

Barriers to Access to Justice in Attendance and Representation in Family Court

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Barriers to Court Attendance

Childcare Obligations

Nearly 20% of family court cases involve issues of custody and access,¹ and in the majority of cases we observed, the applicants had children. We witnessed one case in which a father petitioned to move the ongoing proceedings to a court in another city, which the mother protested, as this location was farther from her childcare providers. While applicants may appear remotely at court proceedings, the default appearance method for most applications is in-person, unless a judge orders otherwise.² This requirement makes it more onerous for parents to attend court, as they must procure childcare if the proceeding occurs outside of school hours.



Work Obligations

Family Court remands in Vancouver, which we observed for this project, occur at either 9:30 am or 2 pm-4 pm on Mondays and Wednesdays.³ This limited court schedule creates barriers for parties whose usual work hours conflict with these times. 67% of applicants in active family cases in Canada are female and 58% of family court applicants are self-representing.⁴ This schedule creates a gendered barrier, as women are more likely to be applicants and turn to the family court system.



Health

Undesired transitional phases of life, such as divorce, can have negative effects on health outcomes.⁵ In two cases observed, parties were facing serious health issues and sought delays in their proceedings. The parties were asked to provide extensive documentation while awaiting surgeries. Another party's disability status was highly scrutinized by the Judge. These attitudes make it more difficult for those struggling with health and chronic disabilities to adequately attend and represent themselves in court, placing a large burden on applicants seeking to schedule around their health procedures.



1 Ciavaglia-Burns, Lyndsay. "Profile of Family Law Cases in Canada, 2019/2020." Government of Canada, Statistics Canada. Government of Canada, Statistics Canada, June 28, 2021. <https://www150.statcan.gc.ca/n1/pub/85-002-x/2021001/article/00011-eng.htm>.

2 Gillespie, Melissa, "Practice Direction Default Method Of Attendance For Court Appearances under the Provincial Court Family Rules". Accessed March 18, 2023. <https://www.provincialcourt.bc.ca/downloads/Practice%20Directions/FAM%2011%20Default%20Method%20of%20Attendance%20for%20Certain%20Court%20Appearances.pdf>.

3 "Vancouver Civil." Provincial Court of British Columbia. Accessed February 22, 2023. <https://www.provincialcourt.bc.ca/court-location/vancouver-civil>. [Vancouver Civil]

4 Vancouver Civil, *supra*, at note 3.

5 Pearlin, Leonard I., Scott Schieman, Elena M. Fazio, and Stephen C. Meersman. "Stress, Health, and the Life Course: Some Conceptual Perspectives." *Journal of Health and Social Behavior* 46, no. 2 (06, 2005).

Barriers to Parents' Representation

Financial Resources

Many parties in court may not have sufficient financial resources to hire a lawyer and benefit from their expertise. This problem may disproportionately affect women due to the feminization of poverty.⁶ This problem may be significant in cases of domestic violence as the women may have been forced to become financially dependent on their partners, and as a result, be worse off in finding representation for their case. We observed that women in family court were more likely to represent themselves or rely on duty counsel than their male counterparts.



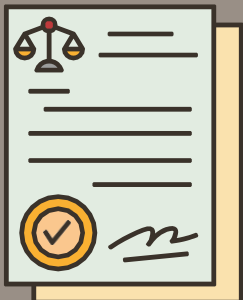
Language Barriers

Some parties face language barriers both inside and outside the courtroom that can impede their access to representation. Before court, parties may struggle to understand the court process and how to find a lawyer to represent them. A few cases we observed included interpreters for one of the parties. Some judges were accommodating and ensured the interpreter had time to translate from English and back as required. However, other judges did not allot much time for the interpreters to help their party, possibly impeding their access to justice.



Legal Aid Criteria

The Legal Aid system in British Columbia falls short of providing access to justice for many people.⁷ First, it only offers support for certain legal problems, limiting those who can access legal aid depending on whether their issue falls within the accepted categories. Second, there are income maximums for using legal aid. However, those who are above these thresholds may still not be able to afford other representation due to the low thresholds and high expenses of legal fees.



⁶ Women's Legal Education and Action Fund. "Women and Poverty." LEAF. Women's Legal Education and Action Fund. Accessed February 20, 2023. <https://www.leaf.ca/wp-content/uploads/2011/01/WomenPovertyFactSheet.pdf>

⁷ Legal Aid BC. "Do I Qualify for Legal Representation?" Legal Aid BC. Accessed February 27, 2023. https://legalaid.bc.ca/legal_aid/doIQualifyRepresentation.