poor. It is then assumed that poor people are more likely to have a multitude of other social problems such as welfare assistance, poor housing, lack of adequate parenting skills etc., and that these problems adversely influence the client's ability to be helpful and productive in their request for legal services. Audrey Smith has studied the interprofessional relationships between social workers and lawyers in the legal aid setting. She concludes that, "although the client sees his problem as legal, a knowledge of the problems of legal aid clients shows that the legal problems are usually so interrelated with broader social problems that legal service alone may be only fragmentary and temporary. Social workers, through their skills in dealing with these broader social problems, can help

maximize the legal services offered and make them more effective." (Smith 1970:167) Smith identified problems in the relationship as stemming from the social worker's role being seen as secondary to that of the lawyers, ie. social services are an auxiliary service to the legal service. Smith also notes that the two services are in conflict with each other in that, "one appeals as a representative of the client to the adversary system of conflict resolution, while the other establishes and uses a professional relationship with the client to effect change in the client and/or his environment." (Smith 1970:165)

Preston and Byrne have also examined social work services in a legal aid setting. In this instance students were placed in the setting, but, as in Smith's study the social work role was viewed as secondary to the legal service provided. Preston and Byrne identified that, "a central argument for having social workers and attorneys function within the same agency revolves around the principle of privileged communication between lawyer and client. Much of the literature cites the strain this principle creates in collaborative efforts between social workers and lawyers representing different agencies or persons. When both professionals work under the same authority, however, the strain is considerably lessened." (Preston and Byrne 1975:227) This study compares the two professions in terms of their value, purposes, sanctions,

knowledge, and methods. They conclude that, "a social and emotional assessment of a client and his situation can provide the attorney with essential background information that he would not otherwise have, upon which to make decisions regarding legal assessments and strategy." (Preston and Byrne 1975:229). In addition they view the social work services as being a viable alternative to the legal services and that given the opportunity some clients may opt for the social services.

Social workers continue to be seen as a productive service within the legal aid setting. Robin Ferruggia presents a comprehensive discussion of how social workers can be helpful to attorneys in several areas. Ferruggia's discussion is the result of actual work that was completed as a result of being hired under a juvenile court grant. Homestudies and custody evaluations were a specified part of the work. (Ferruggia 1978:134) In addition, Ferruggia cites knowledge of community resources and referral, crisis intervention, and liason with other social services organizations as areas of service related to the clients' legal needs.

Each of these authors views the legal aid setting as an area in which lawyers and social workers can work as a team. However, while their comments pertaining to the services provided are valid within the the Canadian setting, they are not in the U.S.A, in a position to evaluate the

relationship where a private lawyer handles a legal aid case. This is a distinct possibility in Canada where legal aid services are provided through both public legal aid offices and private lawyers who accept a client who is assisted with expenses through legal aid.

#### Lawyers and Social Workers and Criminal Law

When the relationship between lawyers and social workers is viewed in terms of criminal law, the focus in the literature is almost entirely on the juvenile or younger offender. Some young offenders are already within the child welfare system and, as such, are in contact with a social worker. In other situations social workers are required to be assigned to a juvenile by order of the court. This was emphasized further by the statement made by the Solicitor General's Committee in 1975: "Any discussion involving youth and the law must consider that young persons in trouble are often children in need: children in need of parents, homes, education, understanding, supervision and respect." (Government of Canada 1975:3) This report views the juvenile court system in place in 1975 as a "kindly parent" that is trying to maintain a delicate balance of helping children, preserving their rights, while at the same time protecting society from harmful conduct. An effort is seen to be made by the juvenile court system, that fosters the interrelationship of social workers and the law, in terms of

the awareness on the part of many of the judges, of the need to understand this in terms of the method of dealing with the juvenile's criminal act. In fact one of the proposals made by the Solicitor General was that, "there should be an adequate response to the individual needs of young persons...mandatory assessments." (Government of Canada 1975:7)

While on the one side of the issue, judges are presenting the need for "mandatory assessments" of young offenders, the Manitoba Association of Social Workers presents a similar view. "Children in conflict with the law must be viewed in a more positive framework in which each juvenile is seen as having potential for growth and change...As long as the juvenile justice system continues to get caught up in treating only the symptomology and does not attempt to get at the real causes of "delinquent" behaviour...no lasting change can be effected." (MASW 1978:2) This same paper points out that lawyers who are providing legal services to juveniles, often do not have any training in the developmental and therapeutic needs of children and adolescents, but at the same time, many of them caution the children in custody not to speak to anyone about the charges against them. This puts the social worker in a position of having to deal with acting out behaviours without being able to get at the real issues facing the child. As such children can be caught in the awkward



relationship between lawyers and social workers, and it is those same children who are the losers in terms of the positive and productive handling of the situation.

As we can see, the interrelationship between law, lawyers and social workers is not as well understood or established within the criminal court system as in family law. While the juvenile justice system has made an attempt to perceive the social service issues involved in the young offender's criminal acts, there still remains for it to have an effective collaboration established between the courts, lawyers, and social workers.

As per the criminal law and the adult, beyond assigning probation officers and providing counselors within the penal system, the literature is essentially non-existent in terms of the emotional needs of the adult criminal offender, when being passed through the legal system.

#### Applicable Social Work Theory

While no particular social work theory is specifically related to the legal environment, Pincus and Minahan's framework for social work practice can be seen as an effective way of viewing the situation and how the legal and social work professions can be interrelated in their approach toward helping clients. Pincus and Minahan state that "society has an obligation to ensure that people have access to the resources, services, and opportunities they

need to meet various life tasks, alleviate distress, and realize their aspirations and values...In providing societal resources, the dignity and individuality of people should be respected." (Pincus and Minahan 1973:39)

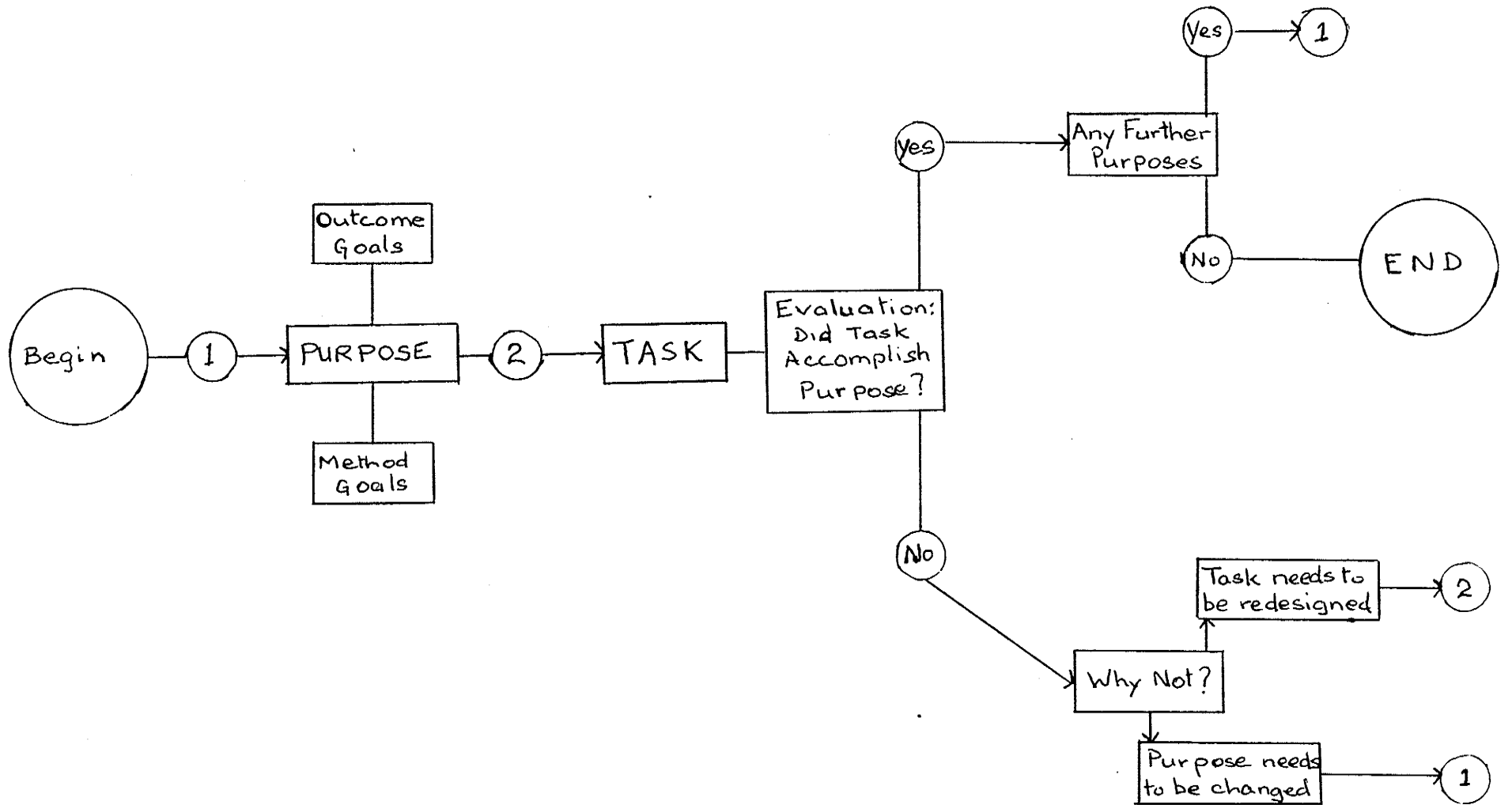
In their identification of a "change agent [as] a helper who is specifically employed for the purpose of creating planned change," (Pincus and Minahan 1973:54) one could perceive an interrelationship between lawyers and social workers as "change agents" who are employed equally by a client to facilitate planned change that is closely interrelated in their own lives. Using the concepts of the "change agent," the "client system," the "target system," and the "action system," (Pincus and Minahan 1973:54-61) one could develop a system in which the client, social worker, and the lawyer, collaborate effectively together to achieve a particular goal or set of goals.

Other theories could be utilized in terms of a professional social worker in a legal setting. However, in order not to confuse the issues further it may be sufficient, to leave the development of these theories and ideas to another time.

### Summary

Certainly all of the literature surrounding the topic of lawyers and social workers in a professional interrelationship has not been reviewed here. One of the

difficulties in this review is that there is no one or more paper or volume that discusses the particular aspects that are being studied in this practicum. Much of the literature is either lacking in this area or skirts the particular study issues. Thus we finish with an overview of the studies, comments and ideas that surround social work and law in its various complexities.



The Process in Social Work Practice  
 (Pincus and Minahan 1973:86)

### CHAPTER THREE: The Practice Setting

The setting in which I chose to do the study was one in which four lawyers shared an office. These lawyers were independent of each other in the sense that they were not partners in a law firm. Two of the lawyers specialized in Family Law; one in Criminal Law; and one in both Family and Civil Law. The expectation was that my involvement would be with only those lawyers that practiced Family Law. In actual fact I was also of valuable service to the Criminal lawyer in several cases.

The agreement with each of the lawyers was that I would spend several days per week working in the office. I was given the use of an area within their total office space and the use of a telephone. As such, I was available to both the lawyers and clients on a predictable, regular basis. For this study it was important that a basis be established for further discussion as to whether or not a social worker could be of better service when situated within a legal office, or could the service be equally as effective if provided in another office distinct from the legal setting. For convenience at this point in time I will use the term "client/s" for those people referred to as clients by the lawyers themselves. In a later chapter I

will discuss the issue as to who is in fact the social worker's client--the lawyer or the lawyer's client?

Initially, clients were referred to me by the lawyers, identified by them as being people who could benefit from a social worker's service in addition to the legal service already being provided. This was usually handled by the lawyer and me discussing together the general outlines of the situation in addition to the specific legal involvement of the lawyer, eg. legal separation, custody of children etc. The lawyer would have already contacted the client and discussed with them the involvement of a social worker in their situation and received the client's permission for the sharing of the necessary information. As such, their involvement with me was entirely voluntary. Once I had received the information, I would contact the client and arrange to meet with them, usually in their own home. From this point on I would have regular contact with the client in addition to regular consultation with the lawyer involved with the case.

The alternative way in which I would receive cases was when a client was already in the lawyer's office discussing their legal request. At some point, determined by the lawyer, a request would be made for my immediate service. The basis on which this decision was made, was usually: confusion of the client, inability of the client to provide the information needed at that point in time, or the

client was becoming upset and in need of someone who had the time and knowledge base to deal with the emerging feelings. The lawyer would then explain to the client that a social worker was available to help at this point in time and would then request my service. At this point, I would either spend some time with the client in the lawyer's office or ask the client to come with me to my office. In either situation the lawyer would not remain present once the situation was explained briefly. After the client had gained either control of him/herself or an understanding of the information needed the client would then either return to the lawyer's office or return home. In all situations encountered the lawyer or I would initiate the contact with the client. This was usually handled either by a direct introduction of me by the lawyer, or a telephone call by me to the client. At this point I would explain to the client, the service that I offered and arrange for a time for us to meet at a later date.

There are many clients who request a lawyer's services for Divorce litigation or a legal separation. These are in fact two distinct legal services, where Divorce is heard in the Court of Queen's Bench (having a superior court judge, federally appointed) and Legal Separations are heard in a Provincial Family Court. In 1984, the Family Division of the Court of Queen's Bench was established in Manitoba. This Division has unified the courts that

previously were separate for Separation and Divorce. For the purposes of this paper I will not distinguish between these two services, when discussing the feelings that emerge, except where they are specifically identified as different.

Many clients who seek legal representation in a Divorce hearing initially appear to be quite sure of what they want. They will make an appointment with a lawyer and request that the processes be begun as soon as possible. However, once the process has been started or even when more information is sought regarding the grounds for the request, some clients will begin to waver in their resolve and start to question what they are really wanting. For example, are they really wanting to live apart from their spouse, or are they wanting some way to work things out but are not sure how to go about it or are afraid to try? Once this 'wavering' begins a lawyer can become quite frustrated in terms of carrying out the initial request and having to deal with the following conflicting feelings that emerge. It is at this point a social worker can be helpful to both the client and the lawyer.

In relation to the client, the social worker can begin to help the client to first of all become aware of the feelings that are emerging, and secondly to begin to sort out these feelings. Discussion can be initiated as to the various options that a client may have. These options may



still include that of continuing with the legal service requested, in addition to others ranging from marriage counseling to no further service, i.e., either legal or social work. One way in which a social worker may be of service to the client but not necessarily to the Lawyer is to encourage the husband and wife to meet together on a conciliatory basis. This does not mean that the end expectation is for the couple to reunite, but that they attempt to try to work out their differences more amicably outside of a court room. For Lawyers, trained in the adversarial system, and who base their fee schedule on the number of communications between the other Lawyers and court appearances, this service provided by the social worker may be, at times, seen as detrimental to their Legal Practice.

In terms of service to the lawyer, the social worker is able to provide a service to the client for which the lawyer is not trained. The lawyer is then free to see other clients and to continue concentrating on providing the legal service. In addition, a social worker can be helpful to a lawyer through consultation as to how she might relate differently to the client such that the flow of information and services provided is both more comfortable and more efficient.

Many lawyers will not enter the field of Family Law because they do not want to deal with the kinds of emotions that emerge and do not feel comfortable in being a part of a

situation that can easily become very emotional. By encouraging Lawyers and Social workers to work together as a team, particularly with regards to separation and divorce, this attitude of Lawyers toward Family Law could be reduced.

Some legal work in Family Law involves the issue of child custody. Lawyers can be asked to represent clients who are fighting, for example, with a Children's Aid Society, for the custody of their children. There are cases in which a lawyer feels that the client has been too hastily accused, under The Child Welfare Act, and that the CAS has not allowed the parent sufficient time to gather together the resources that are needed, nor provided sufficient support or encouragement to make use of all available resources. In addition, most Child Welfare Workers are told not to speak to the opposing lawyer but to speak only to their own Agency Lawyer. Another social worker, separate from the issue of taking sides in the custody dispute, is able to spend some time tracking down the services that are available to the parent/s, and establish whether or not something more could be provided that might allow the parent to retain custody of the child. This can be done in conjunction with the CAS worker in the sense of being helpful to both the client and the CAS social worker. Again the Lawyers involved would be free from having to investigate areas of resource with which they are not likely to be too familiar. In addition, the possibility of the

dispute being settled out of court, allows them the time to work on other matters.

One of the Lawyers I was associated with in the legal office was mainly involved with Criminal Law. Initially I had questioned the usefulness of a liason between a Criminal Lawyer and a Social Worker. However, over a period of time we were to work together on several cases. There are times when a Lawyer is in need of information as quickly as possible, particularly when a court hearing is to take place either that same day or within a few days. The urgency that the lawyer feels can have an effect on the client. The client could respond as quickly and as helpfully as possible. Under these circumstances, the services of a Social Worker are not usually needed. However, if a client reacts to the urgency by becoming frightened he/she may not be able to remain calm enough to provide the information needed. In this situation it is quite likely that both the Lawyer and the client will become quite frustrated with each other. A Social Worker can, at this point, help to reduce the frustrations and inhibitions, that are using up valuable time, and aid both Lawyer and client in the gathering of the information that is needed.

Another way in which the Social worker can be helpful to the Criminal Lawyer is through becoming involved with the client before the court hearing takes place. While

a crime may have been committed, how the accused handles him/herself before and during court, may have some effect on the overall outcome of the hearing. For example, if the client has a good work or school record, or seeks some help for the problems that may have led to the criminal act the Lawyer may be able to convince the Judge that a lesser reprimand is in order. A sentence for time spent in custody may be reduced to a period of probation, or the charge may be dismissed sine die , indicating that the criminal charge will not be acted upon or remain on the person's record unless there are further criminal charges made at a later date. A Social Worker can encourage and support a client to continue with the good parts of their life and to seek help for those parts the client wishes to change. In this way the Lawyer is able to concentrate on the more positive aspects of the case at hand and there are more positive aspects on which to concentrate.

The discussion to this point has been directed towards showing how a Social Worker can work with a Lawyer in terms of working with the Lawyer's clients. Lawyers, themselves can also benefit from the presence of a Social Worker within their office. Lawyers can and do feel "over worked" or find themselves in a state of crisis because they do not feel adequately prepared for a hearing. A Social Worker, familiar with the Lawyer and some of the cases that they are dealing with, can provide the support and

encouragement that will help reduce the anxiety that is being felt. This anxiety can greatly inhibit the Lawyer's work progress and, in turn, add to the feeling of 'crisis'. In addition, the Social Worker's very presence can reduce the work pressure on the Lawyer by indicating that the work load is being shared and that the Lawyers no longer need to be delving into areas for which they are not trained.

As we have seen throughout this discussion, there are many areas in which Social Workers and Lawyers can work together for the benefit of both the Lawyer and the client. This discussion has been limited to the author's specific experience in association with the legal profession. Given a broader experience base, the discussion could quite possibly be expanded to include many more ways and examples of team work that can be beneficial to both Lawyers and their clients.

## CHAPTER FOUR: The Casework Described

I will now present a description of the actual work completed, that establishes a basis for my discussion of these issues. Ten cases in all were completed. These can be divided into three groups with only one case overlapping more than one group. The three groups are: 1. Separation and Divorce Issues; 2. Child Custody Issues re: CAS; and 3. Criminal Issues.

### 1. Separation and Divorce Issues

#### Case No. 1

SB was married 12 years to her husband who is a Treaty Indian. They had been separated for approximately one year and they had seven children, the youngest of whom was two years old. SB filed for divorce on the grounds of physical and mental cruelty. Her husband drank, and physically abused her but avoided bruising her face. In addition, he was mentally cruel to her.

They owned their house jointly with a mortgage through CMHC. The down payment for the house was obtained through Indian Affairs. Currently the mortgage arrears were being paid by Provincial welfare.

Recently SB's husband had returned from Calgary with his girlfriend. When he was drunk he would beat on the door of their home frightening SB and the children. He felt that the house was still his. SB had contacted her lawyer asking what she could do to cope with the situation. There was an order of Prohibition against her husband but it took the police 15 minutes to respond, if they responded at all. In addition, she was questioning re what would happen to the house if she were to return to the reserve for a while for safety.

I had three sessions with SB in her own home in addition to several phone calls. SB's needs were to protect herself and her children from her husband, in addition to retaining possession of her home. Our goal was to reduce SB's anxiety and frustration by helping her sort out her priorities. In providing SB with emotional support and through making several phone calls to Provincial Welfare and Indian Affairs, more information was obtained that enabled SB to make a more rational decision as to her situation.

#### Case No. 2

MB had been married seven years. She had four children, the youngest having just been born at the time of referral. She and her husband were legally separated. MB's husband drank and physically abused her. He had never harmed the children. There were orders of Prohibition,

Maintenance, and Custody in effect. She was currently living on Provincial Welfare in a four bedroom townhouse in St. Vital. While the townhouse was large and modern, it was also sterile and furnished with a bare minimum of furniture. MB also felt isolated from her friends and trapped by her four children, three of whom were constantly at home.

MB's basic need at the time of referral was some relief from child care. Two of the children were old enough to go to a day care but the Provincial Welfare worker was hesitant to support this need as she felt that as MB was a full time homemaker, there was no need for her children to go to day care.

I met with MB twice in her own home and had several phone contacts. In addition I drove her two children to Day Care the first day as transportation had not been arranged for that day. Our goals during that time were to provide MB with some relief from caring for her preschoolers, while the baby was very small and needed a lot of care. In addition the children needed the stimulation that Day Care provided. MB was able to handle the situation with her husband as long as she was not over powered by caring for her children. In meeting with MB, I collected sufficient information re her children that enabled me to contact the appropriate agencies involved in arranging Day Care. Through perseverance, day care and the transportation needed was arranged and MB was able to better cope with her situation.



Case No. 3(a.)

DH had lived common-law for 16 years. They had three children, the youngest of whom was 4 years old. DH's common-law husband had a drinking problem in addition to a string of criminal charges both within the City of Winnipeg and in other places outside of Winnipeg. DH was seeking a Legal Separation from her husband and custody of their three children. Under Manitoba Law, the relief provided to one member of a couple who has cohabitated together for a period of one year, and from which a child has resulted, becomes available with respect to maintenance, custody and access. As such, legal assistance is required in terms of establishing maintenance and child custody, in addition to the division of property.

In the Separation aspect of the case, DH was in need of help in the reorganization of her life. I met with DH once in her own home. This was followed by several phone contacts with DH. This case also had the added issue of child custody in terms of CAS Winnipeg. This aspect will be clarified later in this paper when the cases specific to child custody issues re CAS Winnipeg are discussed.

Case No. 4

LW was recently legally separated from her husband. LW had legal custody of the four children, two from a

previous marriage and two from her present marriage. Her husband was prohibited from visiting the children except under minimal circumstances, however he continued to make threats to harm her and the children. While LW's husband did have a drinking problem and had exhibited violent behaviour, the children blamed LW for the marriage breakdown. LW required assistance in sorting out her acceptance/non-acceptance of her husband's visiting privileges. She also needed help in learning to restrain her reactions to his actions.

The goal in this case was for LW to learn more about herself and her situation in order that LW could defuse her children's anger toward her rather than continually feed into it. In addition LW worked towards controlling her anger and resentment toward her husband in terms of allowing visits with the children that were established by the court. I met with LW in her own home three times in addition to several phone contacts.

#### Case No. 5

MW had married her husband in Antigua in the West Indies. Shortly after their marriage, her husband had come to Canada to work and while here had formed a relationship with another woman. Seven years previous to my involvement with this case, MW's husband had brought her and their two children to Canada. MW was given her own place to live and

her husband visited them frequently. Subsequently another child was born.

MW was legally separated from her husband and had custody of all the children. Her husband had visitation rights to see the children. MW's husband would purchase the groceries he thought were needed and pay the household bills directly. He gave no actual money to MW for herself or the children. During this time MW became ill and was diagnosed as having leukemia.

Eight months previous to my involvement with the case MW's husband had removed their oldest child, age 12 years, from her home and had not allowed MW to see him. He was visiting less frequently than before and was providing less food for the family. MW was in need of a better housing arrangement and some control over her own finances. Her husband was completely opposed to MW being on welfare or living in subsidized housing and was threatening to remove the other two children from the home if she should apply for either form of assistance. MW's husband did not believe that her condition was as serious as diagnosed and believed that she was using her illness to take advantage of him.

Over the course of six months I saw MW at least once a week in her own home. MW's goals were to regain custody of her eldest son and to gain financial and emotional control over her own life. Our sessions involved providing MW with counseling that involved helping her to work out

what she wanted to do and how it was to be achieved. During the extent of my involvement MW moved into a larger home through public housing. She also became financially independent through the support of Welfare. MW's lawyer was trying to regain custody of her son and MW was beginning to make plans to enter an LPN training program.

#### Case No. 6

CF was seeking a divorce from her husband. The question of custody of their young child was before the court. The court had ordered that a home study of each parental home be provided in order that the court could make its decision. CF was anxious regarding the home study and needed some reassurance as to what to expect and how to handle herself.

In this case, contact was minimal. I was in the legal office, the lawyer received the call, ascertained its nature and transferred it to me. I provided CF the information she needed re what to expect with the home study. I also offered her further help and reassurance if she felt she needed it.

#### Discussion

In each of the cases presented in this first group of clients involved in Separation and Divorce Litigation, there was very little difficulty presented concerning the

legal aspects of each case. As a social worker in a legal office my role was not to replace the lawyer but to complement and enhance their legal services through providing crisis, family, and personal counseling as needed by the clients. While the legal issues in Separation and Divorce cases are fairly clear cut as defined by: The Divorce Act (1968)(1986), The Marital Property Act (July 20, 1978), The Family Maintenance Act (July 20, 1978) and The British North America Act sec 91(26) and sec 92(12), the underlying emotional issues are much more difficult to define. Many of the people involved in these cases were in situations that felt confusing to them. A confusion that resulted from, either their not understanding which components were involved and/or they were unable to identify the various components.

A social worker is trained to listen to a person's description of their problems and then to begin to identify the various components that comprise the problem. In doing so, the social worker is then able to help the client understand the problem with which they are coping, and thus they can begin to devise new coping mechanisms that will help to relieve their confusion and resulting stress.

Many of the underlying emotional components in this group of clients were a result of a lack of communication between the various community agencies with whom the client was involved, in addition to the lack of communication

between each agency and the client. For example, Case No. 2, MB did not in fact have a further legal problem as a result of her Legal Separation. However, her difficulties did involve a lack of coordination and communication between agencies that were providing her with financial and child care support. In living separated from her husband and having a new baby, MB was trying to cope with her problems alone. She was feeling overwhelmed by the demands made on her energy by the children and unable to sort through and follow through the prospective day care plans that would ease those demands. Day care was available for two of the children, but the financial aspect of arranging transportation for them had created a stumbling block that seemed to her to be insurmountable. By spending time with MB and clarifying the issues involved, I was able to bridge the gap between the various agencies and MB. As a result day care and transportation were provided for two of her children. She was then able to make better use of her time to catch up on her sleep when the baby was napping and thus regroup her energies. Following this, MB was better able to cope with the other aspects of her situation. Prior to my involvement, MB had been quite depressed and had called her lawyer for assistance with problems that were not legal issues.

Another role that I filled as a social worker was to partake in negotiations between husbands and wives who were

involved in obtaining a divorce or separation and who were emotionally upset by their situation. All of the clients presented in this group had one or more children. In some situations the custody and maintenance arrangements were recognized as satisfactory by both parties. In others, while the custody and maintenance arrangements had already been set by the court, the husband or wife did not respect the ruling. As a result, the clients were under an enormous amount of stress in trying to handle their situation and were contacting their lawyers for assistance. Case No. 5, MW, particularly illustrates this situation. While custody of all the children had been granted to MW, Her husband had removed one of the children from her home to live with him. In addition, while her husband did provide maintenance for his family, he fully controlled the maintenance by spending it himself on food and clothing which he then gave to his wife and children. Such a situation, if taken back to court can become lengthy and expensive, in addition to increasing the emotional stress placed on each of the individuals involved. By entering into a negotiating framework, the clients had the opportunity to come to an equitable agreement without an expensive and lengthy court hearing. The lawyer was relieved of lengthy, emotional sessions with her client. This left her free to pursue other legal work and the clients were able to reach their agreement in a way that was more satisfactory in meeting their emotional needs.

In discussing the role of the social worker with regard to clients who were involved in Separation and Divorce litigation, I have attempted to show how a social worker can complement the role of the lawyer in such instances where emotional needs are coupled with legal needs.

## 2. Child Custody Issues re: CAS

### Case No. 7

BA was 20 years old, single, with one child age 7 months. She was on Welfare and had a drinking problem. This was BA's first child. She had received a number of support services through Welfare eg. public health nurse, and homemaker, native health worker, with still no change in her ability to care for her child or handle her drinking problem.

CAS Winnipeg had twice apprehended the child, in September 1979 and November 1979. Both times the police had found the baby left alone. BA did not abuse him.

During my only contact with her, BA was very quiet, non-committal and difficult to talk to as Cree was her first language. In several follow-up discussions with her worker at the Native Alcoholism Council, BA was described as "stubborn but easily led". BA had previously attended



several Alcohol Programs but was unable to maintain the program once she had left.

At the time of my involvement, CAS Winnipeg had apprehended the child and had set a date for a court hearing at which they intended to ask for an Order of Permanent Guardianship. The goal of the lawyer and presumably of BA was for BA to regain custody of her child with the additional supports that would help her to be a more satisfactory parent. BA's worker at the Native Alcoholism Council was initially in favour of CAS's application. However, following several discussions concerning alternative possibilities available to BA she agreed to support an application for an Order of Temporary Guardianship for a period of two years. In addition, BA's Band at Norway House was contacted and a request was made of them for alternative arrangements that could be made by their people to be presented at the court hearing.

Case No. 3(b.)

DH had lived common-law for 16 years with her husband. She was seeking a legal separation from her husband and custody of their 3 children ages 13, 6, and 4. DH was living on Provincial Welfare. She was diagnosed as having Systemel Lupus Erythmathosis, a debilitating form of arthritis. She also had a number of vascular ulcers,

particularly in the ankle area.

CAS Winnipeg had apprehended their three children and had obtained a 6 month Order of Supervision of the 13 year old, and an Order of Temporary Guardianship for a period of one year for the 6 and 4 year olds. The apprehensions were made for the following reasons:

1. Father had a serious drinking problem. The mother was aware of this problem and was aware of the difficulties that it caused in the family. However, she was unable to keep him away when he was drinking. In addition, the two boys had expressed to the worker that they were afraid of their father when he was drinking.
2. The housekeeping standards in existence when the children were apprehended were such that the homemaker would not enter the apartment.
3. Mother's physical condition which required medical treatment and hospitalization.
4. The fact that the mother was unable to look after the children because of her own illness.

I met with DH once in her own home this was followed by several phone contacts. DH was in need of assistance in obtaining suitable housing for herself and her children. The Indian and Metis Friendship Center were called on to assist in this matter in addition to providing homemaking services. My role in this aspect of DH's case was to bridge the communication gap between DH, her welfare worker, her

landlord and the CAS. I initiated the contact with these agencies. Once this was done DH began to sort out the issues for herself and was able to regain guardianship of her children.

### Discussion

This second group of cases represents those which involved a child custody dispute with a child welfare agency, specifically the Children's Aid Society of Winnipeg. Again, lack of communication between agencies and agency and client was a major factor in creating the emotional stress that these mothers were under.

In Case No. 7, BA was involved with CAS Winnipeg, Welfare, and the Native Alcoholism Council. In addition, she was a member of the Norway House Indian Band. When reviewing the situation BA was encountering, it appeared that none of these agencies, nor the Band had had contact with each other. As a social worker I was again bridging the gap that existed between these agencies, their client and the Indian Band. In contacting the various agencies, alternative plans began to evolve for BA and her child. The language barrier in particular, represented a problem for both CAS Winnipeg and BA's lawyer, as communication in English with BA was either very disjointed or non-existent. The Native Alcoholism Council did have a counselor who spoke Cree in addition to Alcohol Treatment Programs that

accommodated Cree people.

In Case No. 3(b) DH was also facing a lack of communication between CAS, Welfare, the Indian Metis Friendship Center, and her landlord. In addition, her poor health combined with these factors contributed to her difficult situation. When a person is in poor health, it can become very difficult to negotiate one's way through a situation one might handle more easily when one is healthy. As such, DH's condition simply added to the emotional stress she was under following the apprehension of her children and her separation from her husband. While the situation required legal representation, the lawyer's presentation of DH's case was greatly enhanced through the social worker's role in negotiating and communicating between different agencies.

These two cases involving a child custody dispute with CAS of Winnipeg, show how a social worker, separate from those involved in the dispute can more objectively pursue the various issues involved in the case. In both cases the legal representation in court had the potential to be greatly enhanced through the services provided by the social worker in the legal office. Those services provided by the social worker were not legal in nature but would have required the lawyer's time and energy in a situation with which they were not trained to cope.

### 3. Criminal Issues

#### Case No. 8

IP was 19 years old. He had finished Grade 8 at the age of 16 and lived with his Dad on the reserve, on Welfare. He had four brothers and one sister. His mother had died when he was 17.

The charge against him was 'Auto Theft'. He had come to Winnipeg on the day of his court hearing and was in consultation with his lawyer. After some time, his lawyer came to me and stated that IP was "not talking". He needed a character witness for court that afternoon and she did not have time to spend with him trying to figure out whom he could ask. I took IP to another office, and talked to him about his fear of the trial and explained the process of the trial to him. His lawyer required information about his schooling, his work experience, his family, and any previous charges.

IP provided the information required and identified a cousin who was living in Winnipeg who could act as a character witness for him. We called his cousin and explained the situation to him. He agreed to appear in court as a character witness for IP. As a result, later that day the charge was dismissed in court. With this case the goal was to relieve IP's anxiety and to help him help

himself in providing the information he needed for his defense in court. Through crisis counseling this goal was achieved through only one contact with the client in the legal setting.

Case No. 9

OL was 50 years old and had been married for seven years. There were three children, all girls, ages 19, 15, and 14 from his wife's first marriage. OL had a drinking problem.

The charge against OL was Indecent Assault. He had continually tried to fondle and pet the 14 year old girl; there had been no actual intercourse.

This was OL's wife's second marriage. The children were from her first marriage. Since the charge had been laid the family wanted it withdrawn. However, this could not be done and it was necessary for OL to go to trial.

Following the laying of the charge they had gone to Family Services where an assessment of the family situation was made. Family Services had recommended that OL attend Alcoholics Anonymous meetings, and that his wife was to attend Alanon. OL, his wife and the 14 year old daughter were to be involved in family counseling. No further contact was made by Family Services following this assessment although further counseling was offered to the family.

OL did not go to AA, his wife did not go to Alanon and the family did not go for family counseling. OL's wife now believed that "everything was okay". My initial contacts with this family were by telephone in which I gathered further information beyond the information provided by the lawyer. Following this I made contact with the social worker at Family Services to determine her understanding of the situation. In making these contacts the goal was to encourage OL and his wife to return to counseling. This would further enhance the case for OL's defense. Directly following a meeting with his lawyer, I talked with OL and his wife in the legal office. They were both visibly upset. They were worried about the upcoming trial, frightened about the outcome, and upset about the disruption in the family. OL had promised to stop so why did the trial need to continue.

We talked at length about each of these issues until they felt calmer and were more prepared to deal with the future trial and its implications.

#### Case No. 10

LF aged 14 was the youngest of 6 children, 4 sisters and 1 brother (age 22, married, with one child). He was attending school in Grade 8, although he was frequently truant. He was currently involved with a counselor from the Child Guidance Clinic (CGC). He had had two previous

charges under the JDA that were dismissed sine die, and two other charges under the JDA for which he had received a one year probation.

His present charge under the JDA was that of 'Wounding'. He had used a knife on another 8 year old boy. LF's lawyer requested an assessment of his home and school situation for use in court. I consulted with the CGC counselor, LF's mother and his older brother. LF was involved in a program at school where he was receiving some extra attention at school, but it was not enough. The CGC counselor suggested that we attempt to involve LF's brother as LF tended to live in either his parent's home or his older brother's house. LF's father did nothing with the children and LF sought companionship with his brother and his wife and their daughter. LF's mother was interested in having LF's guardianship transferred to his brother. This required the consent of both mother and father and would be processed through Surrogate Court.

LF's father had not worked in over 20 years. He was an epileptic and he appeared to have used this to justify his inactivity regarding his job and his children. LF's mother had arthritis which at times was crippling. Several times she had needed to remain in hospital for several days. During these times a homemaker had been called into the home. She appeared to work hard to provide food and care for the children but received no help from her husband. Much



of LF's school has been disjointed because of the many moves that the family had made.

LF's lawyer thought that LF could possibly receive probation, especially if it could be shown that he had lots of supports and changes for the better since his previous problems had occurred. LF's brother filed an application for guardianship of LF and LF moved into his brother's home. In addition LF was enrolled in the Youth Achievement Program (YAP) at school where there were two teachers and three aides for every 20-25 kids. It was "academic activity" oriented so that LF could eventually work himself back into the main academic stream.

With the continued support of the child guidance counselor, his school counselor and the special program, LF now had an opportunity to learn how to handle his problems in more appropriate ways. His lawyer also had a much improved situation to present to the court on his behalf.

### Discussion

The criminal cases presented here represent additional ways in which a social worker can enhance the services provided to the legal client. IP represents a situation in which the lawyer and her client were unable to communicate with each other. IP's fear of the situation in which he found himself was so overwhelming that he could not respond to his lawyer who was unable to relate to his

emotional distress. As a social worker actually situated within the legal office, I alleviated the emotional stress that IP was experiencing through crisis counseling, the end result being a very positive conclusion to his court hearing. Without the availability of the social worker, the positive aspects of IP's case may not have been identified and presented with the same end result.

Cases 9 and 10 both represent situations in which a follow through of recommendations was essential to the positive representation of the legal case. In these cases, much of the legal representation was based on the positive changes that the clients had made following the criminal charges having been laid against them. The intent was to show that the people who had been charged were making an effort to effect a positive change in their respective situations. A lawyer does not usually have the time available that would be required to encourage the clients to follow through with the recommended changes. In addition, fear of the trial process could foster a feeling of hopelessness in the client that would hinder their ability to view the positive aspects of the suggested changes. Once the process has been explained, it becomes less threatening and allows the client to become more rational in terms of helping himself.

These three cases have illustrated how a social worker, situated within a legal office can aid the client

and lawyer in presenting their defence in the most positive way.

### Summary

In this chapter, 10 cases have been briefly described. While each case is individually different, there are several issues that are common to all of them. The most readily apparent issue is that of communication. In each case as presented, lack of communication between agencies, client and agencies, and lawyer and client is seen as a problem that has contributed to the client's confusion and stress. The social worker is seen as a person who is able to help bridge these communication gaps through negotiation, mediation and linkage. Another issue is that of fear of the unknown. The unknown could be the actual court hearing, or the expected result of the court hearing. It could also be not knowing what is expected or required in order to present the best possible case. Another strong element seen in these cases is the consistent need for reassurance and encouragement in the face of seemingly insurmountable problems. A social worker who is not attached to any one particular agency, but has knowledge of the agencies to which the clients are connected, is providing an atmosphere in which accepting assistance beyond the legal aspects is more acceptable.

## CHAPTER FIVE: Evaluation and Model Development

In all areas of social work, legal knowledge is undoubtedly helpful. For example, the marriage counselor should have a working knowledge of the legalities involved in separation, divorce, and marriage; in mental health, social workers should have a grasp of the legal rights of the patients; in corrections, particularly juvenile delinquency, social workers must be aware of the prisoners rights and legal procedures, etc. Or in cases of loss of legal rights and/or other injustices, such as welfare recipients not receiving their entitlements, social workers should be knowledgeable in areas of legal rights and jurisdictions, and should be skilled in organizing groups suffering such injustices. Legal consultation is important since solutions to human service problems can have a great impact on overall agency administration, types of programs, eligibility requirements, and even professional education.

From the obverse veiwpoint, social work skill, knowledge, and expertise is useful to a lawyer in areas of research, problem solving, group work and community organizing, counseling, intervention and prevention strategies, and social problems in general. Is simply the sharing of knowledge in these areas enough? Should the

law/social work relationship end here with each acting as an independent advisor/consultant? Or does the answer lie in that each simply learns the skill, techniques/methods, theoretical base, procedures, etc. offered by the other? It is the contention of this practicum that lawyers and social workers can work together toward the common interest of the client by working in tandem. That each, within their own profession, need only learn when the other's expertise should be included in the work that is being done. By being able to identify when the other should be included, the team approach can be utilized to its full potential from both the viewpoint of the lawyer and the social worker.

#### A. Evaluation

##### 1. Overall Evaluation of the Practicum Situation

Over a short term situation, as was the case with this practicum, it is difficult to set up specific measuring mechanisms as to the relative success or failure of the study. As such an evaluation of this specific study then becomes a subjective entity in which the characters or players involved in the study also become the evaluators.

##### a.) Clients

The clients in the study, were in all but one case, very open to the concept of social work counseling in the legal setting. In the one case noted (BA), the client's

views were not obtainable as she was unable to communicate easily in English, and she was already terrified by actually being present at a court hearing when I first had contact with her. Following the court appearance she disappeared and while I continued to work on her behalf, because she did not appear at a further court hearing to represent herself, she was unable to make use of any of the services she was being offered.

In each of the other cases, the contact made between the social worker and client was made either in the legal office setting or by phone contact and subsequently in the client's own home. With each of these cases there was never any verbal or overt objection to my involvement. They did not express any resentment to a social worker having some knowledge of their particular situation. Once actual contact had been made with these clients, in most cases further contact was initiated by the clients themselves. Only in the very short term cases such as that of IP was there no further contact necessary. The reason for this being that the contact, short term counseling and investigative aspects of the case were all handled on the day of the court hearing, in the legal office. During the court hearing IP's case was dismissed, as such there was no further need for contact.

The case of IP case does illustrate the need for a social worker in the legal setting. IP was very confused

and withdrawn when he arrived and had not previously spoken to his lawyer. His lawyer, in turn, became frustrated with her attempts to reassure IP and ellicit the needed information from him. As a social worker, available at that particular time in the legal office setting I was able to help him to become calm to the point where he could hear about the process in which he was to be involved. In addition he could begin to see how he could best help himself rather than simply succumb to the feeling of being overcome by the whole process.

In 9 out of 10 cases the clients showed visible relief, relaxation of the stress they had been feeling. They were able to work out their own ways of helping themselves and the social work role became one of support that was helpful and supportive to the client in the areas needed by the client.

b.) Self

As a participant in the project, it is not always possible to remove oneself sufficiently from the situation in order to provide a reasonably objective evaluation. In addition, the passage of time between the actual completion of the casework and its presentation can lead to a number of facts that can be biased either in a positive or a negative way due to a selective memory. Despite these limitations the value still remains in assessing the study from the

social worker's viewpoint.

The most visible and immediate results of my involvement in the cases was seen regarding the long and short term counseling provided. For example, in the case of MW, the counseling was maintained throughout my involvement within the legal setting, and continued for a short period of time, at MW's request, following my departure. During this time MW's health remained stable, she was able to feel comfortable in removing herself from complete dependency on her husband by moving into a public housing unit. Her sense of self-accomplishment and independency was visible to me as a social worker, in the way she was able to be relaxed, smile, and discuss her future with a more positive attitude. Without my involvement, the lawyer and MW were becoming increasingly frustrated with MW's inability to do anything for herself and her need to continue to lean on a husband who quite obviously exploited her. By becoming part of the team, I as a social worker was able to help MW to separate her legal needs from her emotional needs. As such the confusion was alleviated for both the lawyer and her client and the client's ability to help herself and her lawyer was enhanced.

The case of LF was a further example of a case in which I believe that my involvement illustrates a positive effect on the client. This was a criminal case that involved many social and emotional issues that were, in



effect, outside of the actual legal situation. However, the lawyer involved was able to identify the need for social work involvement in terms of the involvement having a positive effect on the outcome of her client's court hearing. In becoming involved in this case, I relieved the lawyer of a great deal of time that she may have spent on these aspects of the case. In addition, I was able to become more heavily involved in the social/emotional aspects of the case than would the lawyer. As a result the lawyer was given more extensive background information and change of circumstances to present in court on LF's behalf; LF's parents were satisfied with the change in circumstance; and LF was in a setting in which he could feel less personal stress and more support from his family.

The effect of my involvement re short term or crisis counseling is best illustrated by IP's case. My presence in the legal setting was seen by the lawyer, client and myself as very advantageous. An escalation of stress on IP's part was curbed by a social worker's presence and the lawyer was able to step back from IP's emotional needs and concentrate on his case, what information she needed, and how it would be best presented. There was no resentment on the lawyer's or IP's part of any intrusion into their "territory" or personal information. It was a case in which it can be seen clearly how the lawyer and social worker worked together in a short period of time to help the client and enhance his

legal case in addition to his personal well being.

A significant portion of my work was that of referral, linkage, negotiation, and bridging communication gaps. In many instances the clients were unable to or afraid to mobilize other people on their behalf. Connections were made between welfare workers, Children's Aid Society workers, family service workers, Indian Metis Friendship Centre, and the Native Alcoholism Foundation workers etc. Appendix D provides a complete list of agencies that were contacted by the social worker on behalf of the clients. As a social worker my perception of the problem would often identify an inability to communicate. Either the client misunderstood, simply did not know, or was too afraid to speak out. On the other side of the situation, case workers in other agencies are often overloaded to the point that if the client does not speak up for him/herself then the attention goes elsewhere. As a social worker in the legal setting I saw that I was effective in either encouraging the client to speak up or in making that first or further connection with the agency. Once the connection had been made or re-established it was then up to the client to decide "what next."

In addition to helping clients with their social and emotional needs, I also identified an additional role in the legal setting as being emotionally supportive to the lawyers themselves. This role was not initially identified,

however, during my social work practice within the legal setting, the need was apparent, for emotional support for the lawyers. In such instances as MW and IP, the lawyers were feeling at a loss as to "what to do next," and were short of time in which decisions had to be made. These feelings can have an adverse effect on both the case at hand and other cases on which they are working at the same time. In addition, these feelings could spill over into their personal lives. By being in the legal setting, in the capacity of a social worker, my services were available to anyone in need--the lawyers included. While taking on the cases in which the clients were confused and frightened, I was alleviating stress and confusion on the part of the lawyers. This would lead to an enhanced ability to perceive that particular case and other cases in an improved frame of mind. As such the lawyers feelings could change to those of progress and encouragement that the case was "going well." One could only hope that these feelings would also enhance their personal lives.

As the social worker in the legal setting, I did not experience any negative responses to my position from either the lawyers, clients, or other agencies. I felt that my role was seen as positive for all people involved.

c.) Lawyers

From the beginning of the project, the four lawyers involved in the legal setting seemed positive and encouraged by having a social worker in their midst. They viewed this as an enhancement of the services offered and an addition to their services, rather than an experiment that may or may not work. All the comments by the lawyers, both during and following the study period were very encouraging and positive. They were eager to have me involved in many of their cases with no apparent feeling of intrusion or "take over." In addition, when my stay was ended, I was called several times, later on, by one of the lawyers, who thought that my involvement in the case as a social worker, would be helpful.

In terms of their positive evaluation of the project, it was sufficient enough to encourage them to continue to request a further social worker placement from the School of Social Work at the University of Manitoba.

d.) Outside Observers

As an additional point of reference in evaluating this project, comments by outside observers may be considered to be valid. These outside observers constitute other lawyers who learned of the project, a journalist interested in writing an article, people from other agencies contacted, and other social workers who observed portions of

the study. In each instance the study was viewed as innovative with a very positive relationship seen between the lawyers and the social worker. While, for the most part, these people were not delving into an in depth analysis of the situation, they were giving their initial reaction as being very positive. This was quite different from the reactions of lawyers approached, previous to the study, who presented only a negative response to the suggestion of a working inter-relationship between lawyers and social workers.

## 2.) Evaluation re Initial Objectives

### a.) How a social worker can facilitate the lawyer's practice of law

When a lawyer works alone with a client, the lawyer is also alone in dealing with the client's emotional trauma that can be associated with the legal situation. A lawyer who is not trained in counseling intervention methods might find him/herself in a situation that could lead to major communication difficulties. In such cases as MW, IP, and LW, a large portion of the communication between lawyer and client was not based on legal need but on emotional need. This was identified initially by the lawyers who were attempting to deal with their clients. In the case of MW, she was phoning her lawyer frequently to enquire as to progress on her request for custody of her oldest son who

had been removed from her home by her husband. While the phone calls were initially regarding a legal request, behind this need was a need for reassurance that someone was looking after her. There was often a description of what her husband had done most recently--a plaintive request for attention. MW's lawyer was both sensitive to her client's need for attention other than legal, and sensitive to her own needs as a lawyer, to use her time more constructively in the practice of law with MW and her other clients.

The case of IP presented a situation in which the lawyer was sensitive to her client's fears and her own inability to help him bypass them (gain control over them). He needed emotional help in order to provide the information that his lawyer required to present his defense. IP's lawyer was in a situation where even if she had persevered, she may not have obtained the information that she required. In addition, she may have escalated IP's fears to the point where he might have handled himself very badly in court and the results may have been quite different from the actual results.

The case regarding LW was another one in which the client's emotional needs were evident despite her continued requests for legal attention. While not disclaiming the real legal needs that were in fact being handled by her lawyer, the evidence of emotional trauma was such that the lawyer felt she would have spent a great deal of time trying

to attend to these emotional needs. This time is then taken away from other legal matters that required her attention and were more specific to her professional training.

Each of these cases have been used to illustrate how a client undergoing emotional trauma can detract from the legal services the lawyer is able to provide to the specific clients as noted and to other clients. In addition, these cases partially illustrate how a lawyer can begin to identify a client's needs beyond the legal issues. In the cases of MW and LW, the clients were frequently phoning their lawyers. In the case of IP the client became more and more withdrawn in the presence of the lawyer and his need for legal assistance.

In each of these cases the involvement of a social worker reduced the amount of time each lawyer spent with her client, on issues that were not in fact legal issues. In addition, the clients were given the attention they were seeking to meet their emotional needs. As a result, communication between the lawyer and client was improved while at the same time the actual time used in communication was reduced.

b.) How a social worker can ease the emotional trauma of the client.

When a client approaches a lawyer seeking legal advice or assistance, the circumstances surrounding the case

can be highly emotional. The facts of the case must be clearly presented by the client in order that the lawyer can fully understand the details that are necessary for the best presentation of the case. While a lawyer is trained in examination and cross-examination, these techniques are not designed to elicit information from a client that is emotionally upset. Nor do these techniques help the client deal productively with the emotional issues of the case. A trained social worker has the skills at hand to help the client with the emotional trauma in conjunction with the lawyer's need to elicit the facts that are pertinent to the case.

The case of OL was a criminal matter that was traumatic for the entire family. While OL had not continued with the counseling recommended by his lawyer, he continued to feel emotionally upset both by his own actions, by being caught, and by being required to relive these events every time he saw his lawyer. In addition, OL's wife was emotionally traumatized by the situation and she and her daughters were indicating that they wanted the charge of indecent assault to be withdrawn. The request made of me by the lawyer was to establish what OL and his wife had done in following up the recommendation made by their lawyer to seek counseling. Through my contact with OL's wife, I learned that while they had initiated counseling with Family Services, they had not continued. OL's wife, however, had



indicated that they would like to continue the counseling. Thus, initially my role was as a communication bridge to re-establish contact between OL, his wife and the Family Services social worker. Shortly following this contact with OL and his wife, they had a meeting with their lawyer. The meeting greatly aroused the emotional trauma in OL and his wife and following their meeting they were visibly upset.

Because I was there, in the legal setting, OL and his wife were able to receive some immediate crisis counseling at that point in time. They were able to identify their feelings re the charges and in doing so, were then able to begin to deal with them. Following this they were able to leave the legal setting in a less emotional state, with a more positive view to re-engaging in longer term counseling. Many people in a similar situation, without social work help immediately available, would have left the legal setting in an emotional crisis. The crisis would have continued for a longer period of time, and would most probably have not resulted in any inclination on the part of the client to continue longer term counseling.

This case is a further illustration of how a social worker can work in tandem with the lawyer in helping the client through the legal situation. While the lawyer can be more efficient with her time used in determining the legal aspects of the case, the clients can also receive almost immediate relief from the trauma created by the situation.

As such, a client, given their awareness of the availability of the social work service, may have an increased ability to provide more accurate information more efficiently due to the self reassurance that further emotional help is readily available if required.

c.) How effective mediation can be achieved

Mediation is usually seen in terms of separation or divorce settlements in which money, child custody, and division of property are at issue. In my actual field work, I did not have the opportunity to practice this aspect of mediation. However, I did practice mediation in an alternative venue--that of mediation between a child care agency and the parent(s) of the child(ren) involved in the dispute. Mediation is most often required when the usual means of communication break down and the two parties are at an impasse at opposite ends of the continuum. Mediation is then used to renew or re-establish communication in a way in which each party can be more objective about the requests/demands being made.

In the child welfare custody disputes that I observed, the communication gap presented a problem that, particularly in the case of BA, was not easily overcome. BA spoke Cree with very little knowledge of English. How then does a social worker in the child welfare agency, who speaks English and no Cree, communicate to her client what the

agency requires of her in order for her to have the opportunity regain custody of her child. While on the one hand the agency worker had assisted in providing extra services for BA, BA did not fully understand how she was expected to make use of these services. She had come fairly recently from her reserve, where life was different than in the city. Again, my inability to speak Cree was a barrier in itself and the environment in which I first met BA was highly distressing. I was able to communicate with the various people who had been providing services to BA, and was able to gain a more complete picture than any one of the people involved. As such my assumption was that if I could regain contact with BA, that mediation could take place with an increased probability of positive results.

The other case that involved a child custody dispute with a child welfare agency was DH. Although there was no language barrier to cope with in this situation, there was a breakdown in communication. In this case mediation was achieved through my position as an independent social worker. I was able to identify where the breakdown occurred and what steps needed to be taken to begin negotiation again. In this instance, positive results were obtained. With the mother DH, re-established in more suitable housing, and with homemaking services provided, the agency was then willing to return her children to her.

In each of these cases the lawyer, by having the

social work services readily available, was able to spend less time on the individual cases. Previously they would have attempted to do some of the mediation themselves or it would have taken place in the court hearing with the judge being the "mediator." By providing the services at a more opportune time, the emotional trauma of such disputes can be reduced, in addition to reducing the time spent settling them.

### 3.) Intervention

In evaluating the method of intervention there is firstly the need to identify the role of the social worker in addition to that of the lawyer. Who is determining the intervention and who is in receipt of the intervention. On first glance at the situation in which I worked one could assume that the social worker was the person who decided on and implemented the intervention and that the lawyer's client was the person who was in receipt of that intervention. While that brief scenario was true in some cases, (eg.MW,LW), in other cases there was a different division of roles. At times the lawyer would in effect establish the method of intervention. This was especially well illustrated in the case of IP where the time frame was extremely short, the client was very withdrawn and the information required was very important. In identifying her needs, the lawyer was also identifying the method of

intervention. In this situation crisis counseling combined with short term counseling was the method of intervention.

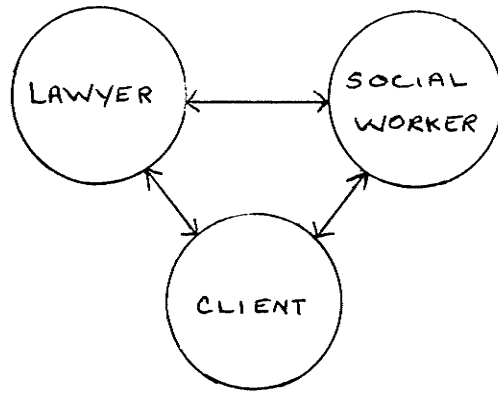
In some ways, one could also identify the lawyer as a client of the social worker. As previously discussed, a lawyer's frustration with a client can lead to emotional stress and an inability to cope efficiently with a given situation. Such a situation may come about when a breakdown in communication occurs between the lawyer and her client. In such a situation the social worker then becomes a mediator with, in actual fact, two clients. I did not find that this was a common situation in the setting in which I worked, but I did observe the potential for this difficulty with reference to several cases.

Crisis counseling, short term counseling, and mediation were the most frequently used methods of intervention, although the case of MW was one that involved longer term counseling. By choice, the main portion of my counseling with individual clients took place in their own homes. In these cases my method of intervention was short term counseling with some mediation and information gathering for both the client and the lawyer. When I saw a client within the legal setting, in each case the situation was one of the client being in a highly stressful, emotional state. I had set aside time to be in the legal office in order to be available to provide such counseling should the need arise. I found that there were occasions in which

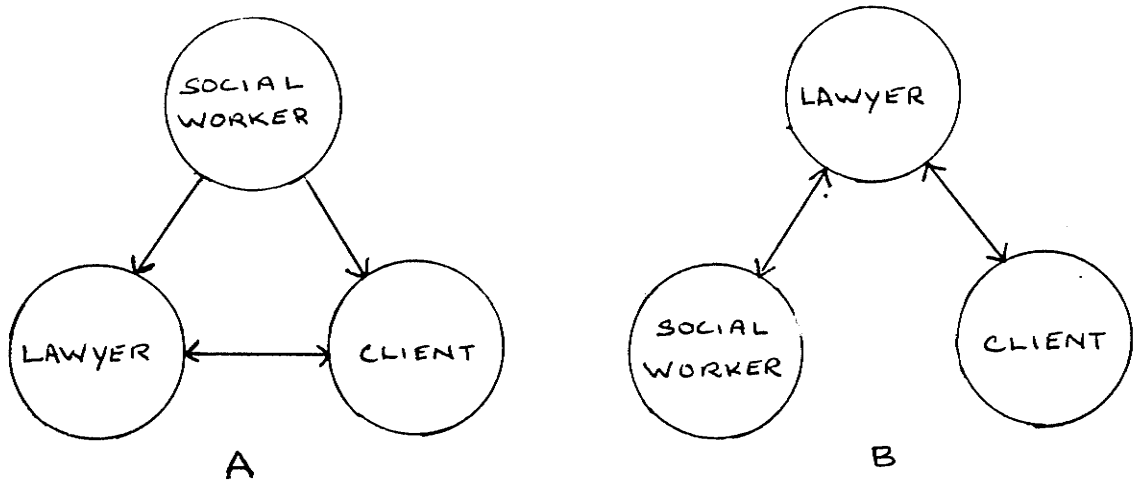
having a social worker immediately available was beneficial to both the client and the lawyer. Had a social worker not been immediately available, the client would have been left to alleviate his/her own emotional crisis and/or the lawyer would have been required to spend an additional amount of time in helping her client through the crisis.

In addition to identifying types of counseling and mediation, the lawyer and social worker working together as a team was also an intervention in terms of the client's needs. Many legal clients, particularly those under stress, perceive the lawyer as an authoritative person. This perception can increase the emotional stress and decrease the client's ability to help themselves or their lawyer. By adding the additional facet of a social worker, a client is then in a position to perceive the legal setting as a setting in which their needs can be met in a variety of ways. The client is also in a position of being related to on different levels. The suggestion here is that the opportunity is there for the client to perceive the situation in an alternate way in which the lawyer is not as likely to be seen as authoritarian, but as someone who understands the workings of the law and the legal aspects of their individual case. The social worker can then be perceived as a person who can help them through this situation which they find emotionally stressful. I would identify here at this point that this perceived perception

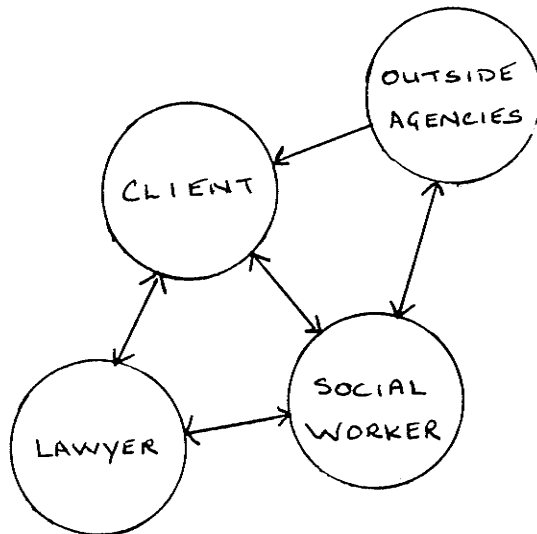
on the part of the client is enhanced by the fact that both the relationships, between the lawyer and client, and social worker and client, are voluntary. That is, it is the client's choice whether or not one or both of the relationships are maintained.



1. Team Model



2. Consultative Model



3. Communication/Referral Model



## B. Selected Models for Implementation

In completing this practicum, it is important to place the work done and evaluated in a framework that can be utilized by others. Because the nature of the work done was limited to a particular setting and a limited time frame, several different models will be described here that are variations of the actual work completed.

### 1.) Team Model

In this model the social worker and the lawyer would work together as a team of professionals who view each other as specialists in their individual fields. The client becomes the client of both the lawyer and the social worker, and communication occurs regularly between client and lawyer, client and social worker, and lawyer and social worker. The relationships between all three participants is voluntary; that is, at any point in time the client can refuse either service being offered/provided. With this type of model it would be suggested that the lawyer and social worker have their offices within the same setting to facilitate their communication and their accessibility to the client.

In terms of establishing roles, in this model the lawyer is seen as the legal professional who establishes the appropriate need for legal counsel. The lawyer also defines the information that is required to fulfill the basic

requirements to represent the case. The social worker is seen as the therapeutic professional who is there to meet the emotional needs of the client. Both the lawyer and the social worker could share the investigative and educational roles in the areas of their professional expertise. The social worker would be the professional who would make the referrals to other agencies as the need arises. While there is an attempt here to establish a clear division of roles, it is acknowledged that these roles are not easily defined in such clear dimensions in real case situations.

Should conflict arise between the three parties described in this approach, the first step towards resolving the conflict should be made between the lawyer and the social worker. An attempt should be made together, to redefine their roles and set priorities in terms of the actual case.

Funding for this model would require that the lawyer and social worker, either receive their fee from different sources, or establish a prior agreement as to the percentage received by each from the fees received from the client. Lawyers have already an established form of payment of legal fees either through legal aid or the actual client. Social workers, to this point are not seen as professionals who collect fees from their clients for services rendered. As such, until the relationship between lawyers and social workers becomes established in the eye of the public, the

social worker may be required to establish payment through other means. A grant provided by both the Federal and Provincial Governments could be seen as an option. The assumption here is that by spending money on providing professional social work in the legal setting, the government will save even more money by having fewer cases proceed to court, and by shortening the average length of the court hearings.

## 2.) Consultative Model

With this model, I have illustrated two ways in which the use of consultations may take place. In model 2 a.), the social worker is in contact with both the lawyer and the client. The social worker may be either within the actual legal setting or situated close by. The social worker's services are requested by either the lawyer or the lawyer's client. In this model both the lawyer and the lawyer's client can become the social worker's client. In model 2 b.), the consultation takes place only between the lawyer and social worker. The social worker does not have direct contact with the lawyer's client although the client would need to give permission for social work consultation due to the requirements of confidentiality. In both of these consultative models the social worker would be hired by the lawyer when the need for consultation arises.

Within these consultative models the roles of the

lawyer arrais to other agencies can be made by either the lawyer or the social worker.

With the consultative model, conflict between lawyer and social worker is less likely to occur as the social worker is hired by the lawyer for consultation on only therapeutic needs. Again the relationship between lawyer and social worker, and client and social worker is a voluntary one and can be terminated at any time by either party.

With this type of model, the payment of social work services rendered would be made through the legal office. A contractual arrangement would have been made previously between the lawyer and the social worker. Government funding may be a possibility on the same basis as suggested for the Team Model, in that the courts would be used more efficiently.

### 3.) Communication/Referral Model

This model illustrates those cases in which the lawyer's client is already involved with other social agencies. In this situation both the lawyer and the social worker have the same client. The client is in need of legal services but is also communicating poorly with other agencies. This poor communication may have resulted in the need for legal services, or may confuse the issues surrounding the specific legal requirement. With this type

of model the social worker may be situated within the legal setting or be, close by within the same office building.

The communication/referral model implies the role of the social worker in this situation as a facilitator between the client and lawyer, and the client and other agencies. In addition the social worker's role would include the therapeutic services required to meet the emotional needs of the client. The lawyer's role is that of meeting the legal needs of the client. The lawyer would also establish the investigative requirements of the legal case. These requirements may be fulfilled by either the lawyer or the social worker. The educative requirements of the client would be met by both the lawyer and the social worker as they pertain to the different areas of professional expertise.

If conflict occurs between the lawyer and social worker working within this model, it should be resolved through the re-establishment of the priorities as they relate to the needs of the client. In this model the lawyer and social worker are working on an equal basis as professionals providing services in their areas of expertise. Again the relationships here between professionals and client are voluntary.

With this type of model the social worker would receive remuneration as a professional in a business/legal setting. Funding could be obtained through both the Federal

and Provincial Governments on the basis of reduced court costs. Other means of payment could be arranged through a separation of the fee "normally" paid to the lawyer into legal and social work services. The fee would then be paid to the association of the two professionals and its division would be as previously determined.

### Summary

These three types of models illustrate several ways in which social workers and lawyers can work together to the mutual benefit of the client in need of legal services. This practicum has established a reasonable basis for suggesting that this type of combined service is needed in today's society. As the population increases, so do the needs of the systems providing services to individuals. Backlogs within the court system are common knowledge. This can be alleviated through providing the type of service as described in this paper. In addition, clients can be served more efficiently and effectively within the legal setting.

## APPENDIX A

Code of Professional Conduct Canadian Bar Association.  
Special Committee on Legal Ethics, 1975

### Rules

1. The lawyer must discharge his duties to the client, the court, members of the profession with integrity. (p.1)
2. (a.) The lawyer owes a duty to his client to be competent to perform the legal services which the lawyer undertakes on his behalf.  
(b.) The lawyer should serve his client in a conscientious, diligent and efficient manner and he should provide a quality of service at least equal to that which lawyers generally would expect of a competent lawyer in a like situation. (p.4)
3. The lawyer must be both candid and honest when advising his client. (p.8)
4. The lawyer has a duty to hold in strict confidence all information acquired in the course of the professional relationship concerning the business and affairs of his client, and he should not divulge any such information unless he is expressly or impliedly authorized by his client or required by law to do so. (p.12)
5. The lawyer must not advise or represent both sides of a dispute and, save after adequate disclosure to and with the consent of the client or prospective client concerned, he should not act or continue to act in a matter when there is or is likely to be a conflicting interest. A conflicting interest is one which would be likely to affect adversely the judgement of the lawyer on behalf of or his loyalty to a client or prospective client or which the lawyer might be prompted to prefer to the interests of a client or prospective client. (p.16)
6. The lawyer who engages in another profession, business or occupation concurrently with the practice of law must not allow such outside interest to jeopardize his professional integrity, independence or competence. (p.22)
7. The lawyer owes a duty to his client to observe all relevant rules and laws regarding the preservation and safekeeping of the property of the client entrusted to him. Where there are no such rules or laws or the lawyer is in any doubt, he should take the same care of such property as a careful and prudent man would take care of his own property of like description. (p.24)

8. When acting as an advocate the lawyer must, while treating the tribunal with courtesy and respect, represent his client resolutely, honourably and within the limits of the law. (p.27)
9. The lawyer who holds public office should in the discharge of his official duties adhere to standards of conduct as high as those which this Code requires of a lawyer in the practice of law. (p.36)
10. The lawyer should not
  - (a.) stipulate for, charge or accept any fee which is not fully-disclosed, fair and reasonable;
  - (b.) appropriate any funds of his client held in trust or otherwise under his control for or on account of his fees without the express authority of his client, except as permitted by the Rules of his Governing Body. (p.39)
11. The lawyer owes a duty to his client not to withdraw his services except for good cause and upon notice appropriate in the circumstances. (p.43)
12. The lawyer should encourage public respect for and try to improve the administration of justice. (p.48)
13. Lawyers should make legal services available to the public in an efficient and convenient manner which will command respect and confidence and by means which are compatible with the integrity, independence and effectiveness of the profession. (p.51)
14. The lawyer should assist in maintaining the integrity of the profession and should participate in its activities. (p.56)
15. The lawyer should assist in preventing the unauthorized practice of law. (p.58)
16. The lawyer's conduct towards other lawyers should be characterized by courtesy and good faith. (p.59)
17. The lawyer should observe the rules of professional conduct set out in this Code in the spirit as well as in the letter. (p.64)



Code of Ethics for Social Workers Canadian Association of  
Social Workers, 1970

Professional Obligations

1. To regard the welfare of the individuals, the groups and the community he serves as his primary professional duty.
2. To work for social change required to promote the well-being of all citizens and to participate with colleagues and others in social action and social intervention designed to effect change consistent with the values, goals and objects of the profession.
3. To hold himself personally responsible for his professional conduct.
4. To take steps to protect the community from individuals or groups purporting to offer or provide welfare services, but whose services are incompatible with the well-being of those to whom the services are offered.
5. To increase his own professional competence and be ready to share his knowledge with the social work profession as a whole. (p.1)
6. To support the development of social work practice and the work of his colleagues by participating to the best of his abilities in the activities of his professional associations.
7. To work co-operatively with other persons having regard for their areas of competence.
8. To use care in expressing views on the findings, opinion and professional conduct of colleagues, confining such comments to matters of fact and matters of his own knowledge.
9. To respect the privacy, dignity and other rights of persons.
10. To use in a responsible manner information obtained in the course of professional relationships.
11. To foster policies, procedures and personnel practices which enable social workers to conduct themselves in accordance with the values, goals and objects of the profession.
12. To work for the improvement and extension of education for social work. (p.2)

## APPENDIX B

### FAMILY LAW: AN ANNOTATED BIBLIOGRAPHY

The purpose of this annotated bibliography is to help a social worker coming into the field of law, gain a basic understanding of the history, statutes, acts and cases of Family Law. One of the roles of a social worker in the legal setting is to help clients of lawyers through the legal maze and turmoil of a separation and/or divorce, with as little as possible of the fear of the 'unknown' legal system adding to the inner turmoil already begun. In order to relieve a client's fears a social worker must have some basic knowledge of the processes involved in the legal system which are likely to concern the client. This annotated bibliography provides a range of material from very legalistic terminology to books and articles that are written in 'lay man's' terms. Thus it can be seen that a social worker working in a legal setting does not have to become a 'para-lawyer' in order to gain the basic understanding necessary in order to assess the likelihood of a client having difficulty with the emotional turmoil of separation or divorce, and where, in particular the legal process might amplify that emotional turmoil.

This bibliography is divided into five sections. The first is a reference to a broad overview of the Canadian Legal System. The second section presents materials useful in determining the background of our family and divorce laws in Canada. The third section deals with Family Law in Canada, the fourth, Divorce in Canada. Finally the fifth section represents selections dealing with Family Law in Manitoba.

#### 1. The Canadian Legal System

This section is intended to provide a broad overview of the legal system in Canada. This overview is necessary in order to fit family law into its appropriate relationships within the system.

Gall, Gerald L.; The Canadian Legal System Toronto: The Carswell Co. Ltd., 1977

Contents: Nature of Law  
Sources of Law  
The British Legal System  
The Constitutional Basis of Legislature and  
Judicial Authority  
The Institutions: the role of courts in Canada  
Hierarchy of Federal and Provincial Courts and the

Division of responsibility  
The role of judges and lawyers  
The doctrines of precedent and stare decisis  
Principles of statutory interpretation  
Natural justice in the administrative process  
New Directions

This book presents the derivations of Canadian Law through Common Law and Case Law. It represents a translation of the abstract notion of law into a breathing, living entity with meaning and availability to all persons. It increases the awareness of the nature of the system, of the roles expected of those persons manning these institutions, and of the judicial attitudes which bind all of the foregoing together into a single, complex functioning entity.

## 2. The British Background to Divorce and Family Law in Canada

This section is intended to provide the historical background from which the Canadian Law is derived. Until 1968 when the Divorce Act was passed, Canadian divorce and separation law was based on the British Matrimonial Causes Act of 1857. Therefore it is important to understand the foundation of our Canadian Law.

Bromley, P.M.; Family Law London: Butterworth's, 1976

This book presents a good discussion of the issues involved in Family Law, however, since it is of British orientation it is only useful in that it provides a comparison to Canadian Law.

Jackson, Joseph ed.; Rayden's Law and Practice in Divorce and Family Matters in all Courts 13th ed. Vol.1 and 2, London: Butterworth's, 1979

Basically this is a book on British Law. However, since the Canadian law was based on British law until the BNA the historical perspective is a useful one. Beyond 1857, however, it becomes essentially irrelevant. Chapter One of Vol.1 does present a good historical background to the British law.

Webb, P.R.H. and H.K. Bevan; Source Book of Family Law London: Butterworth's, 1964

Contents: The contract to marry  
The formation of marriage in England  
Nullity of marriage  
Divorce and other matrimonial relief obtainable in the divorce division of the high court  
The basis to a petition for divorce  
Matrimonial relief of spouses during marriage  
Maintenance of spouses during marriage  
Financial relief  
Legitimacy  
Parent and child: right to custody  
Parent and child: the duty to maintain  
Miscellaneous parental rights and duties  
Guardianship  
Adoption  
Child protection  
Property rights as between husband and wife

This book provides the reader with as much of the relevant legislation as reasonable. It illustrates as many of the general principles as possible by the inclusion of a

broad selection of case law. The texts of the relevant statutes and cases are grouped under appropriate headings and linked by commentary and selected bibliographies. Since our Canadian family law was based on British law through the BNA Act until 1968, it is very useful to understand the basis for the establishment of British family law in order to understand the background of our Canadian law. This book provides a good combination of the body of statutes, commentary on their use and background and relevant cases to emphasize particular points.

3. Family Law in Canada

This section is intended to provide a basic overview of Family Law in Canada. Parts of family law are Federal, others are Provincially based. As such an overall view presents a background into which the various parts fit.

Andrews, H.T.G.; Family Law in the Family Courts Toronto: The Carswell Co. Ltd., 1973

Contents: Deserted wives and childrens maintenance act  
Reciprocal enforcement of maintenance orders act  
The child welfare act--Part II--Children in need  
of  
Protection  
The child welfare act--Part III--Protection of  
children born out of wedlock  
Family division and the criminal code  
The mental health act--Mental health consideration

This book presents a very good outline of family law and how it works. There is a good preface and introduction on the background of family law considerations. Each chapter introduces the whys and wherefores of the topics considered.

Canadian Bar Association, Standing Committee on Continuing Education; Canadian Bar Association Continuing Education Seminars No.2 Family Law Ontario: Canada Law Book Ltd., 1974

Contents: Pretrial preparation for assessment of maintenance  
Developments in the law of inter-spousal support  
upon  
dissolution of marriage  
Techniques of settlement of a matrimonial  
dispute--Day  
Techniques of settlement of a matrimonial  
dispute--Brabant  
Arbitration of child disputes  
Pitfall in the drafting of separation and divorce  
settlement agreements  
Enforcement of judgements and orders across Canada

This book represents an extremely useful discussion of issues related to divorce and separation. After each chapter there is an extensive bibliography. Formulas are provided for various combinations of maintenance in addition to discussions of the emotional aspects involved in divorce and separation.

---- Canadian Family Law Guide 1976 Vol.1 and 2, Commerce

Clearing House Canadian Ltd., 1976

These volumes provide a complete and continuing coverage of more than 130 federal, provincial, and territorial statutes and ordinances relating to the field of family law in Canada. They include related case law and case annotations.

Vol.1 Topical outline including: Marriage and annulment  
Children  
Separation  
Divorce  
Maintenance  
Property

In addition, Vol.1 contains a report on the Family Law Commission of Canada under "New Matters" and a Summary of Recommendations.

Vol.2 Under Manitoba --all the Acts established by Manitoba Provincial Legislature.

This volume includes the acts for each of the ten provinces and the North West Territories and the Yukon. As such a comparison can be made between Provincial legislations.

Kronby, Malcolm C.; Canadian Family Law Ontario: General Publishing Co. Ltd., 1979

Contents: The legal remedies  
Marriage  
Separation  
Financial support  
Custody and maintenance of children  
Divorce  
Annulment  
Property rights  
Domestic contracts

This volume attempts to answer the most common questions

eg. what's a legal separation  
Doesn't the mother always get custody of the children  
How can I prove adultery  
Will I lose my property rights (what ever they are) if I break up the marriage

This book has been written to explain in simple language the rights, obligations and remedies of family law, eg. Family Law is the entire range of statutes, regulations and precedents that govern relations between husband and wife and between parents and children. This includes the

body of law on marriage, divorce and annulment, on custody of children, and property rights within the family. An appendix is also included which outlines "what your lawyer will probably want to know."

Mendes da Costa, Derek, ed.; Studies in Canadian Family Law, 1972 Vol.1 and 2, Toronto: Butterworth's, 1972

Vol.1 Family courts in Canada

Family organization and the illegitimate child  
Children in need of protection  
Adoption in Canada  
Property rights during the subsistence of marriage  
Alimony and maintenance  
Divorce

Vol.2 Custody and access

Evidence of proof in proceeding for divorce  
Nullity of marriage  
Res judicata in matrimonial cases  
The family and welfare assistance legislation in  
Canada  
Husband and wife in the law of Quebec: A 1970  
conspectus  
Tort liability of children and their parents  
Reciprocal enforcement of maintenance orders in Canada  
Divorce and the conflict of laws

Each section listed includes a discussion of the "ins and outs" of law with relevant case references. Since each section is written by a different person, these volumes represent varying perspectives on the law.

Payne, Julien D.; Selected Articles and Working Papers on Family Law, 1969

Contents: Artificial human insemination. 1958  
Proposals for reform of the law relating to  
separation  
and maintenance agreements. 1968  
Working paper on maintenance of family dependents  
with special reference to the deserted wives  
and children's maintenance act. 1960  
Working paper on judicial separation. 1966  
Working paper on maintenance during marriage with  
special reference to permanent alimony. 1967  
Tortious invasion of the right of marital  
consortium. 1968  
Brief and evidence submitted to the joint  
committee  
of the Senate and House of Commons on



divorce. 1963  
Divorce reform in Canada. 1968-69  
Corollary relief in nullity and divorce  
proceedings. 1969  
Statutory promotion of reconciliation in  
matrimonial  
causes in Australia and New Zealand. 1969  
Working paper on marriage guidance and  
conciliation  
services in England. 1967  
Legislative Amelioration of the condition of the  
common law: The Legitimacy Act (Sask). 1961

This is a selection of working papers which provide  
extensive background information to the final product eg.  
the Divorce Act, 1968.

#### 4. Divorce in Canada

This section provides references specific to Divorce in Canada. Since divorce is only one part of Family Law, it is important to deal with it separately from family law since a major portion of the role of a social worker working in a legal setting involves people going through divorce.

#### Canada. Divorce Act 1968

This is a copy of the actual Divorce Act, of which an understanding is necessary for anyone working with people going through divorce. This in combination with Reville's Divorce Act Annotated is very useful.

Canada, Parliament, Special Joint Committee of the Senate and House of Commons on Divorce Report, 1967

Part I recommendations--committee's conclusions, and  
                                                        recommendations shortly stated.  
Part II Canadian divorce law and the law of other countries  
Part III Grounds for divorce  
Part IV Procedure and jurisdiction  
Part V Draft Bill--incorporating the Committee's  
recommendations  
                        in legal form

This volume represents a basic background and rationale for the recommendations made resulting in the Divorce Act, 1968. It is an attempt to make the law of divorce and related matters in accordance with the needs of the people, more humane and more practical. Included is a recognition of alternatives not included in the Divorce Act. The recognition provides for a justification that the committee has dealt with the matter and deemed it not worthy of recommendation for inclusion in the Divorce Act.

Hainsworth, T.W.; Reville's Divorce Act Annotated 2nd ed., Toronto: Canada Law Book, 1979

This is an excellent book which should accompany the reading of the Divorce Act 1968. It provides an interpretation according to the cases following its enactment and the subsequent amendments.

Jahn, Penelope and Charles Campbell; Divorce, Children, Welfare: an up-to-date handbook on Canadian Family Law Toronto: Anasi, 1979

Contents: Divorce  
                    Children  
                    Welfare

This is a book about legal misunderstandings. It explains the down-to-earth problems of initiating legal actions and enforcing them. The purpose is to fill the gap between the sympathetic condolences of friends (and social workers) and a lawyer's hard-nosed assessment of legalities. It is an easy to read summary of the pitfalls of legalities.

The Law Society of Upper Canada Continuing Education Committee; Special One-Day Programme--the New Divorce Act and Rules June, 1968

Contents: The Divorce Act  
Changes in the substantive law of divorce and ancillary remedies  
Change in practice under the new rules  
Evidence of degree of proof  
Amendment to existing rules and new rules made necessary to implement the Divorce Act with annotations  
Steps in the typical undefended divorce action  
Information to obtain from client  
Preparation of documents and instructions for filing and service

This is an early explanation of the Divorce Act 1968 and how it was expected to be used. The amendments and changes to the rules are identified. An outline of the steps in the legal process is provided.

Lipson, Norman; Guide to Marriage, Divorce and Family Law in Canada Toronto: Coles Publishing Co., 1976

Part I Divorce  
Part II Settlements  
Part III Marriage and Separation  
Appendices

This book shows the reader how to take advantage of the legal avenues open to them, both in terminating their marriage and ensuring that they are denied nothing from marriage that is rightfully theirs. It attempts to familiarize the reader with the procedures one can expect to encounter, so that any action one initiates will be taken with one's eyes wide open--and that will mean more piece of mind for the reader and at less cost. This book takes the Divorce Act and turns it into common sense language--easily followed by someone not versed in legal terminology or procedure.

Payne, Julien D.; Power on Divorce 2nd ed., refers to Power, W.K. The Law and Practice Relating to Divorce and Other Matrimonial Causes in Canada Calgary: Burroughs Co. Ltd., 1964

Part I Divorce  
Part II Annulment of Marriage  
Part III Other matrimonial causes  
Part IV Jurisdictional and incidental factors  
Part V Practice

This is a textbook written and compiled before the introduction and passage of the Divorce Act in 1968. It represents a good discussion on jurisdictional Divorce, eg. Dominion, Provincial. Also included is a good historical review of where the divorce acts are from and their amendments.

5. Family Law in Manitoba

This section represents a selection of writings pertaining to family law in Manitoba in particular. This would be of particular interest to a social worker working in a legal office in Manitoba.

Manitoba. Dept of the Attorney General; Family Law in Manitoba October, 1978

Contents: Marital property: the old law/the new law  
Family law during marriage  
Marriage breakdown/separation and divorce/court orders—custody, maintenance, harassment etc.  
Unmarried relationships  
Children  
Changing names  
The law will protect  
Legal advice  
Counseling

This booklet attempts to incorporate the new legislation with other areas of the law to provide an overall summary of Family Law in Manitoba. It informs readers and provides them with a better understanding of the area of family law.

Manitoba. Dept of Health and Social Development; The Law and Family Life in Manitoba 1974

Part I Marriage  
Part II Severing the Marriage  
Part III Divorce  
Part IV Children's Aid  
Part V Adoption  
Part VI Juvenile Offenders

The purpose of this booklet is to explain, in everyday language, the status which marriage affords, and the marital remedies provided by law. The information is gained from observed divorce proceedings in Queen's Bench and Winnipeg Family Courts; interviews with the legal profession, self-help divorced people and free legal aid people. It is very pertinent to Manitoba.

Manitoba. Family Law Review Committee; Report of the Family Law Review Committee (on) the Family Maintenance Act and the Marital Property Acts

Committee members: Myrna Bowman  
Rudy Anderson  
Ken Houston, Q.C

This booklet identifies the problems in the legislation enacted and recommends appropriate amendments. It is written in "plain" English rather than statutory English. It provides an extremely good discussion of the "ins and outs" of the two acts in addition to individual and collective rationales for recommended changes or deletions in the act. It represents a good background of the "whys and wherefores" of the new acts.

APPENDIX C

CHART: AREAS OF FAMILY LAW DEALT WITH BY EACH COURT

	Provincial Judges Court (Family Divison)	County Court	Court of Queen's Bench	Surrogate Court
Child Maintenance	YES	NO	YES	YES
Custody of child	YES	NO	YES	YES
Children in need of protection	YES	NO	NO	NO
Juvenile delinquency	YES	NO	NO	NO
Access	YES	NO	YES	YES
Adoption	NO	YES	NO	NO
Guardianship	YES	NO	NO	YES
Family Maintenance Act orders	YES	YES	YES	NO
Marital Property Act orders	NO	YES	YES	NO
Divorce	NO	NO	YES	NO
Maintenance after divorce	NO	NO	YES	NO
Enforcement of Queen's Bench or County Court orders	YES	YES	YES	NO
Divorce and Matrimonial Causes Act	NO	NO	YES	NO

APPENDIX D

Agencies Contacted

Child Day Care Office--3rd Floor, 267 Edmonton St., Winnipeg  
Child Guidance Clinic of Winnipeg--700 Elgin St., Winnipeg  
Children's Aid Society of Eastern Manitoba--123B Marion St.,  
Winnipeg  
Children's Aid Society of Winnipeg--114 Garry St., Winnipeg  
Family Services--264 Edmonton St., Winnipeg  
Indian Family Centre--470 Selkirk Ave., Winnipeg  
Indian Metis Friendship Centre--465 Alexander Ave., Winnipeg  
KINEW Housing Corporation--129-818 Portage Ave., Winnipeg  
Low Rental Housing--410-352 Donald St., Winnipeg  
Manitoba Indian Brotherhood (MIB)--944-8245  
Native Alcoholism Council of Manitoba--203-865.5 Main St.,  
Winnipeg  
Osborne House--54 Balmoral St., Winnipeg  
Public Welfare Department--450 Main St., Winnipeg  
Veteran's Services--169 Pioneer Ave., Winnipeg  
Winnipeg Home Improvement Project (WHIP)--420 McDermot Ave.,  
Winnipeg  
Women's Employment Counseling--301-374 Donald St., Winnipeg



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