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The Civil Justice System and the Public Project: Family Court-Coast to Coast

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The *Civil Justice System and the Public Project*

Family Court – Coast to Coast

Editor

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2004

This paper is an edited, composite narrative created from field observation notes made by members of the *Civil Justice System and the Public* research team at various locations across Canada between April 2002 and May 2004. It was first presented to the Nova Scotia Family Law Symposium, Truro NS, December 1, 2004. The *Civil Justice System and the Public* is, a collaborative partnership research project funded by the Alberta Law Foundation and the Social Science and Humanities Council of Canada. Details of the project are available at www.cfcj-fcjc.org. The present paper is only possible because of the contributions of many individuals. We wish to thank all of the members of our research team for their contributions to the development of this project; our project partners, research participants, field research team, and Research Directors Barbara Billingsley, Lois Gander, Diana Lowe, and Teresa Rose.

Overview of the *Civil Justice System and the Public Project*

The Civil Justice System and the Public is a collaborative research program founded on the belief that a lack of effective communication both within the system and between that system and the public, is a significant barrier interfering with access to justice. This research is designed to involve both the public and the justice community in identifying changes in communication practice that will improve the system. The goal of the project is to make specific and clear recommendations for effective change that will ultimately improve access to the civil justice system by increasing the ability of the system to hear, involve, and respond to the public.

An Alberta pilot of the project is funded by the Alberta Law Foundation, and funding for a five year national study is provided by a Community-University Research Alliance (CURA) grant from the Social Sciences and Humanities Research Council of Canada (SSHRC). The project takes a collaborative action research approach and has established a large, national, academic and community partnership representative of all the players involved in the civil justice system.

Components of the research include a short questionnaire, in-depth interviews, researcher observations, and case studies of good communication practices. Interviews have been conducted with people working in all facets of the civil justice system, as well as with members of the public who have been involved in a civil case. Data collection has been conducted in Alberta, Nova Scotia, Ontario, Quebec Nunavut and British Columbia.

Analysis of the research data is now under way. In Alberta results have been taken back to the participating communities for their further input. Additionally, case studies of good communication practices will be identified, providing information about specific programs and a mode for collaborative evaluation of new programs.

We will continue to work with our partners to develop and circulate research products that will ensure our findings lead to new knowledge and improved communication practices. This presentation, prepared for the Nova Scotia Family Law Symposium is drawn from observation notes made by members of the research team in all of the research jurisdictions across Canada.

The narrative presented is a composite of observations and experiences. Written in the first person the "I" in the narrative reflects the combined perspectives of the observers as they attended Family Court in their role as research assistants for the *Civil Justice System and the Public* project. While Cam Schwartz is a Law Student, Cresswell, Statt, Stratton and Tsui are social science graduates with no previous experience of the civil justice system. Although they are highly educated, specially trained objective observers, they find understanding the system and confronting the emotionally charged context of family court challenging

Going to Family Court

It is the first time I have been to Family Court. In fact, the first time I've been to the courthouse. I am going there today as a researcher for the *Civil Justice System and the Public* project.

The tunnel leading to the law courts seems bleak. Footsteps echo; the lighting is dull; the air is unrefreshing; there is nothing whatsoever on the walls. The grey, frozen snow I glimpse through the window at the end of the tunnel merely adds to the depressing atmosphere.

Once inside the courthouse, I notice a number of people looking at a wall with papers all over it, so I join them. There are listings, by courtroom, of cases being heard. I find the way to family court following some other people through a glass door into a H-shaped hallway. All natural light disappears; acoustics are muted; it smells musty.

I sit for a while on an empty seat by the door, soaking in the atmosphere. There are several people about – mainly members of the public I think, because they are dressed in jeans and track shoes and sports jackets. Everyone seems weary, anxious, or terrified, or some combination of these. I overhear a number of people mention missing time at work. There are a couple of men and women in suits I think are lawyers and then one walks anxiously into the group gathered outside the courtroom and says clearly “is anyone here by the name of?” No one answers.

Time passes slowly as we wait for the courtroom to open. Several more lawyers have arrived. A woman across from me is crying now. There does not appear to be any security here and I wonder about that - might there not be potential enemies sitting across from each other? What if a spouse showed up?

I strike up a conversation with the lawyer of the missing client. I ask if she often represents clients she has not met. She says it's not uncommon, but that she's had several telephone meetings with this person, so there was no need to meet face-to-face. She went off to telephone and her client turned up, flustered and asking if anyone was her lawyer. She said to me, “I'm supposed to be meeting this woman lawyer here - I don't know who she is.” I was able to point her in the right direction - but, the client didn't seem to share her lawyer's confidence in their electronic relationship.

The courtroom is open now, but I'm not sure if it's acceptable to just walk in. I wait and watch as other people enter and exit through the double doors but cannot figure out a discernable pattern. I time my own entry right behind a couple of the women carrying folders - like me (later I realize some of them are social workers). Inside, the court is comfortable but small - very different from my expectation which, I guess, was formed by what I had seen on Law & Order.

Court has not begun and a lawyer is talking to his male client. Everything can be overheard in this small space. Apparently the ex-wife is outside minus her lawyer, who has been delayed. The man's lawyer takes advantage of this situation, approaching the woman and persuading her to go into the courtroom and speak to the man. The

discussion does not go well. I am uncomfortable to be present in what is clearly a private matter. I am torn between leaving politely as a member of the general public, and remaining as a researcher. I stay where I am.

Finally! A robed court clerk enters and the judge follows. We all stand up. Court begins with several unopposed matters, which are heard quickly. I note that the female party is repeatedly referred to as 'mom.' Perhaps this is meant to make it less formal, but it seems insulting and degrading to reduce the party to this social role and no other. And the one male party is referred to as 'my client' by his also male lawyer.

Now there is a case about a PGO – *what is a PGO?* There are concerns about the mother's contact with her sixteen year old daughter. The word "stalking" is mentioned. One lawyer asks for a restraining order. The other lawyer, representing the mother, says that there is no objection. A social worker jumps in, and speaks for the child, indicating she has no wish to have any contact with the mother. The judge did not seem bothered by the social worker's interjection and I'm surprised by all this.

Next, an adolescent girl in the chair immediately in front of me whispers to herself, "Yeah!" when her TGO is extended.. *And that differs from a PGO, how exactly?*

Now a young, unrepresented, Aboriginal couple stand up. They touch hands as they stand before the judge, visibly shaking with fear. There is a TGO in place and social services are requesting a PGO. The child has a medical condition and the mother tells the judge she just can't manage at present and wants what is best for the child. She does not understand what a PGO means. The judge explains – *so now I know too-these cases are all about temporary or permanent guardianship orders for minor children.* The judge tells the mother to go to Legal Aid and get a lawyer. He refuses to grant the PGO and extends the TGO. The couple leave and two people that I think are lawyers follow them out. Hopefully to offer some help!

A case follows where an Aboriginal maternal grandmother is a party. She does not say one word, just nods a lot – *I think that in her culture nodding is a recognition that another person is speaking and being heard – she will wait to be invited to speak* - Her case is dealt with without her ever opening her lips.

I am struck by how these decisions that dramatically, drastically, change people's lives are made so quickly in this court. This is the end of the court docket for the morning. The judge addresses me asking if I have any business before the court today. I feel a moment of panic. I say that I am just observing.

In the afternoon, the first case heard involves more positive interactions. A female Aboriginal youth, accompanied by a lawyer, a social worker and another woman (not sure of the role). It is hard to follow. There is something about secure treatment. I think the girl is under a TGO and Social Services want her to agree to a PGO. But, if instead she agrees to a secure treatment period she will be over 16 and can work towards independent living. I'm not sure what all that means. The judge takes some time reading this case file, while the lawyer goes through documents with the girl. The social worker is patient and kind to her. Another social worker comes in briefly and hugs the girl. The

judge gives the girl a pep talk and extends the TGO when the girl agrees to the secure treatment. She leaves with the social worker and the other women, who both hug her.

The main case of the afternoon follows. It is Children's Services versus a mother concerning a PGO for an eleven year old girl, who is not present. Both parties are represented by legal counsel. The woman wants to make a statement to the court about why she is willingly relinquishing guardianship. I don't understand why and again, I feel like an unnecessary intruder as the sad story unfolds. Incest by the natural father; allegations of sexual abuse by the stepfather; ADHD and other health problems of the child. The woman speaks quietly. The purpose seems to be to illustrate the repeated failure of social services to provide proper intervention and support, and failure to allow supervised visits during an interim guardianship order. Apparently the judge gets the point, as she cuts the story short with sharp words to the social services representatives. The PGO is denied; a three month TGO made, along with a psychological assessment of the mother and supervised visitations. The judge states, "if social services has a problem managing these visits they can take place in my Chambers!" *But, I wonder, "where is the child in this? She is eleven. Why does she not have a voice? Perhaps she doesn't want the visits. How do children get a lawyer? Who decides this?"*

Another day - Another city...

When I first enter the building in which family court is located I can't find an information desk or any sign explaining where to go for court or the counters. I check my instructions which say to go to the Mezzanine level. There I find a locked door and again no security desk. I check the elevator sign and go to the courtroom area, thinking I will find the counters there. I do not. It's lunch hour so no court is in session. The court area is narrow and dull and reminds me of a criminal holding cell area I once visited. I am quite shocked by the prison-like appearance of the space. There's no daylight. The seats are hard wooden benches around the walls outside the courtrooms. Again, no information desk. This is a horrible space! The social message conveyed to me is that people who have to go to family court are in fact, "criminal."

I finally find the counters. I am supposed to speak to the supervisor. No one is in a hurry to help me or the others who were waiting. Even after I explain that the ACJ has sent me the clerk is a bit surly in telling me to 'just wait there.' Once the supervisor comes she is helpful and friendly in getting the arrangements made to have a table outside the courtroom the following day....

The court area where our table is located is very cramped and busy this morning for what is known as 'family docket'. There's an officious security officer present, making sure no one uses a cell phone in the waiting area. The researchers comment that they feel too close to people who were needing to have personal and emotional conversations. Several women with children are waiting.

Inside, the courtroom is larger than other family courts I've seen. It's full. The seating is uncomfortable wooden benches. Several people are standing at the sides. We are supposed to enter and exit through the back door only. But there is a second door that opens near the front of the court and it's not clearly marked "forbidden" entry. I, and

others, inadvertently enter that way. A family court worker tells us off. People come and go from the courtroom constantly. It's noisy and difficult to hear what the judge is saying. People are confused and some have a hard time knowing if their case is being called. Many are self-represented. Court runs well overtime. The judge and court clerk will barely have time to eat before the afternoon session.

North, South, East and West: More days in Family Court

In the city...

This inner-city courthouse is a brown and beige building - inside and out. Inside it's bewildering and it takes a series of questions directed at different people before we find out where we need to go. At the family court we encounter full, airport level security. Our bags are searched and we have to pass through a metal detector. The two security officers are armed and wear bullet proof vests, but they are friendly and courteous to everyone. We sit in the courtroom area. There are duty counsel, legal aid and children's services offices. Later I realise there is another side to the family court area and the counters are located here. *People have to clear full security just to file a form?*

The courtroom is open and supposed to begin at 10:00. I go in. At 10 after the hour a robed court clerk joins me. She asks me if I'm there for a case. I explain I'm a researcher. She informs me that things don't always start on time because duty counsel has to meet with clients. The duty counsel comes into the courtroom and discusses cases with the clerk. Some are cancelled and other clients are still waiting to speak to the DC. Apparently, some are working on settlements prior to appearing in court and the DC is assisting them through this process.

Finally, at 11:00 DC and a client enter the courtroom. The clerk fetches the judge, who rushes into the courtroom seeming a bit irritated. One parent wants to take a child on holiday and the other won't consent but had not shown up for court. The exchanges are quite relaxed for a courtroom. The judge asks the client some questions directly and asks the DC more technical points, which the DC explains to the client before responding to the judge. Still, the client doesn't appear to understand what is happening. When the hearing is over, the judge rushes out and the client leaves the courtroom with the DC still explaining what happened and what the judge's decision was....

In the suburbs...

Here, the provincial and family courthouse is located near a nice park, with a separate entrance for the family court. The counter area is immediately inside the entrance. One counter is marked "Family Law Information Centre." There are seats opposite the counter and a large waiting area around the corner which has interview rooms and the office of a Mental Health Worker. There is a nice view from the window.

I have to wait for a team member so I sit in the seats opposite the counter and observe. A woman comes to the counter with the Family Information Centre sign and a clerk immediately gets up to help her. The woman leaves papers with the clerk and she will come to get them tomorrow. Someone must be going to look them over. Another clerk is being very helpful to a man filing papers, giving lots of information and suggestions.

Somehow she seems confident to negotiate that line between information and advice. I wonder if this is a result of special training to work with the information centre program (and later I confirm that it is). I come and go. All day long the staff are friendly and helpful to people who come in for filing purposes. Despite the bullet-proof screen (at least it is a thin one here), the clerks lean forward and make eye contact. They smile lots and attend closely to what clients are saying. *These clerks stand out as models of good communication practice.*

Somewhere – a town...

The atmosphere is tense in spite of the relaxed décor. People pace the hallways and look around frequently. In contrast to the superior level courthouse which just has a receptionist, there are three uniformed, armed security wearing bullet-proof jackets sitting together in a central kiosk. I think it is intimidating - over-the-top - but it's typical for family courts where the structure of the space perpetually suggests the expectation of a dangerous public.

In this jurisdiction, all the child protection, custody and access hearings are held in closed court, but we have gained special permission to observe inside the courtroom as well as set up an information table. We arrive late, see no table ready for us and cannot immediately locate our contact. I ask at the counter. A clerk tells me, curtly, to "just wait there." So I wait.

The counters are busy. The space is really small for the amount of people waiting and doing business at the counters. Everything can be overheard. The clerks are not friendly to the clients in either tone or demeanour. My associate beckons; our contact is found. *Fortunately - or I may have been left waiting for ever!* Our contact is helpful and friendly. We get a table set up. I stay outside and my associate goes into court.

The public coming into court here seem fairly organized compared to elsewhere. So far, everyone has come in with papers in hand. Many have envelopes or folders with the papers neatly clipped together. I sit and try to catch people's eye and smile. At 9:30 the hearings resume. A sheriff on duty in the courtroom calls the parties when their cases are to be heard.

A lawyer and her client have been consulting in an interview room while a man, who I think is representing himself in the same case (an SRL), lurks outside. The lawyer comes out, introduces herself and asks him for a copy of some document. She tells her client, "we'll only be two minutes; we're just setting a trial date." Their case is called. It lasts 22 minutes. The hearing went other than the lawyer anticipated. The SRL wishes to change his access agreement. The mother is concerned about what the father tells the son about her during visits. The judge takes on a mediation role. He makes a referral to a parenting class and offers to make copies of an article that discusses how important it is that parents do not put the child in the middle of their conflicts. There will be no trial this time. The judge changes the access order and goes carefully through the schedule emphasizing the importance of their son also understanding it. He suggests each parent has the dates marked on a calendar at each house. The parties exit the court and leave quickly and separately.

It is now 11:15. Court is running late; the hallways are crowded. I don't think the SRLs know that they can use the waiting rooms, but those with lawyers do know that they can, even if they arrive before their lawyers do. The sheriff is looking for the next parties. They are found outside the criminal courtroom. Two lawyers go by talking about SRLs holding up proceedings. The tone is sarcastic - if I can hear this other people can.

A woman without a lawyer is avoiding my eye and squatting in the hallway going through all her papers. She is like someone waiting to go into an exam and doing last minute cramming. Finally I catch her eye and say, "It's hard to wait so long isn't it?" She agrees with me, but still doesn't engage. After a few more minutes she starts to pace the hall. The male party in her case has been standing by the far door the entire time but now his lawyer is here and takes him into a room. The woman comes up to me and tells me, "He needs a lawyer. I know what I am going to say!" She is glad his lawyer has taken him off. I surmise most of her discomfort and interaction avoidance was due to his presence in the hallway. They are called into court. They agree to an access schedule but when they come out the woman seems upset - *I wonder if perhaps she didn't say what she wanted to after all?*

The final case of the morning goes in. Two divorced parent SRLs, but the step parents aren't allowed into the court and this puzzles me. This is an access/custody issue. If I were the judge I'd want to take a look at the current spouses! I have been talking to the stepfather of the child concerned in this case for 40 minutes. I have also spoken with the father and stepmother on the other side. Based on my observations, the stepmother rather obviously had an addictions problem of some sort - my guess drugs. The stepfather told me that the mother and he have concerns about the child being at the father's house on overnight visits. Inside the court, the father who is petitioning for increased access, is aggressive in manner to the mother and the judge. The judge once more emphasizes the importance of not allowing feelings for one another to get in the way of raising their child. The father continues his inappropriate and aggressive communications. The judge is not impressed! A date for a full hearing is set. Surprisingly, as this group leave the court, no one seems particularly upset!

More cases. Court adjourns at 1:15. A 15 minute lunch break in order to start the afternoon docket on time...

Far and away...

The courthouse in this remote area is a small wooden building - such a contrast to most courthouses we've been to. But the courtroom turns out to be the most attractive I've seen. The décor is pleasant, the wooden benches are padded. There is a window overlooking the bay and this makes for a relaxed atmosphere - I don't think I've been in a courtroom with a window before.

There are 23 cases listed on today's docket. The court sheriff/bailiff is sitting at the back in a waistcoat and shirt-sleeves. He is not armed. The judge comes in. The Legal Aid lawyer is up. I look through the docket and see he is listed for a total of 11 of the cases. He seems somewhat nervous and unsure of the circumstances of his first two cases. I decide this maybe because both clients currently seem to be missing! He is more confident about his next case, sounding relieved as he states that he has consulted

frequently with this client who will be joining the court today on the phone. However, a notice to appear by phone has not been filed; but as the client is expecting the call the judge goes ahead and has the clerk call him without making any fuss or reprimanding anyone. While this is in process another clerk comes in with a message for the judge and then trips on the phone cord, sending the phone flying. The judge smothered a laugh before asking the clerk if she is all right. She is. The male clerk gathers up the phone, gets connected and a hearing is scheduled. I find it difficult to follow - the interactions between judge and lawyers seem to incorporate prior knowledge of parties and issues that is not present in urban courtrooms!

A young child has been running around the courtroom and no one seems particularly bothered by this, but now the judge comments that perhaps he will be a lawyer when he grows up. Maybe this is a polite way of asking that the child is controlled, because a female lawyer now goes back to speak to the mother and they go outside with the child. When court adjourns for lunch, her matter still not heard, the mother and child are sitting in the waiting area. The child is getting fussy - it is a long time for him to be here.

The Last Stop...

There are all kinds of people outside this courtroom. It is very interesting to watch all the parties interacting. As well as two Duty Counsel, there are several casually dressed, quite young, social workers who are very involved with clients in a friendly way. Together, these workers seem to encourage, with positive effect, friendly interactions with parties and legal counsel outside of the court before appearances. They help people with forms and papers. Tensions are much lower than I have witnessed elsewhere. The one tense incident I've seen was quickly diffused by the interventions of both court and social workers.

There is a large, very mixed, group of people exiting the courtroom now. I figure two are the natural parents. There is someone else with a History syllabus in a bag. And there seem to be court and/or social workers. Everyone is shaking hands. I have never before seen such a happy bunch of people exiting a family court hearing!

Another man comes out of court and is looking for his social worker. When he finds her, he says, "I'm so happy right now." The social worker congratulates him. I think he just won custody of his son.

Having this collaborative network of support people really seems to make a difference!