

July 26, 2017

CRILF Reviews Federal Divorce Data for Alberta

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Report Commented On: [Analysis of Data from the Federal Justice Divorce File Review Study: Report on Findings for Alberta, 2011](#)

The [Department of Justice](#) undertook the Federal Justice Divorce File Review Study in 2003, a project which wound up gathering enormous amounts of information about families going through divorce from courts across Canada. Three waves of data were collected, in 2005, 2008 and 2011. In 2015, the [Canadian Research Institute for Law and the Family](#) (CRILF) was granted access to the third tranche of data collected from the Calgary registry of the [Alberta Court of Queen's Bench](#).

The Institute has now released its [report](#) on that data, focusing on the timelines between separation and key events in the divorce process, parenting orders and child support orders, and analyzing the data by gender and the mention of family violence. Although the Institute's findings are interesting, the data collected are not representative of divorce files in Canada, nor of divorce files in Alberta, for two main reasons. First, it appears that many of the 328 court files reviewed for the Study were uncontested desk order divorce applications; 75.9% of cases only had one order in the court file and 95.7% of those orders were final orders. Second, the coders who gathered the data were instructed to ensure that every third or fourth file they reviewed was "thicker," thus oversampling files expected to have a higher degree of complexity.

Demographics

Two-thirds of plaintiffs were women, three-quarters of whom were represented by a lawyer for some or all of their cases. Less than half of defendants were recorded as having counsel.

The average age of plaintiffs at the time of divorce was 40, and the average age of defendants was 41. Men were somewhat more likely to be employed outside the home at the time of divorce (93%) than women (83%). About one-quarter of spouses were born outside Canada.

The average number of children involved was 1.7, and 87.9% of files involved spouses with one or two children. The most number of children involved in a divorce file was nine.

Marriage Breakdown

Separation was the [ground of marriage breakdown](#) given in 97.9% of all files, and was the only ground of marriage breakdown in 93.6% of files. The next most common grounds were mental cruelty, cited in 3.1% of files, and adultery, cited in 2.8% of files. Physical cruelty was given as a ground of marriage breakdown in only one file.

Time Intervals

The average amount of time passing between the date of separation and the filing of the statement of claim for divorce was 2.5 years, and the longest amount of time passing between these dates was 16.4 years.

The average time between filing and the making of the divorce order was 1.3 years, and the longest amount of time passing between these dates was 6.4 years.

The average time between separation and the divorce order was 3.5 years, and the longest amount of time passing between these dates was 18.1 years.

Orders On File

Three-quarters of files only contained one order at the time of data collection. 24.1% had at least two orders on file and 20.1% had at least three orders on file.

The most common types of initial order were final orders (95.7%), following by interim orders (3.7%) and interim interim orders (0.6%). Almost three-fifths of orders were made by consent and one-third were uncontested. Only 8.2% of all orders were contested.

Family Violence

Slightly less than 15% of the 328 files reviewed contained at least one mention of family violence. Cases mentioning violence were more likely to be started by women (77.1% of cases compared to 64.2% of cases not mentioning violence), while the parties to such cases tended to be slightly younger and have lower incomes than in cases not mentioning violence.

In files mentioning family violence, the time between the date of separation and the commencement of a divorce action was shorter than in other files, at 1.4 years, while the average time between filing and the making of the divorce order was longer, at 1.7 years. Cases mentioning family violence were much more likely to include an interim order, with 27.1% of those files having at least one interim order, compared to 2.9% of files not mentioning violence.

Parenting Orders

The most common initial parenting orders required the primary residence of the eldest child to be with the mother (69%), while decision-making in respect of that child was shared between the mother and the father (62.3%).

Fathers received the eldest child's primary residence in 10.6% of initial orders, and the child's primary residence was shared in 14.2% of those orders. Sole decision-making authority for the child was assigned to the mother in 30.8% of initial orders, while fathers received sole decision-making authority for that child in 6.9% of orders. The differences in the arrangements made with respect to the second eldest child were marginal.

The most common arrangements for parenting time were unscheduled but generous contact with the children (59.1%). The next most common orders were for contact on a set schedule (23.8%) and contact as the spouses may agree (23.5%). Unscheduled orders for contact were more common in cases not mentioning family violence than in cases mentioning violence (62.9% compared to 37.5%), and orders for scheduled contact were more common in cases mentioning violence than in cases not mentioning family violence (39.6% compared to 21.1%). Supervised parenting time was relatively rare, and was ordered in 1.4% of cases not mentioning violence and in 12.5% of cases mentioning violence.

Child Support

In light of the arrangements made for children's primary residence, fathers were much more likely to pay child support (92%) than to receive it (8%). Men supported 1.69 children on average, and paid support in the average annual amount of \$15,246, with a median annual amount of \$8,280. Women, on the other hand, provided support to 1.45 children and paid support in the annual amount of \$4,286, with a median annual amount of \$4,032.

The significant discrepancy between the amounts paid by women and men results more from differences in income than in the number of children for whom support is paid. Most mothers in the files reviewed earned between \$1 and \$60,000 per year, while most fathers earned between \$30,001 and \$150,000 per year; the income of the highest-earning man was \$878,353, almost twice that of the highest-earning woman (\$465,500).

Comments on the Data

The findings from [the Institute's analysis](#) of these data are interesting, but are likely unsurprising to anyone involved in the family justice system. They confirm my own intuitive expectations as a family law practitioner, as well as the anecdotal information the Institute has gathered from judges and lawyers and presented in [other reports](#). The real significance of this data set, however, lies in its status as the only baseline data on family justice processes extant in Canada, and the rather tragic fact that very little has been done to evaluate it.

The data collected by the Department of Justice are richly detailed; the Study itself was an important and innovative project, and represents a landmark in government efforts to obtain an empirical understanding of how justice processes impact families. The Institute's report examines only a fraction of the more than 2,000 data points that Study coders could enter for each file and the countless correlations between them, and does so for just one of the jurisdictions covered by the Study. Tragically, the data are now six years old and are rapidly aging toward irrelevance.

Given the imminent obsolescence of the data gathered by the Department, it is imperative that the federal, provincial and territorial governments commission research to thoroughly investigate the existing data and undertake a new round of data collection. As was noted by the [Family Justice Working Group](#) of the national [Action Committee on Access to Justice](#), "we have surprisingly little empirical information about the nature and scale of family disputes ... or about the adequacy of the justice system's response." These data are vital if we are to formulate a rational response to the demands of litigants without counsel and plan a coherent strategy to improve access to family justice in Canada.

This post may be cited as: John-Paul Boyd “CRILF Reviews Federal Divorce Data for Alberta” (26 July, 2017), online: ABlawg, http://ablawg.ca/wp-content/uploads/2017/07/Blog_JPB_Divorce_File_Review.pdf

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