



Family Law Court Watch Report
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PBSC is an award-winning law student program that provides legal services free of charge to organizations and individuals in need across Canada. The program offers invaluable hands-on experience to student volunteers and high quality, professional legal assistance to organizations.

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The BC Society of Transition Houses is a member-based, provincial umbrella organization that, through leadership, support and collaboration, enhances the continuum of services and strategies to respond to, prevent and end violence against women, children and youth.

This document does not contain legal advice. Pro Bono Students Canada is a student organization. This document was prepared with the assistance of PBSC UBC law student volunteers. PBSC students are not lawyers and they are not authorized to provide legal advice. This document contains general discussion of certain legal and related issues only. If you require legal advice, please consult with a lawyer.

¹ We would also like to thank Raji Mangat for her invaluable feedback and participation in this project.

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INTRODUCTION

The British Columbia Society of Transition Houses (BCSTH), and Pro Bono Students Canada (PBSC) sought to collaborate on this court watch project as a way of assessing the current realities and barriers that exist in the family court process for women and children. This court watch project is a way to gather insight, statistics, and information on the justice system's response to violence against women and children. Observing and reporting is one way to hold our legal system, judges, and lawyers accountable for their pivotal role in equal access to justice for all and especially in violence against women cases. In accessing the justice system process a number of factors were of particular interest to us from the initial stages of this study. One of which being the proportion of self-representation by women in civil violence against women cases as self-representation rates in family law continues to rise.² Additionally, we sought to explore what role and voice children have in court, whether recent changes to the implementation of protection orders affected how they were granted, who the parties were and how they were treated, and overall what the family court experience is like for litigants. Through the research collected by this court watch, the efficacy of the court's processing of family law cases and cases of violence against women and children can be more readily assessed. This court watch project aims to identify the barriers in accessing equal access to justice for women as well as practices and policies that can facilitate the removal of barriers to equal access to justice. The data provided here will not only prompt further questions for future court watches and research, but also direct us to areas in which we must critically examine what improvements need to be made to better the system, particularly for vulnerable groups.

METHODS

The data from this court watch was collected from observing sessions in Vancouver Civil Family Court from November 6, 2017 to January 22, 2018. Monday morning proceedings were attended, which started with check-in at 9:30am and would go until 12-1pm, typically ending around 12:30pm. Some of the judges opted to take a break in this morning session around 11:30am while others would go straight through. In total 50 cases were observed with an average of about 12 cases covered in each morning session. On January 22, the least amount of cases were covered with eight, and on January 8 the most were covered with 15. Time allotted to each case varied widely. Some cases would be quickly dismissed within minutes if parties were absent or wanted to speak to duty counsel, whereas other files had several issues and parties would engage in tense arguments.

The court watch was conducted by one coder using a survey tool completed for each of the cases, which can be found in Appendix A. The survey questions and categories were created through an adaption of those used in a number of other court watch projects.³ The questionnaire collected information on the case (date, file number, judge, parties, motion, outcome), and on the

² Department of Justice, *Self-Represented Litigants in Family Law* by Research and Statistics Division (Department of Justice, 2016) <<http://www.justice.gc.ca/eng/rp-pr/fl-lf/divorce/jf-pf/srl-pnr.html>> accessed 19 March 2018.

³ Kimberly Abshoff and Stephanie Lanthier, *Family Action Court Team (F.A.C.T. Court Watch Project 2008 Background Paper* (2008), <<http://www.oaith.ca/assets/files/Publications/CourtWatchFamilyCourtToronto2008.pdf>> accessed 5 October 2017; Laura Track, *Supporting Mothers or Shutting Them Out: Results of a Court Watch* (2013), <<http://www.westcoastleaf.org/wp-content/uploads/2014/10/2013-REPORT-Supporting-Mothers-or-Shutting-Them-Out-Results-of-a-Court-Watch.pdf>> accessed 5 October 2017; Public Citizens for Children and Youth, *Courtwatch: Juvenile Justice in Philadelphia 2011-2012* (2012), <<https://www.pccy.org/wp-content/uploads/2014/07/PCCYCourtwatch2012.pdf>> accessed 5 October 2017; West Coast LEAF, *West Coast Legal Education and Action Fund Family Law Project: Court Watch Report 2005-2006* (2007).

demographics (gender, race, age, language) of parties, the judges, and legal counsel. The decision to start collecting demographical data on legal counsel was added into the study after research started and there was not always time to be able to report the demographics on all parties, resulting in the proportion of recorded demographics for legal counsel being much lower than for parties and judges, where all were coded for so long as they were present. Therefore, it is important to take any findings on the demographics of legal counsel from this study with caution as they are not complete. The gender, race, and age of the parties, judges, and legal counsel, were all accessed visually and are therefore subject to a high margin of error. Factual evidence stated in the court was used to support these judgements whenever possible. For instance, if the litigants had an 18-year-old daughter that would factor into the estimate of their age. If a party spoke to their language, culture, or say the fact that they lived on a Musqueam reserve⁴, this would aid the categorization of race. Demographical factors could not be accessed for parties that did not appear in court and also for two fathers⁵ who participated by means of teleconference only, with no video visual.

After the data was collected, broader categories were established to organize age and race. As it is impossible to accurately pinpoint one's age by visual assessment and some facts to assist, age was broken down by those appearing to be within their 20's, 30's, 40's, those 50 or above, and then those not physically present. For race, the categories created were Aboriginal, Asian (East and South Asian were grouped together for the sake of analysis as there was a small number of South Asian parties), Black, Latino/Hispanic, Middle Eastern, White, and then those not physically present.

In observing parties type of representation counsel was distinguished by no representation, duty counsel representation, or represented by a hired private lawyer. Duty counsel is "a lawyer provided by BC's Legal Services Society to attend Provincial Courts on family remand days and provide legal advice."⁶ If parties were represented by private counsel this was determined by their name listed on the daily court list. The remaining parties that then had representation in court but no name was listed on the daily court list were determined to be duty counsel. As the court watch progressed it quickly became apparent which lawyers were duty counsel as they had reoccurring appearances in the court. Parties were marked as having no representation when they did not have a lawyer with them at the bench, or the litigant themselves were not present and no lawyer showed for them either.

The survey tool also collected information on whether interpreters or front-line workers were used, as well as how much parties participated in the proceeding through a measure of speaking time. For accessing the amount and quality of speaking time of each party, after the entire session was completed it was holistically determined whether a party did not talk at all or very little – saying one or two words (labeled as 'No'), whether they only spoke in response to direct questions asked by judges or lawyers and they were simple answers (labeled as 'In Response'), and then if they spoke freely or for longer periods of time – giving fuller explanations of their side of the story (labeled as 'Yes').

Details on the children in the family were also collected through the questionnaire. This included whether the couple had children, how many and of what ages, and what the custody and

⁴ *C v C* (8 January 2018), Vancouver P-F-1730076, Judge I.

⁵ *L v M* (6 November 2017), Vancouver P-F-1729853, Judge K; *L v B* (20 November 2017), Vancouver P-F-1729944, Judge R.

⁶ Provincial Court of British Columbia, "How to prepare for a family court trial", online: (11 July 2017) <<http://www.provincialcourt.bc.ca/enews/enews-7-11-2017>> accessed 12 March 2018.

child support arrangements were. Not all of these factors were expressed verbally in court in every case and therefore in those instances remain unknown to this study. The survey tool sought to collect observations on any children that were present in court, and what role they had in the proceeding. However, this section was not applicable to the vast majority of cases as it was uncommon for children to appear before the bench, this will be discussed in more detail later.

Notes were also taken on the judges' treatment towards each party, their attitudes, and comments on their statements and conduct. Additionally, the conduct and attitudes of the legal counsel were recorded for some of the cases. Once again, questions on legal counsel were added in once the study had begun and during fast-moving proceedings this section was not always able to be completed. Future studies will hopefully be able to dedicate more observation to legal counsel, as their conduct and attitudes certainly have significant impacts on their clients' cases, the proceeding's atmosphere, and the legal system overall.

The final section that the survey tool tested for was violence present in the family which was reported in the proceeding, any current or past criminal proceedings against either of the parties, and whether any applications for conduct or protection orders were made. Statements on violence or abuse within the family were recorded and then later categorized under physical, emotional, financial, sexual, harassment, and/or child witness. It is likely that violence existed in more cases than noted but that it was just not stated in the proceedings, especially in those that were quick judgments about simple issues like setting a date. In a number of cases, based on the statements and demeanour of certain parties violence was suspected, however only in those where it was stated was it coded. Likewise, only in cases where there was mention of a party previously or currently facing criminal charges was it recorded. The survey tool lastly captured whether a protection or conduct order had been made, if compliance and the process of serving the order were discussed, and if it was granted.

DEMOGRAPHICS

OVERVIEW

The makeup of the family structures studied were largely comprised of heterosexual couples. No same-sex couples were captured in this study. Parties varied in their relationship with one another, from those still currently married or previously been married, all the way to those who had simply had a short-term romantic relationship. The vast majority of parties observed had children together. Children ranged in age from infancy to 21 years old, and some couples had up to five children together. This study sought to study children's voices and representation in court, however children were only present at the bench in three cases.⁷ All of whom were infant children who did not speak, other than making some noises, and were simply held by their mothers. It appears then that children are largely voiceless within family court, or perhaps receive more of a platform in longer trials or Family Case Conferences (FCC). This may be to the benefit of children who are older and can follow the issues being debated in court, and the bickering that can sometimes accompany it. Yet, it may also be argued that the absence of children prevents them from exercising their agency and speaking to their needs. This is something that additional studies should investigate further.

In five cases it was not stated whether children were present in the family or not. Due to the overwhelming number of files relating to couples with children and for the sake of identifying the parties in this report, female parties will be referred to as Mothers and the male

⁷ *O v H* (20 November 2017), Vancouver P-F-1730033, Judge R; *J v S* (20 November 2017), Vancouver P-F-1628939, Judge R; *P v F* (22 January 2018), Vancouver P-F-1730115, Judge N.

parties as Fathers. The only diversion from the standard heterosexual family structure seen in the 50 files were five which involved Grandmothers⁸, either as a third party to the Mother and Father or as a party against the Mother or the Father. No other extended family members were involved in the cases as guardians of the children or as parties to a claim.

Other demographical factors were initially established to be collected by the survey tool, including whether parties presented with a disability, a mental health issue, addiction, or pregnancy. None of the cases observed stated that any of the parties had a disability or mental health issue directly. Based on facts in certain cases, it is likely that there were parties present dealing with a disability or a mental health issue, however without further evidence these inferences were not made. Similarly, with addiction it was only stated that the Father had issues with substance dependency in two cases.⁹ It is possible that addiction was an issue with parties in other cases but this cannot be known for certain. Finally, in only one case was it evident and stated that the Mother was currently pregnant.¹⁰ Navigating the legal system and dealing with family disputes can be an immense challenge in itself, and for those dealing with a disability, mental health issue, addiction, or pregnancy at the same time the compounding stress should not be overlooked. While this study did not capture enough data to draw conclusions on any of these factors, they are important topics that should be examined with subsequent research.

AGE

The most common age category of parties appeared to be the thirties, with 35% of litigants falling within this bracket (49% when only considering those that were present). For a breakdown of the age categories for each party type refer to Table 1. Ten Mothers and 18 Fathers were not present and thus their age could not be accessed. For the five cases which involved Grandmothers, four of them were over the age of 50 and one was not present. A small discrepancy might be noted between the age of Mothers and Fathers, with a greater number of Mothers being younger than Fathers and no Mothers appearing to be 50 years or older, whereas four Fathers were categorized into this group. Men coupling with women of an age younger than themselves is not an uncommon societal trend¹¹ and appears to be persisting here if the age approximations are true. The fact that 28% of parties were not present may skew this data however, especially if certain age groups are more or less likely to attend court. If it is the case though that on average Mothers persist to be younger than Fathers, this serves as another dimension where Mothers stand at a disadvantage. The older man may carry a greater capacity to invoke his privilege against a younger woman, having potentially more life experience and resources to draw upon to better navigate the legal system.

⁸ *C v W* (6 November 2017), Vancouver P-F-1326904, Judge K; *T v R* (20 November 2017), Vancouver P-F-1729509, Judge R; *L v B* (20 November 2017), Vancouver P-F-1729944, Judge R; *V v L* (20 November 2017), Vancouver P-F-0620141, Judge R; *V v V* (22 January 2018), Vancouver P-F-0620141, Judge N.

⁹ *V v L* (20 November 2017), Vancouver P-F-0620141, Judge R; *F v L* (8 January 2018), Vancouver P-F-1729647, Judge I.

¹⁰ *C v C* (8 January 2018), Vancouver P-F-1730076, Judge I.

¹¹ Statistics Canada, *Marital Status: Overview, 2011* by Anne Milan, Catalogue No 91-209-X (Ottawa: Statistics Canada, 2013) <<http://www.statcan.gc.ca/pub/91-209-x/2013001/article/11788-eng.pdf>> accessed 12 March 2018.

Table 1:

AGE	20s	30s	40s	50+	Not Present
Mother					
<i>N</i>	9	23	7	0	10
<i>%</i>	18	47	14	0	20
Father					
<i>N</i>	5	13	9	4	18
<i>%</i>	10	27	18	8	37
Grandmother					
<i>N</i>	0	0	0	4	1
<i>%</i>	0	0	0	80	20
Total					
<i>N</i>	14	36	16	8	29
<i>%</i>	14	35	16	8	28

Total N = 103 individuals (49 Mothers, 49 Fathers, 5 Grandmothers), 74 who were present

RACE

A diverse range of individuals were observed throughout this court watch, reflecting the multicultural composition of the city of Vancouver. A full overview of the approximated race by each group can be seen in Table 2. Once again, these numbers are subject to the error of visual judgment and also the fact that 28% of parties were not physically present. The largest portion observed was White/Caucasian individuals at 34% (47% out of those who were present). The second largest group was Asian individuals at 20% (28% out of those present). Then Aboriginal and Latino/Hispanic were each at 5% (7% out of those present). The smallest groups were Black and Middle Eastern, each at 4% (5% out of those present). Comparing these percentages of the party demographics out of those present to those of the Vancouver population,¹² it appears that our sample was fairly representative, with certain discrepancies.

Table 2:

RACE	Aboriginal	Asian	Black	Latino / Hispanic	Middle Eastern	White	Not Present
Mother							
<i>N</i>	3	13	1	2	2	18	10
<i>%</i>	6	27	2	4	4	37	20
Father							
<i>N</i>	2	8	3	1	2	15	18
<i>%</i>	4	16	6	2	4	31	37
Grandmother							
<i>N</i>	0	0	0	2	0	2	1
<i>%</i>	0	0	0	40	0	40	20
Total							
<i>N</i>	5	21	4	5	4	35	29
<i>%</i>	5	20	4	5	4	34	28

Total N = 103 individuals (49 Mothers, 49 Fathers, 5 Grandmothers), 74 who were present

¹² Statistics Canada, *Focus on Geography Series, 2016 Census* (Ottawa: Statistics Canada, 2013) <<http://www12.statcan.gc.ca/census-recensement/2016/as-sa/fogs-spg/Facts-CMA-Eng.cfm?TOPIC=7&LANG=Eng&GK=CMA&GC=933>> accessed 12 March 2018 [*Statistics Canada*].

While Aboriginal peoples compose 2.5% of the general population in Vancouver,¹³ in our court watch they appeared to be 7% of parties. This overrepresentation speaks to the continuing impacts of colonialism against Aboriginal peoples and their subsequent heightened risk of victimization, including domestic violence, which would result in them having increased contact with the court system.¹⁴ This finding highlights the need for social and legal systems to continue the decolonization process and increase family and legal supports for Aboriginal peoples. Black, Latino/Hispanic, and Middle Eastern individuals were also overrepresented based off of a comparison to the Vancouver 2016 census.¹⁵ In the general population these groups represent 1%, 1.4%, and 0.7%,¹⁶ respectively, whereas in this court watch they made up 5%, 7%, and 5%. It should be noted that this study's Latino/Hispanic category was compared with the census' Latin American group, and the Middle Eastern section was compared to the census' Arab percentage. The census uses more specific categories and therefore are not perfectly comparable with those used in this court watch. The overrepresentation for those two groups then may not be as significant. As with Aboriginal individuals though, it appears as though there may be larger failings of our society and the legal system in providing adequate supports for these marginalized racial groups. The only visible minority group that was not overrepresented, but in fact underrepresented, were Asian litigants. In the court watch, 28% of present individuals were Asian, while 44% of the general Vancouver population is Asian.¹⁷ While this could mean that Asian families in Vancouver more effectively deal with family disputes out of court, it could also indicate a silencing cultural norm of not fighting family disputes in a public forum. This finding prompts further discussion on research on why this is the case.

Overall, this underrepresentation of Asian individuals balanced out the overrepresentation of the other visible minority groups, making the proportion of visible minorities to non-minority individuals very similar to that of the general population. In this study, this ratio was 53% to 47%, respectively, whereas the census reported it to be 49% to 51%.¹⁸ It should also be noted that within those individuals categorized as white in this study, a large portion of them appeared to be European or Russian immigrants, many of which had strong accents. Therefore, while this portion of individuals may benefit within the legal system by their skin colour, they may still face cultural and language barriers in effectively navigating family court.

JUDGES

Four judges were observed in this court watch. In terms of gender, three of the four judges were female. Then for race, three of the four judges were white, with the remaining judge being South Asian. One judge appeared to be in her 40's, while the rest looked to be in their 50's or older. While it seems from these figures that judges persist to largely come from a certain sociocultural background, conclusive statements or analysis cannot very justly be made with such a small sample of judges. It is important to underscore though the way in which background influences judicial perspective and decision-making, thus it would be highly beneficial for subsequent court watches to try to examine a broader sample of judges.

¹³ *Ibid.*

¹⁴ Statistics Canada, *Victimization of Aboriginal people in Canada, 2014* by Jillian Boyce, Catalogue No 85-002-X (Ottawa: Statistics Canada, 2013) <<http://www.statcan.gc.ca/pub/85-002-x/2016001/article/14631-eng.pdf>> accessed 12 March 2018.

¹⁵ *Statistics Canada, supra* note 12.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Ibid.*

LAWYERS

Along with judges, lawyers also historically come from an advantaged class. In the observations from this court watch it appears that while there is some movement for diversity, that the benchmark standard of a lawyer still remains to be the older white male. For an overview of the age, gender, and race of the legal counsels for the Mothers, Fathers, and Grandmothers please see Table 3. It should be noted that these numbers are not all distinctly unique individuals as many lawyers, especially duty counsel, were in a number of cases and their demographics are consequently repeated. In the 50 cases there were 73 lawyers, but demographical data was only collected on 46 of them (63%); 28 out of the 39 lawyers for the Mothers (72%), 15 out of 29 for the Fathers (52%), and then three out of five for the Grandmothers (60%).

Lawyers were seen to largely be in their 40s and 50s or above, with this being the case for 45% (72% in considering only those recorded). Only one lawyer was judged to be in their 20s, which makes sense on account of the number of years it typically takes for one to become a lawyer. For gender there was a closer division, with male lawyers being slightly more common than female. For race a number of the categories observed in the parties were cut out entirely as only White, Asian, and Latino lawyers appeared before the court based on visual judgement. Despite the diversity seen in the demographical analysis of the parties and the Vancouver census,¹⁹ the lawyers observed here were largely white, making up 38% (in only considering recorded lawyers this jumps up to 83%).

While conclusions from this data should be drawn with caution due to the number of missed observations, these figures raise questions about why the demographics of lawyers do not reflect that of their clients or of the general population, and what the consequences of this are. This data suggests that the institutional barriers to becoming a lawyer for minorities and the oligarchy that exists in the legal world are still very much present. One must wonder how this shapes the law, and also how effectively these lawyers represent their clients' needs and best interests when they come from such different backgrounds and perspectives. It would be valuable to conduct further research with more resources on this issue of who the legal counsel in family court are, and how this impacts their clients and the law.

Table 3:

COUNSEL FOR	AGE				GENDER		RACE			NOT RECORDED
	20s	30s	40s	50+	Female	Male	White	Asian	Latino	
Mother										
<i>N</i>	1	8	8	11	14	14	24	4	0	11
%	3	21	21	28	36	36	62	10	0	28
Father										
<i>N</i>	0	4	6	5	5	10	11	1	3	14
%	0	14	21	17	17	34	38	3	10	48
Grandmother										
<i>N</i>	0	0	2	1	1	2	3	0	0	2
%	0	0	40	20	20	40	60	0	0	40
Total										
<i>N</i>	1	12	16	17	20	26	38	5	3	27
%	1	16	22	23	27	36	52	7	4	37

Total N = 46 counsel out of the recorded 73 counsel that were present.

¹⁹ *Ibid.*

REPRESENTATION

The growing need for affordable legal counsel was displayed in the court watch as the most common form of representation across all parties was duty counsel at 49%. In Table 4, this trend is displayed, as well as private counsel being the least common option overall. Mothers were seen to more often have counsel, either duty or private, than Fathers, however this may be skewed by the fact that a greater number of Fathers did not appear before the court. If this is not the case then it appears from these numbers that Mothers more often retain private counsel, and/or Fathers are more willing to self-represent. This is supported by the fact that in a number of cases Fathers who self-represented appeared much more confident speaking to the judge and being in front of the court than Mothers who self-represented did. All of the Grandmothers used duty counsel, which may speak to their need for someone to help them navigate the system in their vulnerable position, but economically unable to pay for private counsel.

Table 4:

REPRESENTATION	None*	Duty Counsel	Private Counsel
Mother			
<i>N</i>	10	23	16
<i>%</i>	20	47	33
Father			
<i>N</i>	20	22	7
<i>%</i>	41	45	14
Grandmother			
<i>N</i>	0	5	0
<i>%</i>	0	100	0
Total			
<i>N</i>	30	50	23
<i>%</i>	29	49	22

*This category includes when no one was present for a side

We can see from these numbers that duty counsel is an essential service for parties in family court. Judges frequently recommended parties to first speak with duty counsel or questioned if they had already been. However, in the court watch it was noticed that duty counsel was not always present or prepared when they needed to be. Going from case to case, they often had to read straight from files, sometimes for the first time. Consequently in some cases this resulted in duty counsel making errors, as in one case where they misstated the child's gender.²⁰ In another, when duty counsel was unable to follow the matter, they plainly stated "I'm not familiar with the file."²¹ While this particular case was stood down until the afternoon so that duty counsel had time to familiarize themselves with the case, it is a wonder how well they could prepare in such a short time that was likely booked with other matters, and also the inconvenience the delay would have been to the parties (which was highly common). The same duty counsel lawyers would do multiple files back to back or in the same morning and at times seemed overwhelmed and tired. This raises the question of how well duty counsel is serving the large percentage of parties that rely upon them for assistance in family court, and points to the importance that greater resources be dedicated to staffing and funding legal aid.

²⁰ *L v H* (8 January 2018), Vancouver P-F-1629250, Judge I.

²¹ *L v L* (8 January 2018), Vancouver P-F-1427623, Judge I.

SPEAKING

An overriding theme throughout the court watch was the importance of time and the court's harsh constraints in regard to it. In proceedings that were a matter of minutes, the amount of time a party got to speak and what they said could be crucial to the outcome of their case. Yet with this in mind, we can see the problem of overloaded courts has cut into speaking time for all parties, as overall not speaking at all or barely was the case for parties 32% of the time. This is then followed closely at 28% with speaking only in response to basic questions. Only 14% of the parties got to speak freely and for longer periods of time to explain their position or defend themselves. This opportunity was granted the least to Mothers, with only 8% in the yes category. Mothers also had the largest portion of not speaking at all at 43%, which is more than double Fathers who did not speak (20%). Grandmothers were split between either not speaking at all in 40% of the cases and then speaking more liberally in 40%. The sizeable proportion of parties who were not present impacts the ability to draw themes from these numbers, but it appears from this that Mothers are less often given the opportunity to speak in court or do not feel as comfortable expressing themselves as Fathers do.

Table 5:

SPEAKING	No	Response	Yes	Not Present
Mother				
<i>N</i>	21	14	4	10
<i>%</i>	43	29	8	20
Father				
<i>N</i>	10	15	8	16
<i>%</i>	20	31	16	33
Grandmother				
<i>N</i>	2	0	2	1
<i>%</i>	40	0	40	20
Total				
<i>N</i>	33	29	14	27
<i>%</i>	32	28	14	26

INTERPRETERS & FRONT-LINE WORKERS

Besides legal counsel, this study also watched for the presence of front-line workers and interpreters to assist parties. It was disappointing to see that no front-line workers were present in our observations, despite the fact that a number of parties could have benefited greatly from such support, especially cases that involved violence and abuse. This finding suggests that more information should be given to parties on the resources that may be available to them and helping connect them to front-line workers. On the other hand, interpreters were present to help translate for a party in eight cases (16%). Of these eight cases, four were there to translate to Spanish, two to Mandarin, one to Cantonese, and one to Russian. Four translators were for Mothers, two were for Fathers, and two for Grandmothers. In five cases it was expressed that an interpreter was needed but was not provided because one was not currently available or the court did not have an interpreter for the requested language. In several other cases language barriers were apparent with parties, and while not explicitly requested, interpreters would have likely been highly useful. Not only is it vital that all parties are able to be fully communicated the happenings of the court which directly affects their lives, having interpreters available and ready to assist parties would have also greatly improved the court's efficiency in a number of observed cases.

MOTIONS & ISSUES

Based on the labelling system used by the courts, each case is categorized by motion type, which includes first appearance (first time parties are before the court), application (could be for custody, parenting time, child support, etc.), second appearance, fix a date (for a trial or FCC), or a pre-trial conference (to arrange witnesses, document disclosure, or other materials before the trial). Based on the nature of the observed court, the largest fraction at 44% were first appearances. Pre-trial conferences made up the smallest amount of cases that were observed at 4%. A breakdown of the amount of each motion type can be seen below in Table 6.

Table 6:

MOTION	Number (N)	Percent (%)
FA (First Appearance)	23	44
APP (Application)	16	31
SA (Second Appearance)	6	11
FXD (To Fix A Date)	5	10
PTC (Pre-trial Conference)	2	4
Total	52*	100

*Two cases had two labels each, resulting in a total of 52 rather than 50

The standard motion labels given by the court however give little detail on what the more specific issues that the motion itself dealt with. Based on the comments taken on each case the issue was expanded under each motion type, as can be seen in Table 7. Through this analysis, we can see that across all motion types child support and disputes over disclosing financial information related to assessment was the most common issue. Second to child support was the issue of determining parenting time or visitation, then picking a trial or FCC date, followed by application for a conduct or protection order, travel rights (parent wanting to take child out of the country without permission of the other parent), custody, and other (correcting error in court documents, seeking trial information, ruling on parenting decision, etc.).

Table 7:

Specific Issue*	FA	APP	SA	FXD	PTC	TOTAL
Child support & financial info	10	6	2	3	-	21
Parenting time/visitation	8	4	1	-	-	13
Trial/FCC date	5	2	1	1	1	10
Conduct / Protection Order	3	2	1	1	-	7
Travel Rights	3	3	1	1	-	8
Custody	2	1	1	1	-	5
Other	-	3	-	-	1	4

*2 cases had two labels, specific issue only listed for one of two

The most common issue observed in this court watch was relating to financial support for the child(ren), sometimes additionally the spouse, and the accompanying debates around disclosing financial documents. The amount and compliance to child support payments were not always stated in court. For those that were, amounts agreed upon ranged from \$200²² to \$1793²³ per month (it should be noted that the former was for one child while the latter was for two). It

²² *S v S* (20 November 2017), Vancouver P-F-1427741, Judge R.

²³ *W v W* (8 January 2018), Vancouver P-F-0822122, Judge I.

was not uncommon for parties to get into heated debate on issues with non-compliance of payments, reassessment, and retroactive support.

Regarding custody, in 21 of the cases the custody arrangement was stated (42%). In 15 of these cases, the Mother had sole custody of the child(ren), which amounts to 71% of the cases where custody was known. In three of the cases, the Mother and Father had shared custody, which amounts to 14% of known cases. In two cases the Grandmother and Mother shared custody (10%). In one case the Grandmother had sole custody (5%). There were no cases where custody was stated that the Father had sole custody. A majority of the cases did not have the custody arrangement reported, but these numbers support a gendered historical and societal trend of mothers being the primary caregiver to children.²⁴

OUTCOMES

As the nature of this court was largely early hearings, a good portion of cases were redirected to trial or a FCC (33%) or had the proceeding stood down (25%) so that there was time to consult duty counsel, for duty counsel to prepare, for other materials to be gathered, or for out-of-court negotiations to be made. Outcomes of cases were grouped into broader categories for analysis and their percentages can be viewed in Table 8. After setting a trial/FCC date, and standing down procedures, the next most common outcomes that were observed were a conduct or protection order being made (10%), parenting time or visitation determined (9%) (this included what days, times, in what locations, and in the presence of who a parent could see/parent the child(ren)), disclosure of financial documents ordered (8%), custody decided (4%), child support amount set (4%), travel order (3%) (one was denied²⁵ and the other required written consent by the other parent,²⁶ the rest of the cases that applied for travel rights were sent to trial or a FCC), change to the record (2%), and application withdrawn (2%).

Table 8:

OUTCOME	Number (N)	Percent (%)
Trial/FCC date set	22	33
Proceeding moved/stood down	17	25
Conduct/Protection Order made	7	10
Parenting time/visitation set	6	9
Order to disclose financial documents	5	8
Custody decided	3	4
Child support set	3	4
Travel Order	2	3
Change to record made	1	2
Application withdrawn	1	2
Total	67	100

In all of the cases where protection orders were made, abuse or current criminal investigations were present in the family's situation, most with recent threats made against the Mother and/or child(ren)'s lives. All of the protection orders applied for were made by Mothers

²⁴ Statistics Canada, Spotlight on Canadians: Results from the General Social Survey - *Parenting and Child Support After Separation or Divorce* by Maire Sinha, Catalogue No 89-652-X, No 1 (Ottawa: Statistics Canada, 2014) <<http://www.statcan.gc.ca/pub/89-652-x/89-652-x2014001-eng.pdf>> accessed 13 March 2018.

²⁵ *B v K* (20 November 2017), Vancouver P-F-0822470, Judge R.

²⁶ *Y v Z* (8 January 2018), Vancouver P-F-1730050, Judge I.

against Fathers. Of those that were made, three were ex parte, meaning the order was granted without the presence of the Father. Mothers often had difficulties locating Fathers to be able to serve them, the most extreme case being where a mother had made over seven unsuccessful attempts.²⁷ Accommodations were sometimes made in such cases, as in the previously mentioned case where the judge allowed the order to be served through the Father's probation officer. Judges did not inform these Mothers of the new free process available to them for serving notice. This may problematically be because the judges themselves are unaware of this service, as in one case²⁸ the judge displayed that they were unclear on the whole protection order procedure and had to get direction from counsel.

ABUSE & CRIMINAL CHARGES

Abuse was explicitly expressed to be a factor in ten cases, all against Mothers & children. Of these stated, six involved physical violence, three emotional, two harassment, two sexual, and three child witness. Conducting a court watch on longer court procedures would be more useful in studying this topic as issues of violence did not always come up in these proceedings and if they did they were most often in passing. It is likely that in the families observed in this court watch, issues of abuse and violence are more prevalent than what was presented in these motions. Often going hand-in-hand with violence and abuse was the issue of criminal charges. Three Fathers were in custody at the time of the court watch. Past or current criminal charges against Fathers were mentioned in 11 cases. In one case the Father had previously served seven years for kidnapping and currently could not be located as he was said to have a contract out on his life.²⁹ A few other cases also involved Fathers who had 'a hit out on them,' which consequently endangered the Mothers and children. None of the cases observed stated that there were or had been any criminal charges against Mothers.

TREATMENT OF PARTIES

Each judge was seen to have a distinct style of governing and how they would treat the parties. Their views on family structures also had a large role in how they addressed parties and could shape the outcome of a case. For instance, Judge K (6 November 2017) was determined for all couples to "co-parent" and "make it work" and would constantly repeat such concepts in almost all of her cases. This included a case which involved abuse where she stated that "the children probably miss their father"³⁰ and encouraged the parents to reconcile. While it is possible that the children in this case were missing their Father, promoting the hegemonic nuclear family structure just for the sake of it is not healthy or what is best for that family in all cases, especially in those which involve violence. Traditional views on family were also exhibited by Judge I (8 January 2018) as she relentlessly questioned in a number of cases if the Father was *sure* that it was *his* biological child and if paternity was uncontested. Parties never raised this issue themselves and when Judge I did it seemed to catch Fathers off guard and make them uncomfortable, as none seemed to have previously been doubting or wanting to challenge paternity. Such questioning, especially when there was no basis for it, speaks to the traditional hierarchy of biological children being favoured over those not by blood.

²⁷ *N v L* (8 January 2018), Vancouver P-F-1629218, Judge I.

²⁸ *O v H* (20 November 2017), Vancouver P-F-1730033, Judge R.

²⁹ *F v L* (8 January 2018), Vancouver P-F-1729647, Judge I.

³⁰ *T v O* (6 November 2017), Vancouver P-F-1729910, Judge K.

The elite backgrounds of judges show through in particular judgments. For example, Judge I had significant issues understanding parties where English was not their first language, and at times acted impatiently and condescendingly towards those for whom English was not a first language.³¹ This disconnect in class and culture was also shown by Judge K. In one case the Judge lectured an immigrant Father who struggled with English because he had a low income as a result of still being in training for his employment. The Judge stated that only making \$10,000 a year was “unacceptable for raising a child” and the “same as a University student’s summer earnings.”³² While it is true that the Father’s earnings were not sufficient for being able to raise a child, the Judge had no sympathy for the difficulties the Father faced in adjusting to a new language, workplace, and culture, and the fact that a working class immigrant cannot be compared to a more privileged University student.

It is important to note though that while Judges did display problematic attitudes towards parties that this was not always the case. Judge N (22 January 2018) was an illustration of this, as his calm and soft-spoken demeanour brought a respectful tone to each and every case. Despite the constant time constraints of the court, Judge N did not rush parties like other Judges had done and often would check if parties understood what was happening as the proceedings unfolded. This is particularly important for parties who are vulnerable due to age such as the Grandmothers or are unfamiliar with the system and can quickly become lost in it due to culture, language, or class. A judge’s attitude and treatment of parties is a simple way in which the court system can either become a much more or much less accessible and accommodating place for all parties.

TIME

A theme that ran through every single proceeding was the importance of time and the serious lack of it in the court system. The court was evidently seen every day to have more files than it could handle, the worst being on November 20th when during check in parties were repeatedly informed that the morning session typically has 15 files, but that day had 25, so there “wouldn't be time for many of the things they wanted to do.” As a result of this, parties often did not get to elaborate their side of a situation in much detail, if at all. As one judge said while a party was trying to do just this, “Just stop for a minute, I don’t have a lot of time so we need to cut to the chase.”³³ Despite the fact that judges often cut off parties or begrudged them if they took up ‘too much time,’³⁴ judges themselves contributed in the delays by being late or by taking long breaks. On January 22nd, check-in began as always at 9:30am but the Judge did not arrive until 10:15am. This not only shifted the day back and greatly reduced the amount of files that were covered (at eight cases it was the lowest in the court watch), but also led to dozens of parties taking off work, making child care arrangements, and going through other inconveniences just to sit and wait in court. Like one Mother muttered to herself in the waiting room after letting out a deep sigh, “What a waste of time.” Another day during a break in the morning session one woman said to her partner “I don't get how the court system works, we've been here all day” (20 November, 2017). The inefficiency of the court system and the amount of time parties have to expend just to have simple matters like a court date set is inconvenient, decreases confidence in the legal system, and deters people from using the courts when they cannot afford such time.

³¹ *V v D* (8 January 2018), Vancouver P-F-1729685, Judge I

³² *T v S* (6 November 2017), Vancouver P-F-1427865, Judge K.

³³ *D v HR* (6 November 2017), Vancouver P-F-1528484, Judge K.

³⁴ *S v G* (6 November 2017), Vancouver P-F-0721544, Judge K.

CONCLUSION

This court watch project has presented us with a look into what the family court experience is like for litigants and what are the contemporary realities of the system. Through an analysis of the demographics of the different parties present in court, we find that minorities such as Aboriginal peoples are overrepresented, and that judges and lawyers do not reflect the characteristics of the general Vancouver population, nor the litigants they serve. The barriers of the legal profession continue to exist as lawyers and judges appeared to largely come from privileged groups, which has serious implications for how parties are treated and how justice is affected. While still sizeable, we did not find the rates of self-representation within our court watch as high as previous statistics.³⁵ This is likely a result of frequent encouragement by judges for parties to consult with duty counsel. With 49% of parties using duty counsel, it is shown that this legal service is essential for a large number of people and that more resources should be devoted to improving the standard of representation that it provides. More resources should also be devoted to having more front-line workers and interpreters readily available to the courts, as in a number of cases it seemed as though one or both were greatly needed. Along with language barriers, gender also impacted the amount of speaking that a party did in court, with men using double the amount of time as women to express their side of the story. Children were seen to have even less of a voice than women in the proceedings though as they were essentially never present, nor did a child ever speak before the court. Perhaps this is a positive finding for the sake of the child's wellbeing, but it also results in the child not having a say in issues such as custody or reporting violence. Abuse and violence were found by this study to be targeted against women and children, and that the court system can invoke further harm by forcing narratives of traditional family structures or not implementing protection orders as frequently or adequately as they could be. The court process overall was at most times stressful, cold, tense, rushed or delayed. Yet when judges and lawyers regarded litigants with respect and empathy this atmosphere was capable of a real shift. This demonstrates how treatment of parties is a simple method for immediate change. Along with micro-level changes though, this study also presents the need for macro-level improvements on the efficiency of the court system, the availability of readable step-by-step materials on how the process works for litigants, providing information about the service of court orders and in particular the available free BC service in ex parte matters, increasing accessibility and removing barriers for marginalized groups, and improving the court's response to violence against women and children.

³⁵ Department of Justice, *Self-Represented Litigants in Family Law* by Research and Statistics Division (Department of Justice, 2016) <<http://www.justice.gc.ca/eng/rp-pr/fl-lf/divorce/jf-pf/srl-pnr.html>> accessed 19 March 2018.

APPENDIX A

BCSTH COURT WATCH PROJECT SURVEY

Date: ___ / ___ / ___ File Number: _____ Judge: _____

Names of parties involved: _____

Motion/Issue: _____

Outcome: _____

MOTHER

Gender: _____ Race: _____ Visible Minority Aboriginal Age: _____

Presents with: Physical disability Mental Health Issue Addiction Pregnant

English as 2nd Language? If yes, was there use of translators or assistive technology? Was this provided by the court, personally paid for, a family member/friend, or no assistance provided?

Did they have counsel? Yes / Duty / No / NA / NAD

Did a front line worker assist them? Yes / No / NA / NAD

Did they speak in court? Yes / No / NA / NAD

Were they given the opportunity to speak? Yes / No / NA / NAD

Comments on what they said/conduct: _____

FATHER

Gender: _____ Race: _____ Visible Minority Aboriginal Age: _____

Presents with: Physical disability Mental Health Issue Addiction

English as 2nd Language? If yes, was there use of translators or assistive technology? Was this provided by the court, personally paid for, a family member/friend, or no assistance provided?

Did they have counsel? Yes / Duty / No / NA / NAD

Did a front line worker assist them? Yes / No / NA / NAD

Did they speak in court? Yes / No / NA / NAD

Were they given the opportunity to speak? Yes / No / NA / NAD

Comments on what they said/conduct: _____

CHILD(REN)

Does the couple in this proceeding have children? Yes / No / NA / NAD

If yes, how many and how old are they? _____

If yes, what is the current custody arrangement? _____

If yes, is one of the parties responsible for paying child support? _____

If yes, are the payments being made? _____

If Child(ren) Present in Court:

Gender: _____ Race: _____ Visible Minority Aboriginal Age: _____

Presents with: Physical disability Mental Health Issue

English as 2nd Language? If yes, was there use of translators or assistive technology? Was this provided by the court, personally paid for, a family member/friend, or no assistance provided?

Did they have counsel? Yes / Duty / No / NA / NAD

Did a front-line worker assist them? Yes / No / NA / NAD

Did they speak in court? Yes / No / NA / NAD

Were they given the opportunity to speak? Yes / No / NA / NAD

Comments on what they said/conduct: _____

Comments on their counsel if they were represented: _____

JUDGE

Gender: _____ Race: _____ Visible Minority Aboriginal Age: _____

How was the Judge's attitude towards the Mother? _____

How was the Judge's attitude towards the Father? _____

How was the Judge's attitude towards the child(ren) (if present)? _____

Comments on what they said/conduct: _____

COUNSEL

	For Mother	For Father
Demographics (Gender, Race, Age, Disability)		
Attitude towards Mother		
Attitude towards Father		
Attitude towards child(ren) (if present)		
Comments on what they said/conduct		

VIOLENCE & ORDERS

Forms of violence present: Physical Emotional Financial Sexual Harassment Child Witness

Comments on violence: _____

Is either party facing criminal charges or been previously convicted? Note if either for domestic violence:

Was compliance with court orders discussed? Yes / No / NA / NAD

Explain: _____

Was an application for a conduct order made? Yes / No / NA / NAD

Was an application for a protection order made? Yes / No / NA / NAD

If yes, was it granted? Yes / No / NA / NAD

If yes, what was the time period for it to come into effect? _____

Was it ex parte? Yes / No / NA / NAD

Were they advised that ex parte is a free process? Yes / No / NA / NAD

ADDITIONAL COMMENTS (courtroom environment & experience/other relevant/unique facts)

